(g) That the use of respondents' devices will aid blood circulation or strengthen the muscles;

(h) That respondents' devices will retain or hold all ruptures or hernias, or control ruptures 100%;

(i) That respondents' devices are guaranteed, unless the nature and extent of the guarantee and the manner of performance thereunder are clearly and conspicuously disclosed in connection with the representation of the guarantee;

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

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 14th day of April, 1960, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Fred B. Miller and Robert H. Miller, individuals and partners, trading as Miller Laboratories and as Fred B. Miller, 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

RECORDS, INC., ET AL.

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

Docket 7774. Complaint, Feb. 5, 1960—Decision, April 14, 1960

Consent order requiring Boston, Mass., distributors of phonograph records for several manufacturers to retail outlets and jukebox operators, to cease giving concealed "payola" to television and radio disc jockeys as inducement to play their records in order to increase sales.

Mr. John T. Walker and *Mr. James H. Kelley* for the Commission.
Mr. Morris Kirsner, of Boston, Mass., for respondents.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The complaint charges respondents, who are engaged in the offering for sale, sale and distribution of phonograph records as an independent distributor for several record manufacturers to retail outlets and jukebox operators in various states of the United States, with violation of the Federal Trade Commission Act, in that respondents, alone or with certain unnamed record manufacturers, have negotiated for and disbursed "payola," i.e., the payment of money or other valuable consideration to disk jockeys of musical programs on radio and television stations, to induce, stimulate or motivate the disk jockeys to select, broadcast, "expose" and promote certain records, in which respondents are financially interested, on the express or implied understanding that the disk jockeys will conceal, withhold or camouflage the fact of such payment from the listening public.

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 Records, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of Massachusetts, with its office and principal place of business located at 790 Commonwealth Avenue, Boston, Massachusetts, and that respondent Cecil Steen is president and treasurer of the corporate respondent, his address being the same as that of said corporate respondent.

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 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 Records, Inc., a corporation, and its officers, and Cecil Steen, individually, and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with phonograph records which have been distributed in commerce, or which are used by radio or television stations in broadcasting programs in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(1) Giving or offering to give, without requiring public disclosure, any sum of money or other material consideration, to any person, directly or indirectly, to induce that person to select, or participate in the selection of, and the broadcasting of, any such records in which respondents, or either of them, have a financial interest of any nature;

(2) Giving or offering to give, without requiring public disclosure, any sum of money, or other material consideration, to any person, directly or indirectly, as an inducement to influence any employee of a radio or television broadcasting station, or any other person, in any manner, to select, or participate in the selection of, and the broadcasting of, any such records in which respondents, or either of them, have a financial interest of any nature.

There shall be "public disclosure" within the meaning of this order, by any employee of a radio or television broadcasting station, or any other person, who selects or participates in the selection and broadcasting of a record when he shall disclose, or cause to have disclosed, to the listening public at the time the record is played, that his selection and broadcasting of such record are in consideration for compensation of some nature, directly or indirectly received by him or his employer.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner did on the 14th day of April, 1960, become the decision of the Commission; and, accordingly:

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

IN THE MATTER OF

ALLIED MERCHANDISING, INC., ET AL.

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

Docket 7399. Complaint, Feb. 6, 1959—Decision, Apr. 18, 1960

Order requiring cigarette vending machine distributors in University City, Mo., to cease making in advertising deceptive employment offers, exaggerated earnings claims, false assurances of assistance, and other misleading representations.

Mr. Brockman Horne for the Commission.

Mr. Morris A. Shenker, of St. Louis, Mo., for Allied Merchandising, Inc., Peter A. Krane, and William Dardick.

Mr. James J. Rankin, of St. Louis, Mo., for Vern F. Hawkins.

INITIAL DECISION BY WALTER R. JOHNSON, HEARING EXAMINER

In the complaint issued by the Commission on February 6, 1959, respondents are charged with the use of unfair and deceptive acts and practices and unfair methods of competition in commerce in violation of the provisions of the Federal Trade Commission Act, in connection with the sale of and distribution of vending machines, including cigarette vending machines. In due time, after answer, six days of hearings were held at St. Louis, Missouri, Wichita, Kansas, Denver, Colorado, Dallas, Texas, and Houston, Texas. At the hearing held in the last mentioned city on June 30, 1959, counsel supporting the complaint closed his case. On September 10, 1959, the respondents electing not to offer any evidence, an order was entered closing the record for the reception of evidence and further

directing that the parties may file proposed findings up to and including October 30, 1959. Proposed findings were submitted in support of the complaint but not on behalf of the respondents. The proposed findings are sustained by the evidence and are approved.

Respondent Allied Merchandising, Inc., is a corporation organized and existing under the laws of the State of Missouri, with its principal office and place of business at 7307 Olive Street Road, University City, Missouri. Respondent Peter A. Krane's address is the same as that of the corporate respondent. Respondent William Dardick's address is c/o Bernard J. Mellman, Esq., 408 Olive Street, St. Louis, Missouri. Respondent Vern F. Hawkins' address is c/o James J. Rankin, Esq., 706 Chestnut Street, St. Louis, Missouri. From September 26, 1957 to July 24, 1958, Krane was president, Dardick was vice president and Hawkins was secretary-treasurer of said corporation. During said period the three were the sole stockholders and directors of the corporation and, as such, formulated, directed and controlled the policies, acts and practices of said corporation. On July 24, 1958, Dardick and Hawkins resigned as officers and directors and sold their stock to Krane, and from that date to the present Krane has been the sole stockholder of said corporation and controlled its policies and acts. Each of the individual respondents has been active in making the representations and sales as alleged in the complaint.

Respondents Allied Merchandising, Inc. and Peter A. Krane are now, and for sometime last past have been, engaged in the business of selling and distributing machines used for the purpose of selling merchandise, including cigarette vending machines. Respondents William Dardick and Vern F. Hawkins were likewise engaged during the period that they served as officers and directors of said corporations.

Respondents have done business on a nation-wide scale and have caused their vending machines, when sold, to be shipped from the states of Iowa and Missouri to purchasers residing in other states of the United States and have maintained a course of trade in their vending machines in commerce, as "commerce" is defined in the Federal Trade Commission Act.

In the course and conduct of their business as aforesaid, the respondents have been, and now are, in substantial competition, in commerce, with corporations, firms and individuals engaged in the sale of vending machines.

The respondents' first step in a program of fraud and deceit is the placing of advertisements in newspapers published in the various

states of the United States which supplies them with leads to prospective purchasers of their machines.

Typical of said advertisements is one which appeared under the classified column "Business Opportunities" in the Wichita Eagle, a newspaper published in Wichita, Kansas:

WANTED
MALE OR FEMALE
FULL OR PART TIME

To service route of cigarette machines. No selling or soliciting. Route established for operator.
Must have:
1. Automobile
2. References
3. $995 to $1995 cash available for inventory

Write briefly about yourself and include phone number for personal interview. Eagle Box 528-B.

Under the classification of "Male-Female Help Wanted" the following appeared in "The Wyoming Eagle" of Cheyenne, Wyoming:

RELIABLE MAN OR WOMAN
FULL OR PART TIME
TO SERVICE ROUTE
of
CIGARETTE MACHINES
NO SELLING OR SOLICITING
ROUTE ESTABLISHED
FOR OPERATOR
INCOME STARTS
IMMEDIATELY
$995 TO $1,995 CASH
REQUIRED

Please don't waste our time unless you have the necessary capital and are sincerely interested in expanding—we finance expansion—if fully qualified and able to take over at once write briefly about yourself and include phone number for personal interview.

The ads give the impression that an offer of employment is being made for persons to service an established route and the only investment required is that needed to purchase an inventory.

Persons answering the advertisements receive from the corporate respondent a form letter of acknowledgment signed by "Charles Davis" which reads in part: "Due to the tremendous response to this advertisement, it will be about a week or ten days before our Regional Director will call on you." "Charles Davis" is a fictitious name used by respondents in such letters and in future dealing

with their clientele through correspondence and telephone calls. Several days after mailing the letter of acknowledgment, a representative of respondents' calls upon a prospect. The testimony of all of the fifteen purchaser witnesses which appeared before the hearing examiner reveals that the same pattern of deception was employed in making the sales. With one exception all the sales, about which the purchaser witnesses testified, were made by either Krane, Hawkins or Dardick, the individual respondents.

The representative displays to the prospect a number of credentials, at times including air-travel, diner's and gasoline credit cards, some sort of Dun & Bradstreet card, and cards indicating membership in a Better Business Bureau and in the National Association of Manufacturers. The prospect is given the impression that he is dealing with an honorable business man who is worthy of the confidence and respect of his fellow man. The prospect is maneuvered to the dining room or other large table on which photographs of, and literature about the machines is spread. He learns that respondents' offer is not one of employment to service an established vending machine route and that an investment other than for inventory is required. Respondent representative writes on a piece of paper a column of figures purporting to give the costs which will be incurred and the profits which will be realized by the prospect upon the purchase of machines. The figures do not take into account the gas and upkeep of automobiles used to service the machines, machine repair, license fees and loss and damage caused by burglaries.

The prospects are told the profits on ten machines costing approximately $2,000 will net from $90 to $100 per week; the figures are based on each machine selling fourteen cartons of cigarettes a week; not more than six hours per week of purchaser's time will be required to service such machines; respondents have made a survey, or will make a survey before machines are installed, of the surrounding area to determine profitable locations and they have trained men who went around and secured locations; that by the time purchasers' machines arrived locations would be picked out which would produce the promised profits and respondents' men would install the machines in such locations; respondents' representative would return after a period of time, usually ninety days, to check and determine whether or not purchasers' machines were producing the promised profits, and if a location proves unprofitable respondents will relocate machines; should the purchasers later become dissatisfied respondents will, upon request, resell them to others and they will get the full purchase price back; Allied requires a

purchaser to pay a royalty of two cents per carton on all cigarettes sold through the machines and such royalty is more important to Allied than the profit it might realize from the sale of cigarette machines; arrangements are made for the purchaser of cigarettes at better prices than the prospect can secure for himself; substantial amounts are paid by manufacturers of cigarettes for offering their brand for sale through the machines.

If the prospect decides to purchase machines, he signs a printed document entitled "Purchase and Sales Agreement," to which the representative of the respondent adds his signature, in the company of witnesses, subject to acceptance by the company. The purchaser is required to make a down payment which must be a bank draft, certified check, express or post office money order. Almost immediately the corporate respondent, over the signature of "Charles Davis," dispatches a letter to the purchaser accepting his order. The letter states that the machines are ready to be shipped and upon receipt of the balance due they will be shipped. The purchaser then remits the balance and receives another letter stating that his order has been forwarded to "the factory" or "our factory" for shipment, and further stating that Allied will try to have its location man in the purchaser's area at the same time the machines arrive "so you may be set up in business quickly." In due course the machines arrive, usually a small seven-column machine of inferior construction, each column providing room for no more than two cartons (20 packs) of cigarettes. However, the location man is never present when the machines arrive. The purchaser waits for the location man to show up, in the meantime telephoning and writing Allied's office in University City, Missouri, to find out why he is not on hand. Finally, the location man arrives and the purchaser learns from him that no survey has been made by Allied to determine profitable locations. One of the witnesses testified that when she asked the location man, who was having difficulty finding locations for her machines, about placing the machines according to the survey, she received this reply: "That's a lot of malarkey. They don't survey it. They put the ad in the paper, they sell the machines and then it's up to me to find a place to put them." In some instances the location man will go by himself, and at times the purchaser will accompany him, to solicit and obtain locations in which to install the machines. In other instances the location man will find locations for and install only some of the machines and leave it to the purchaser to find locations and to install the others. The attitude of the location man, who is paid by Allied $10 for each machine installed, is reflected by the following incident.

The owner of the establishment where a machine was being installed told the location man: "There is no sense putting a machine in here, we don't have any traffic," and the location man said, "I don't care, all I want to do is hang these machines and give her a location and get out of Cheyenne and on back to Denver."

Sometimes the location man gives to the purchaser the name of a wholesaler from whom cigarettes may be bought, but in no instance was it shown that such wholesaler offered the purchaser a better price than what he could have secured for himself. Many times the purchaser is not furnished the name of any wholesaler.

Upon the departure of the location man, the purchaser fills his machines with cigarettes. As time passes he finds that nowhere near the promised sales are being made. Instead of sales of fourteen cartons per week per machine, the machines in some cases make no sales at all. Sales of as little as one-half carton per week are not unusual. None of the locations secured for the fifteen purchaser witnesses sold as many cigarettes as promised and, in fact, none sold more than six cartons per week. -Sales of four or more cartons were unusual. Contrary to the representation of the individual who sold the machines, neither he nor any other representative of respondents calls again to find out how a purchaser is succeeding in the operation of his machines. When purchasers contact Allied stating that locations secured by it are not making satisfactory sales and requesting that the machines be relocated they get litttle satisfaction. Illustrative is the situation where a purchaser, after telephoning Allied several times, received a letter reading: "At the present time, we have no planned itinerary for your area. However, just as soon as possible, which we believe will be in the near future, I will dispatch a location man to your area for the purpose of locating your machines. In the meantime, realizing that the task of relocating machines might be a hard one for a woman, if you can obtain the help of some other person capable of doing this job, I will be happy to defray your costs to the amount of Six Dollars ($6.00) per machine." The purchaser later called again and "Mr. Davis" told her that Allied's obligation to her was completed. In another instance, when the purchaser requested the relocation of his machines and asked when Krane was coming back, he received as reply from "Charles Davis" that Krane was away on business and his return was indefinite. "As has happened occasionally in the past," "Davis" continued, "some machines need to be relocated. Insofar as the success of this business depends on the ingenuity and active interest of the individual, I am sugesting that you take a more interested and positive approach toward your business."

In the end the purchaser has to relocate his machines and where this is done he usually find the new location produces little, if any, better sales. In no case do they provide the volume represented by respondents.

Finally, most of the purchasers abandon any attempt at operating the machines. Some request Allied to repurchase or resell their machines, but the typical reply they receive from Allied is that its obligation to purchaser has been fulfilled or that the purchaser should insert an advertisement in his local newspaper to sell his machines. In a few instances the purchasers have prevailed upon Allied to repurchase the machines at about 50 percent of the purchase price. Some purchasers do not request Allied to repurchase or resell their machines feeling, in light of the experience already had with Allied, that such a request would be a waste of time.

One of the witnesses who had purchased ten machines for $2,190, decided not to install them. He had been told by men in his town, who had cigarette machines, that the seven-column machines delivered to him were only suitable for poor lcations and he would not make much out of them. He communicated with Allied by letter and telephone requesting a refund of the purchase price. Allied offered to remit $1,100 by check upon receipt of the unused machines. The witness testified as to the reason why he rejected the offer: "Well, I wanted them to send $1,100 down here to be paid to me on receipt of the machines, but they wouldn't do that. They said I would have to prepay them up there and if they were all right, then they would send me the money. I just figured that was taking too much of a chance. So I didn't send them." The purchaser finally disposed of the machines for about $700.

A few of the purchaser witnesses have continued to keep their machines in operation, and in such instances at a slight profit or at a loss. Some purchasers experienced costly burglaries of their machines in which not only were money and cigarettes stolen but machines were damaged. Purchasers found that they were required to pay license fees on thir machines. Only a few of the purchasers secured advertising allowances or subsidies, and those who did found it was insubstantial in amount.

The purchaser witnesses were persons with comparatively little means who wanted to supplement their incomes; two were widows, one trying to support herself and a small son on social security income and the other elderly, disabled and unemployed; two were retired individuals; one was a telephone operator recently displaced by the dial system and whose husband was totally disabled; one was an elderly part-time night watchman who could not do

hard work; one was an elderly man who had just sold his business; one was an elderly foreigner out of a job; one was a disabled and unemployed workman and one was the wife of an aircraft worker who wanted to earn more for their three children. Each of them bought from respondents from five to twenty-five machines at a cost running from $995 to $5,392.50.

All of the purchasers were without experience in operating vending machines and considering the competitive situation and the type of machines sold and delivered to them by the respondents, there was little likelihood that they would have any success.

Three experienced operators of cigarette vending machines testified in this case, and the following facts were developed: Competition between experienced operators for profitable locations is fierce; securing good locations depends to a good extent upon the experience of an operator in giving good service and upon personal contacts; a 10-carton-a-week location is quite difficult for even an experienced operator to secure; a new operator entering the market is at a distinct disadvantage in securing profitable locations; a major location is one which sells 20 cartons per week, a good location is one which sells 10 cartons a week, and a poor location is one which sells less than ten; an industrial location, such as a manufacturing plant or other establishment which does not attract customer traffic, is rated by the number of persons employed. A rule of thumb followed is that one pack of cigarettes will be sold each week for each employee; a commercial location is rated by the amount of customer traffic, either on foot or on wheels, which the location generates; restaurants and taverns are considered to be good locations, as well as supper clubs; all-night service stations are good, while those which close are not; the more profitable locations demand good-looking machines of the low console type which sit on the floor and which offer a wide variety of brands. Beginning in about 1957, the number of brands of cigarettes offered for sale increased greatly. This caused smaller machines, 6 to 9 columns, to become obsolete. There are about 40 brands of cigarettes on the market today, but experienced operators usually limit themselves to carrying about 20 brands. The minimum size machine which experienced operators have been buying since prior to 1957 is 14-column. Machines range up to 30-column in size; although experienced operators do operate some 7 and 9-column machines, they do so only because such machines have remained in their inventory for several years and operators have no way to profitably dispose of them. Said machines are located along routes of larger machines or placed along the side of a larger machine so that little

expense is incurred in servicing them; it would be almost impossible for a man to make a net profit from the operation of only 7-column machines.

It is found that the charges alleged in the complaint have been established by the evidence.

Upon the findings of fact hereinbefore made, it is concluded and found:

1. The Commission has jurisdiction over all of respondents' acts and practices as alleged in the complaint.

2. The individual respondents are liable in their individual capacities.

3. The use by respondents of the false, misleading and deceptive statements and representations hereinabove referred to has had, and now has, the capacity and tendency to mislead and deceive members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and to induce the purchase of substantial quantities of their machines used for the purpose of vending merchandise because of such erroneous and mistaken belief. As a result thereof, substantial trade in commerce has been, and is now being, unfairly diverted to respondents from their competitors and injury has been, and is now being, done to competition in commerce.

4. The aforesaid acts and practices of respondents 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.

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

ORDER

It is ordered, That respondents Allied Merchandising, Inc., a corporation, and its officers, Peter A. Krane, individually and as an officer of said corporation, and William Dardick and Vern F. Hawkins, individually, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of machines and other devices used for the purpose of vending merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing directly or by implication:

1. That any offer is an offer of employment when, in fact, the real purpose is to obtain purchasers of their machines, or other devices.

2. That an established route of operating machines or other devices is offered for sale.

3. That the only investment required of a purchaser is that needed to purchase an inventory.

4. That the earnings or profits derived from the operation of their machines or other devices are any amounts in excess of those which have been, in fact, customarily earned by operators of their machines or other devices.

5. That surveys have been or will be made by respondents to determine locations which would prove profitable for the installation of such machines or other devices.

6. That profitable locations will be secured for a purchaser's machines or other devices.

7. That, should a location of a purchaser's machines or other devices prove to be unprofitable, said machines or other devices will be relocated by respondents.

8. That no selling or soliciting is required of the purchaser in the operation of such machines or other devices.

9. That respondents will resell or repurchase the machines or other devices sold by them in the event the purchaser becomes dissatisfied with the profit derived therefrom and requests them to do so; or will resell or repurchase said machines or other devices for any other reason, unless such is the fact.

10. That respondents make arrangements whereby the purchasers of their machines or other devices may buy merchandise at wholesale prices.

It is further ordered, That the complaint be and it is hereby dismissed as to William Dardick and Vern F. Hawkins in their capacity as officers of respondent Allied Merchandising, Inc.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

The Commission having by its orders of March 2, 1960, and March 15, 1960, extended until further order the date on which the initial decision of the hearing examiner would become the decision of the Commission; and

The Commission having determined that said initial decision is not appropriate in all respects to dispose of this matter:

It is ordered, That the initial decision be, and it hereby is, modified (1) by striking the sentence appearing on page 4 of the initial decision which begins with the words "The ads * * *" and ends

with the words "an inventory," and (2) by substituting in lieu thereof the following paragraph:

"Another advertisement used by respondents was headed 'Owner Must Sell Established Vending Machine Route.' Through use of the foregoing advertisements, the respondents have represented that an offer of employment is being made to service an established route, that an established cigarette vending machine route is offered for sale and that no soliciting or selling or investment other than for inventory will be required."

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

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

IN THE MATTER OF

RUDOLPH MENDIOLA TRADING AS WHOLESALE FUR HOUSE

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

Docket 7436. Complaint, Mar. 11, 1959—Decision, Apr. 18, 1960

Order requiring a Houston, Tex., furrier to comply with labeling and invoicing provisions of the Fur Products Labeling Act.

Before *Mr. John B. Poindexter*, hearing examiner.

Mr. John T. Walker and *Mr. Charles S. Cox* for the Commission.

Talbert, Giessel, Cutherell & Barnett, of Houston, Tex., for respondent.

FINDINGS AS TO THE FACTS, CONCLUSIONS AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act, the Federal Trade Commission on March 11, 1959, issued its complaint in this proceeding upon the respondent, charging him with violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder and with engaging in unfair and deceptive acts and practices in violation of the Federal Trade Commission Act. After the filing of answer by the respondent, a hearing was held before a

hearing examiner of the Commission and testimony and other evidence were received into the record. On February 17, 1960, the hearing examiner filed an initial decision.

The Commission, upon its review thereof, having vacated and set aside such initial decision, further finds that this proceeding is in the interest of the public and now makes its findings as to the facts, conclusions drawn therefrom, and order, the same to be in lieu of those contained in said initial decision.

FINDINGS AS TO THE FACTS

1. The respondent, Rudolph Mendiola, is an individual trading as Wholesale Fur House. During the period to which the testimony in this proceeding relates, his office and principal place of business was located at 612 Caroline Street, Houston, Texas.

2. Subsequent to the effective date of the Fur Products Labeling Act on August 9, 1952, respondent has engaged in the retailing of fur garments. Many of his garments were made in whole or part of fur which had been shipped and received in commerce, as the terms "commerce" and "fur" are defined in the Fur Products Labeling Act. Such articles accordingly constituted fur products subject to that Act. Unless otherwise stated, the term "fur products" as hereafter used refers to that category of the respondent's merchandise.

3. Certain of the fur products were misbranded in violation of the Fur Products Labeling Act in that information required under Section 4(2) of said Act was set forth in handwriting on the respondent's labels in violation of Rule 29(b) of the Rules and Regulations promulgated by the Commission under said Act.

4. Certain of said fur products were falsely and deceptively invoiced within the intent and meaning of Section 5(b)(1) of the aforesaid Act in that the invoices issued by the respondent did not show the name of the country of origin of the imported furs contained in such fur products as required by subsection (F) thereof.

Another of said fur products was falsely and deceptively invoiced in violation of the Fur Products Labeling Act in that no item number for that product was set forth on the respondent's sales invoice as prescribed by Rule 40 of said Rules and Regulations.

CONCLUSIONS

The acts and practices of respondent, as hereinabove found, are in violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder, and are to the prejudice and

injury of the public and constitute unfair and deceptive acts and practices, in commerce, within the intent and meaning of the Federal Trade Commission Act.

The record, however, does not support informed determinations that the acts and practices challenged in paragraphs 3, 4(a)(b)(d) and 6(a) of the complaint, were engaged in by the respondent in connection with the marketing of products subject to the Fur Products Labeling Act. These latter charges are accordingly being dismissed for lack of jurisdiction.

Paragraphs 7 through 10 of the complaint alleged interstate dissemination by respondent of advertisements which failed to supply the information required by the Fur Products Labeling Act and which misrepresented, among other things, the regular prices for the garments as reduced prices; and paragraph 11 in effect charged failure to maintain adequate records disclosing the bases for the pricing claims thus advertised in commerce. The record, however, does not support the allegations that such products were advertised in commerce, as "commerce" is defined in the Fur Products Labeling Act. These charges of the complaint likewise are being dismissed.

ORDER

It is ordered, That Rudolph Mendiola, an individual, trading as Wholesale Fur House, 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 are made in whole or in part of fur which has been shipped and received in commerce, as "commerce," "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

1. Misbranding fur products by setting forth on labels affixed to fur products information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder in handwriting.

2. Falsely or deceptively invoicing fur products by failing to furnish to purchasers of fur products an invoice showing:

(A) All the information required to be disclosed by each of the subsections of Section 5(b)(1) of the Fur Products Labeling Act.

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

It is further ordered, That the allegations contained in para-

graphs 3, 4(a)(b)(d), 6(a) and 7 through 11 of the complaint be, and they hereby are, dismissed.

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

FINAL ORDER

This matter having come on to be heard by the Commission upon its review of the hearing examiner's initial decision; and

The Commission having determined that the initial decision is not appropriate in all respects to dispose of this proceeding:

It was ordered, On April 12, 1960, that the initial decision of the hearing examiner be vacated and set aside.

It was further ordered, That the attached findings as to the facts, conclusions drawn therefrom, and order, be issued and served upon the respondent.

IN THE MATTER OF

J. R. PRENTICE DOING BUSINESS AS AMERICAN BREEDERS SERVICE ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION ACT AND SEC. 3 OF THE CLAYTON ACT

Docket 7450. Complaint, Mar. 18, 1959—Decision, Apr. 18, 1960

Consent order requiring a major supplier of bull semen used in artificially inseminating dairy cows, to cease providing by contract, etc., that technicians employed by him refrain from working for themselves or a competitor in a bull semen business for a longer period than permitted by the law of the State involved or for longer than one year after terminating employment with him.

Before *Mr. Walter R. Johnson*, hearing examiner.

Mr. Lynn C. Paulson for the Commission.

Sidley, Austin, Burgess & Smith, of Chicago, Ill., for respondents.

COMPLAINT

Pursuant to the provisions of an Act of Congress commonly known as the Clayton Act, the Federal Trade Commission having reason to believe that J. R. Prentice, individually and doing business as American Breeders Service, Ozark Proved Sire Service Com-

pany, a corporation, and Don L. Hoyt, individually and as president of Ozark Proved Sire Service Company, hereinafter referred to as respondents, have violated the provisions of Section 3 of said Act (15 U.S.C.A. Sec. 14), and pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission having reason to believe that said respondents have violated the provisions of Section 5 of said Act (15 U.S.C.A. Sec. 45), and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, the Commission hereby issues its complaint stating its charges as follows:

COUNT I

PARAGRAPH 1. (a): Respondent J. R. Prentice is an individual and is now and has for a number of years last past been trading and doing business as American Breeders Service. Respondent's principal place of business and address is at 325 N. Wells Street, Chicago, Illinois.

(b) Respondent Ozark Proved Sire Service Company is a corporation, organized and doing business under and by virtue of the laws of the State of Arkansas, with its home office and principal place of business located at Springdale, Arkansas.

(c) Respondent Don L. Hoyt is an individual and president of the respondent Ozark Proved Sire Service Company. Respondent does now, and has since its organization directed and controlled the policies, acts and practices of the respondent Ozark Proved Sire Service Company. Respondent's address is the same as that of the corporate respondent.

PAR. 2. Respondent J. R. Prentice, hereinafter referred to as respondent American Breeders Service, is now and has been for a number of years last past engaged in the business of processing and in the sale and distribution of bull semen used in the artificial insemination of dairy cows. Respondent operates in 43 states of the United States and in several foreign countries and is the largest operator in the breeding service business in the United States. Respondent sells bull semen at wholesale and retail. Sales are made through contracts between respondent and the purchasers, some of whom are referred to as distributors, some as dealers, some as independent contractors and others as technician employees.

Respondent Ozark Proved Sire Service Company is one of the respondent American Breeders Service's distributors and has contracted with respondent American Breeders Service not to use any semen for the artificial insemination of dairy cattle other than

semen supplied by respondent American Breeders Service. Respondent Ozark Proved Sire Service Company in turn, under the supervision of respondent American Breeders Service, enters into contracts with technicians whom it designates as purchasers. One of the terms of said contracts is that the purchaser will not use any semen in the insemination of dairy cows except the semen supplied by respondent Ozark Proved Sire Service Company. By agreement between the respondents and the technician purchasers shipments of said semen is made direct from the respondent American Breeders Service's place of business to the technician purchasers. Thus when sales are made respondents ship and/or cause said semen to be shipped and transported across state lines to the purchasers thereof, many of whom are located in states of the United States, other than the state of origin of said shipments. Respondents do now and have for more than two years last past maintained a constant current of trade in said product in commerce between and among the various states of the United States.

PAR. 3. In the course and conduct of their business as herein described respondents have been, during all the time herein mentioned, in substantial competition with other corporations, persons, firms and partnerships in the sale and distribution of bull semen in commerce between and among the various states of the United States.

PAR. 4. In the course and conduct of their business as herein described the respondents have made sales and contracts for sale and are still making sales and contracts for sale of bull semen on the conditions, agreements and understandings that the purchasers thereof shall not use or purchase bull semen from a competitor or competitors of respondents.

PAR. 5. The effect of said conditions, agreements, and understandings may be to substantially lessen competition, or tend to create a monopoly in respondents in the sale and distribution in commerce of such said product.

PAR. 6. The aforesaid acts of said respondents constitute a violation of the provisions of Section 3 of the hereinabove mentioned Act of Congress entitled: "An Act to Supplement Existing Laws against Unlawful Restraints and Monopolies and for other Purposes," approved October 15, 1914 (The Clayton Act).

COUNT II

PARAGRAPH 1. For part of its charges under this Count the Commission relies upon all the matters and things set out in paragraphs 1 through 4 of Count I of this complaint, and adopts the things

therein alleged to the same extent as if said paragraphs were set out verbatim herein and said paragraphs 1 through 4 of said Count I is incorporated herein by reference and made a part of the allegations of this Count.

PAR. 2. It is further alleged that in the sale and offering for sale of its products the respondent American Breeders Service requires the purchaser, whether such purchaser be a distributor, dealer, independent contractor or technician employee to enter into a contract with respondent involving both the rights of termination of such contract and the consequences to the future business activities of the purchasers whose contracts are terminated. Thus the contract specifies:

(1) The territory in which the purchaser will operate;

(2) That during the term of the contract the purchaser will not inseminate any cows with semen other than semen supplied by American Breeders Service;

(3) That the contract can be terminated at the will of either party on 30 days' notice;

(4) That the purchaser will not inseminate cows with semen other than semen supplied by American Breeders Service for a period of two years after the termination of said contract; and

(5) Upon termination of the contract the purchaser will deliver to respondent all customer lists and records.

The respondent Ozark Proved Sire Service Company, as a distributor, pursuant to its agreement with respondent, American Breeders Service enters into contracts with technician purchasers which contracts specify.

(1) The territory in which the purchaser will operate;

(2) That during the term of contract the purchaser will not inseminate any cows with semen other than semen supplied by respondent.

(3) That the contract can be terminated upon 30 days' notice;

(4) That the purchaser will not inseminate cows with semen other than semen supplied by American Breeders Service for a period of two years after the termination of said contract; and

(5) Upon termination of the contract the purchaser will deliver to respondent all customer lists and records.

The provisions of the contracts the respondent American Breeders Service has with its distributors, dealers, independent contractors, technicians and the other customers give to the respondent the power to arbitrarily terminate such contracts and therefore tend to make such distributors, dealers, independent contractors and technician purchasers subservient to respondent's wishes and will as to

the conduct of their business. The contract which the respondent Ozark Proved Sire Service Company has with its technician purchasers gives to said respondents the power to arbitrarily terminate such contracts and deprive technician purchasers of products with which to carry on their business, and make said technician purchasers subservient to the wishes and will of said respondents in the conduct of their business.

In addition to the oppressive restrictions placed upon the purchasers by the provisions of said contracts, the respondents have threatened to sue technician purchasers should such purchasers violate any of the provisions of said contracts, or if any such purchaser should inseminate cows with semen other than that supplied by respondents during a period of two years after the termination of such contracts. The respondents have, in fact, sued technician purchasers who after the termination of the contracts engaged in the business of inseminating cows with semen which they obtained from sources other than the American Breeders Service. Thus under the oppressive provisions of said contracts and the acts of the respondents in enforcing the provisions thereof, the respondents have the power to arbitrarily put a purchaser out of business and prevent such purchaser from engaging or continuing in the business of inseminating cows and of purchasing semen for the purpose of inseminating cows from respondents' competitors.

PAR. 3. The acts and practices of respondents as herein alleged are all to the injury and prejudice of competitors of the respondents and of customers and prospective purchasers of respondents and of the public, and have a tendency and effect of obstructing, hindering and preventing competition in the sale and distribution of bull semen in commerce within the intent and meaning of the Federal Trade Commission Act; have a tendency to and have obstructed, restricted and restrained such commerce in such product and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning and in violation of Section 5 of the Federal Trade Commission Act.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

The Federal Trade Commission issued its complaint against the above-named respondents on March 18, 1959, charging them in Count I with making and having made sales and contracts for sale of bull semen on the condition, agreement and understanding that the purchasers thereof should not use or purchase bull semen from

a competitor or competitors of respondent, in violation of Section 3 of the Clayton Act, and, in Count II, with the use of unfair methods of competition in commerce in the distribution and sale of bull semen in violation of the provisions of the Federal Trade Commission Act. On February 12, 1960, after the filing of respondents' answer, there was submitted to the hearing examiner an agreement containing a consent order to cease and desist purporting to dispose of all of this proceeding as to all parties. Said agreement has been signed by respondent J. R. Prentice, by counsel for said respondent, and by counsel supporting the complaint, and approved by the Director and Associate Director of the Commission's Bureau of Litigation. The hearing examiner, by his notice of February 29, 1960, having rejected the agreement, the matter is now before the Commission for its consideration.

The agreement provides for dismissal of the complaint as to corporate respondent Ozark Proved Sire Service Company and respondent Don L. Hoyt. As to respondent J. R. Prentice, the agreement contains a consent order to cease and desist disposing of one of the charges in Count II of the complaint and provides for dismissal of the remaining charges in Count II and dismissal of Count I. Pursuant to the agreement, respondent J. R. Prentice has admitted all the jurisdictional allegations of the complaint and agreed that the record herein may be taken as if the Commission had made findings of jurisdictional facts in accordance with such allegations. The agreement further provides that respondent waives all further procedural steps before the hearing examiner and the Commission, including the making of findings as to the facts or conclusions of law and the right to challenge or to contest the validity of the order to cease and desist entered in accordance with this agreement. Further, the agreement asserts that it is for settlement purposes only and does not constitute an admission by resopndent that he has violated the law as alleged in the complaint. Respondent additionally has agreed that the order to cease and desist contained in the agreement may be entered in this proceeding without further notice to respondent and that, when so entered, it shall have the same force and effect as if entered after a full hearing, and that it may be altered, modified or set aside in the manner provided by statute for other orders, and that the complaint may be used in construing the terms of the order.

For the reasons assigned in its accompanying opinion, the Commission has determined that the aforesaid agreement containing the consent order to cease and desist provides for an appropriate dis-

position of this proceeding in the public interest, and the same is hereby accepted and order filed.

Having determined that this proceeding is in the public interest, the Commission hereby makes the following jurisdictional findings, and issues the following order:

JURISDICTIONAL FINDINGS

1. The respondent, J. R. Prentice, is an individual doing business as American Breeders Service, with his office and principal place of business located at 325 N. Wells Street, Chicago, Illinois.

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

ORDER

It is ordered, That respondent J. R. Prentice, directly or indirectly, in the course and conduct of a bull semen business conducted under the American Breeders Service, or any other name, do forthwith cease and desist from providing by contract, agreement, or understanding that technicians employed by him shall refrain from working for themselevs or a competitor in a bull semen business for a period longer than permitted by the law of the State involved and in no event for a period in excess of one year after termination of their employment with him.

It is further ordered, That the complaint herein is dismissed as to respondents Don L. Hoyt and Ozark Proved Sire Service Company.

It is further ordered, That Count I of the complaint herein is dismissed.

It is further ordered, That Count II of the complaint herein is dismissed as to J. R. Prentice except for that portion thereof concerning the employment of technicians which is provided for in this order.

It is further ordered, That respondent J. R. Prentice 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.

OPINION OF THE COMMISSION

By KERN, *Commissioner:*

On February 12, 1960, prior to hearings in this matter, there was submitted to the hearing examiner an agreement for consent order

in disposition of all the issues presented in this proceeding. This agreement was rejected by the hearing examiner. The matter is now before us on joint appeal of counsel supporting the complaint and counsel for respondent J. R. Prentice, from that ruling as permitted by §3.25 of the Commission's Rules of Practice.

The agreement contains an order dismissing both counts of the complaint as to respondent Ozark Proved Sire Service Company and respondent Don L. Hoyt. It provides for dismissal of both counts as to respondent J. R. Prentice except for one practice charged under Count II, which practice is the subject of a consent order to cease and desist. The reasons for these actions are set forth in the agreement. The hearing examiner stated as the reason for his rejection of the agreement that, in his opinion, "the agreement and proposed order does not properly dispose of the matters set forth in the complaint."

We have considered the joint appeal of counsel and have carefully reviewed the agreement. In our view, the grounds set forth in the agreement are sufficient, on their face, to support the proposed actions. Furthermore, all of the issues raised in the complaint are covered by the agreement. There is no basis on the information before us to question the terms of the agreement and no reasons have been advanced by the hearing examiner as a basis for his belief. Accordingly, we must conclude that the agreement constitutes appropriate disposition of the issues in this case and we direct its acceptance and the entry of an appropriate decision in this proceeding.

IN THE MATTER OF

AMERICAN DEB FURS, INC., ET AL.

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

Docket 7503. Complaint, June 2, 1959—Decision, Apr. 18, 1960

Order requiring a New York City furrier to cease violating the Fur Products Labeling Act by falsely identifying animals producing the fur in certain products; by invoicing which failed to state the country of origin of fur and to reveal that certain fur was dyed, and which set out fictitious "original" prices; and by failing in other respects to comply with labeling and invoicing requirements.

Mr. C. W. O'Connell supporting the complaint.
Klein and Laitman of New York, N.Y., for respondents.

599869—62——82

INITIAL DECISION BY EDWARD CREEL, HEARING EXAMINER

The complaint charges that respondents have violated the Fur Products Labeling Act and the Rules and regulations promulgated thereunder by falsely and deceptively labeling, invoicing and advertising certain fur products and by failing to maintain full and accurate records disclosing the facts upon which their claims were based.

After hearings, proposed findings and conclusions were submitted by counsel supporting the complaint and counsel for respondents. These proposals have been considered and to the extent they are accepted they are embodied herein. To the extent they are not embodied herein they are hereby rejected.

After considering the entire record, the following facts are found.

FINDINGS OF FACTS

1. Respondent American Deb Furs, 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 place of business located at 151–153 West 28th Street, New York, New York.

2. Respondent Herbert Fischbein is president and treasurer of said corporation and controls the acts, policies and practices of the corporate respondent. Ethel Harris is the secretary of the corporate responent but does not exercise any executive functions for the corporation. Their address is the same as that of said corporate respondent.

3. Subsequent to the effective date of the Fur Products Labeling Act on August 9, 1952, respondents have been and are now engaged in the introduction into commerce, and in the manufacture for introduction into commerce, and in the sale, advertising, and offering for sale, in commerce, and in the transportation and distribution, in commerce, and in the transportation and distribution, in commerce, of fur products; and have manufactured for sale, sold, advertised, offered for sale, transported and distributed fur products which have been made in whole or in part of fur which had been shipped and received in commerce, as the terms "commerce," "fur," and "fur product" are defined in the Fur Products Labeling Act.

4. Certain of said fur products were misbranded in that they were falsely and deceptively labeled or otherwise falsely and deceptively identified with respect to the name or names of the animal or animals that produced the fur from which said fur products had been manufactured in violation of Section 4(1) of the Fur Products Labeling Act. An example of this is the use of the term "broad-

tail lamb" to describe the fur which is a processed lamb that is a different type of fur from broadtail lamb.

5. Certain of said fur products were misbranded in that they were not labeled as required under the provisions of Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder. Some labels did not reveal a registered name or other identification and some contained information on both sides of the label.

6. Certain of said fur products were misbranded in violation of the Fur Products Labeling Act in that they were not labeled in accordance with the Rules and Regulations promulgated thereunder in the following respects:

(a) The term "Dyed Broadtail-processed Lamb" was not set forth in the manner required by Rule 10.

(b) Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was mingled with non-required information, in violation of Rule 29(a). Words such as ranch Silver Blue and sapphire were mingled with required information.

7. Certain of said fur products were not invoiced as required by Section 5(b)(1) of the Fur Products Labeling Act, and in the manner and form prescribed by the Rules and Regulations promulgated thereunder. Some invoices did not state the country of origin of the fur and at least one did not reveal that dyed Persian Lamb fur was dyed.

8. Certain of said fur products were falsely and deceptively invoiced in that the respondents set out on invoices certain "original" prices which were in fact fictitious, in violation of Section 5(b)(2) of the Fur Products Labeling Act. There is extensive proof in the record that during the one-year period that was checked there were numerous fur products that were previously consigned to a purchaser at a price higher than the current price but such higher price was in nearly all instances lower than the stated "original" price. In most instances these garments were not offered for sale prior to the beginning of this one-year period.

9. Certain fur products were not invoiced in compliance with Section 5(b)(1) of the Fur Products Labeling Act or in compliance with Rule 4 of the rules promulgated under the Wool Products Labeling Act in that the invoices showed names that varied from the names required by the Fur Products Name Guide and were abbreviated or incomplete. The names "Blk Dyed Russ Broadtail," "Blk Dyed Russ Persian L" were used instead of the correct and complete names in the Fur Products Name Guide.

CONCLUSION

The aforesaid acts and practices of respondents are in violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder, and constitute unfair and deceptive acts and practices in commerce under the Federal Trade Commission Act.

ORDER

It is ordered, That American Deb Furs, Inc., a corporation, and its officers, and Herbert Fischbein, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction or manufacture for introduction into commerce, or the sale, advertising or offering for sale, transportation or distribution, in commerce, of fur products; or in connection with the sale, manufacture for sale, advertising, offering for sale, transportation or distribution of fur products which 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. Falsely or deceptively labeling or otherwise identifying any such products as to the name or names of the animal or animals that produced the fur from which such product was manufactured.

2. Failing to affix labels to fur products showing each element of information required to be disclosed under Section 4(2) of the Fur Products Labeling Act.

3. Failing to set forth the term "Dyed Broadtail processed Lamb" as required by Rule 10 of the "Rules and Regulations under the Fur Products Labeling Act."

4. Setting forth on labels attached to fur products information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder which is mingled with non-required information.

B. Falsely or deceptively invoicing fur products by:

1. Failing to furnish purchasers of the fur products an invoice showing each element of information required to be disclosed under Section 5(b)(1) of the Fur Products Labeling Act.

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

3. Representing, directly or by implication, that the respondents' regular or usual price of any fur product is any amount in

excess of the price at which the respondents have usually and customarily sold such product in the recent regular course of business.

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

5. 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.

6. Failing to set forth the term "Dyed Broadtail processed Lamb" as required by Rule 10 of the "Rules and Regulations under the Fur Products Labeling Act."

It is further ordered, That the complaint herein against respondent Ethel Harris, an individual, 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 warrant.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

This matter having come on to be heard by the Commission upon its review of the hearing examiner's initial decision; and

The Commission having determined that the initial decision is not appropriate in all respects to dispose of this proceeding:

It is ordered, That the findings of facts contained in the initial decision be, and they hereby are, modified (1) by striking the words "the Wool Products Labeling Act" appearing in lines 3 and 4 of paragraph 9 thereof, and inserting in lieu thereof the words "said Act," and (2) by adding the following paragraphs, the same to be designated as paragraphs 10 and 11 of the initial decision as modified:

10. The complaint additionally charged that the respondents have falsely and deceptively advertised certain of their fur products in violation of Section 5(a)(5) of the Fur Products Labeling Act through designating such merchandise with fictitious prices in consignment memorandums. Unless otherwise stated, the term respondents as used hereafter refers to respondents American Deb Furs, Inc., and Herbert Fischbein. Some of the consignment memorandums issued by respondents set forth "original" prices for the listed garments substantially in excess of the offering prices there stated; and in many instances the stated "original" prices were fictitious in that such articles had never been offered for sale by the respondents at those higher prices. Consignment memorandums are issued upon shipments by respondents to consignees who are to display and offer such wares for sale and billing therefor

by invoice occurs only in the event of subsequent sale. The fictitious prices listed on the consignment memorandums constituted false representations that the merchandise was being offered for sale at reductions in price from the higher ones listed. Such documents were used by respondents to aid and assist in the sale or offering for sale of the fur products to which they related and the false representations made respecting the prices were necessarily intended for the same purpose. The fur products so described in the respondents' consignment memorandums therefore were falsely advertised within the meaning of Section 5(a)(5) of the Fur Products Labeling Act.

11. The complaint additionally charged violation of Rule 44(e) by failure to maintain full and adequate records disclosing the facts upon which respondents' pricing and savings claims and representations were based. As found above, respondents have falsely and deceptively advertised certain of their fur products by representing that the prices thereof were reduced from what were in fact fictitious prices. Respondents also have failed to maintain record disclosing the facts upon which such representations were based and required by subsection (e) of Rule 44 and, consequently, have violated that subsection.

It is further ordered, That the order contained in the initial decision be, and it hereby is, modified by inserting the following paragraphs after subparagraph 6 of paragraph B thereof, the same to be designated as paragraphs C and D:

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 represents, directly or by implication, that the former, regular or usual price of any fur product is any amount which is in excess of the price at which respondents have formerly, usually or customarily sold such product in the recent regular course of their business.

D. Making pricing claims or representatives of the type referred to in paragraph C above, unless there are maintained by respondents full and adequate records disclosing the facts upon which such claims and representations are based.

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

It is further ordered, That the respondents, American Deb Furs, Inc., and Herbert Fischbein, 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 as modified.

IN THE MATTER OF

MICHAELIAN & KOHLBERG, INC., TRADING AS SPINNING WHEEL RUGS ET AL.

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

Docket 7642. Complaint, Oct. 29, 1959—Decision, Apr. 19, 1960

Consent order requiring New York City distributors of rugs and floor coverings, some of them imported, to cease representing falsely on attached labels, invoices, price lists and other sales literature, that the pile or wearing surface of their imported "Manor House" and "Heritage" rugs was "All Wool" when it actually contained a substantial quantity of other fibers.

Mr. Terral A. Jordan for the Commission.
Respondents, *pro se.*

INITIAL DECISION BY EDGAR A. BUTTLE, HEARING EXAMINER

On October 29, 1959, the Federal Trade Commission issued its complaint against the above-named respondents charging them with violating the provisions of the Federal Trade Commission Act in connection with the advertising, offering for sale, sale and distribution of rugs and floor coverings, some of which are imported from foreign countries. On November 25, 1959, the respondents and counsel supporting the complaint entered into an agreement containing a consent order to cease and desist in accordance with section 3.25(a) of the Rules and Practice and Procedure of the Commission.

Under the foregoing agreement, the respondents admit the jurisdictional facts alleged in the complaint and agree, among other things, that the cease and desist order there set forth may be entered without further notice and shall have the same force and effect as if entered after a full hearing. The agreement includes a waiver by the respondents of all rights to challenge or contest the validity of the order issuing in accordance therewith; and recites that the said agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission, and that it is for settlement purposes only and does

not constitute an admission by the respondents that they have violated the law as alleged in the complaint. The hearing examiner finds that the content of the said agreement meets all the requirements of section 3.25(b) of the Rules of Practice.

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

1. Respondent Michaelian & Kohlberg, 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 295 Fifth Avenue in the City of New York, State of New York. Corporate respondent trades and does business under the name of Spinning Wheel Rugs.

Respondents Frank M. Michaelian, L. P. Michaelian, M. A. Michaelian and P. G. Evraets are individuals and are officers of the corporate respondent. Their address 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 hereinabove named. The complaint states a cause of action against said respondents under the Federal Trade Commission Act, and this proceeding is in the interest of the public.

ORDER

It is ordered, That respondents Michaelian & Kohlberg, Inc., a corporation, trading and doing business under its own name or under the name of Spinning Wheel Rugs or under any other name and its officers, and Frank M. Michaelian, L. P. Michaelian, M. A. Michaelian and P. G. Evraets, 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 and distribution, of rugs and floor coverings or any other textile product in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Using the terms "wool" or "all wool" or any other word or term indicative of wool to designate or describe any product or portion thereof which is not composed wholly of wool, the fiber from the fleece of the sheep or lamb, or hair of the Angora or Cashmere goat, or hair of the camel, alpaca, llama, or vicuna, which has never been reclaimed from any woven or felted product; provided, that in the case of products or portions thereof which are composed in substantial part of wool and in part of other fibers or materials, the term "wool" may be used as descriptive of the wool content of the product or portion thereof if there are used in immediate connection or conjunction therewith, in letters of at least equal size and conspicuousness, words truthfully designating each constituent fiber or material thereof in the order of its predominance by weight; provided further, that if any fiber or material so designated is not present in a substantial quantity, the percentage thereof shall be stated. Nothing herein shall prohibit the use of the terms "reprocessed wool" or "reused wool" when the products or those portions thereof referred to are composed of such fibers.

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 April, 1960, 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.

IN THE MATTER OF

B. GERTZ, INC.

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

Docket 7646. Complaint, Nov. 3, 1959—Decision, Apr. 20, 1960

Consent order requiring a furrier in Jamaica, Long Island, N.Y., to cease violating the Fur Products Labeling Act by advertising in newspapers which falsely represented prices of fur products to be "Below wholesale" and below or at cost, and represented excessive amounts to be the usual prices; by failing to maintain adequate records as a basis for such pricing claims; and by failing to comply with invoicing requirements.

Mr. John J. Mathias supporting the complaint.
Sullivan & Cromwell of New York, N.Y., for respondent.

INITIAL DECISION BY JOHN B. POINDEXTER, HEARING EXAMINER

On November 3, 1959, the Federal Trade Commission issued its complaint charging the respondent named in the caption hereof with having violated the provisions of the Federal Trade Commission Act, the Fur Products Labeling Act and the rules and regulations promulgated thereunder.

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

The agreement has been approved by the Director and the Assistant Director of the Bureau of Litigation and disposes of the matters complained about. The pertinent provisions of said agreement are as follows:

Respondent admits sufficient facts as alleged in the complaint so as to give the Commission jurisdiction; 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; respondent waives the requirement that the decision must contain a statement of findings of fact and conclusions of law; respondent waives 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; respondent waives 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 respondent that it has violated the law as alleged in the complaint.

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

JURISDICTIONAL FINDINGS

1. Respondent B. Gertz, 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 162–10 Jamaica Avenue, Jamaica, Long Island, New York.

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

ORDER

It is ordered, That B. Gertz, Inc., 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 fur products, or in connection with the sale, advertising, offering for sale, transportation, or distribution of fur products, which are made in whole or in part of fur which has been shipped and received in commerce, as "commerce," "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

1. Falsely or deceptively invoicing fur products by:

(a) Failing to furnish to purchasers of fur products an invoice showing all of the information required to be disclosed by each of the subsections of Section 5(b)(1) of the Fur Products Labeling Act.

(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) Represents, directly or by implication, that the prices of fur products are "below wholesale," or words of similar import, when such is not the fact.

(b) Represents, directly or by implication that the prices of fur products are below or at respondent's cost, or words of similar import, when such is not the fact.

(c) Misrepresents in any manner the savings available to purchasers of respondent's fur products.

(d) Represents in any manner that any amount is respondent's regular or usual price of fur products when such amount is in excess of the price at which respondent has usually and customarily sold such products in the recent, regular course of its business.

3. Making pricing claims and representations respecting prices

and values of fur products unless there are maintained by respondent full and adequate records disclosing the facts upon which such claims or representations are based.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 20th days of April, 1960, become the decision of the Commission; and, accordingly:

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

IN THE MATTER OF

GREENBLATT'S, INC., OF INDIANA, ET AL.

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

Docket 7677. Complaint, Dec. 3, 1959—Decision, Apr. 20, 1960

Consent order requiring furriers in Fort Wayne, Ind., to cease violating the Fur Products Labeling Act by advertising in newspapers which failed to disclose that fur products were artificially colored or made of cheap or waste fur and to disclose the country or origin of imported furs, represented fictitious amounts as the usual prices and made deceptive percentage savings claims; by failing to keep adequate records as a basis for said pricing claims; and by failing to comply with invoicing requirements.

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

Rothberg, Gallmeyer & Strutz, by *Mr. Thomas D. Logan*, of Fort Wayne, Ind., for respondents.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

The Federal Trade Commission (sometimes also hereinafter referred to as the Commission) on December 3, 1959, issued its complaint herein, charging the respondents Greenblatt's, Inc., of Indiana, a corporation, and Harold Michelson, individually and as an officer of said corporation, with having violated the provisions of the Federal Trade Commission Act and of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder, and respondents were duly served with process.

On February 29, 1960, 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, their counsel, and counsel supporting the complaint, under date of February 22, 1960, 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 Greenblatt's, Inc. of Indiana is a corporation organized, existing and doing business under and by virtue of the laws of the State of Indiana, with its office and principal place of business located at 113 West Wayne Street, in the City of Fort Wayne, State of Indiana. Respondent Harold Michelson is president of the said corporate respondent and controls, formulates and directs the acts, practices and policies of the said corporate respondent. His address is the same as that of the corporate respondent.

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

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

4. Respondents waive:

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

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

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

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

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

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

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

Upon due consideration of the complaint filed herein and the said "Agreement Containing Consent Order To Cease And Desist," the latter is hereby approved, accepted and ordered filed in accordance with the terms thereof. 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 respondents herein; that the complaint states a legal cause for complaint against the respondents under the Federal Trade Commission Act, the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder, both generally and in each of the particulars alleged in said complaint; 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:

It is ordered, That respondents Greenblatt's Inc., of Indiana, a corporation, and its officers, and Harold Michelson, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the sale, advertising, offering for sale, 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 and deceptively invoicing fur products by:

A. Failing to furnish to purchasers of fur products invoices showing all the information required to be disclosed by each of the subsections of §5(b)(1) of the Fur Products Labeling Act;

2. Falsely and 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;

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

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

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

B. Fails to set forth the information required under §5(a) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder in type of equal size and conspicuousness and in close proximity with each other;

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

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

E. Misrepresents in any manner the savings available to purchasers of respondents' fur products;

3. Making claims or representations in advertisements respecting prices or values of fur products unless respondents maintain full and adequate records disclosing the facts upon which such claims and representations are based.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 20th day of April, 1960, become the decision of the Commission; and, accordingly:

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

IN THE MATTER OF

TIME RECORDS, INCORPORATED, ET AL.

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

Docket 7765. Complaint, Jan. 27, 1960—Decision, Apr. 21, 1960

Consent order requiring New York City manufacturers of phonograph records for distribution to retail outlets and jukebox operators, to cease giving concealed "payola" to television and radio disc jockeys as inducement to play their records in order to increase sales.

Mr. John T. Walker and *Mr. James H. Kelley* for the Commission.

Proskauer Rose Goetz & Mendelsohn, by *Mr. Marvin E. Frankel*, of New York, N.Y., for respondents.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The complaint charges respondents, who are engaged in the manufacture, distribution and sale of phonograph records to independent distributors for resale to retail outlets and jukebox operators in various states of the United States, with violation of the Federal Trade Commission Act, in that respondents, alone or with certain unnamed record distributors, have negotiated for and disbursed "payola," i.e., the payment of money or other valuable consideration to disk jockeys of musical programs on radio and television stations, to induce, stimulate or motivate the disk jockeys to select, broadcast, "expose" and promote certain records, in which respondents are financially interested, on the express or implied understanding that the disk jockeys will conceal, withhold or camouflage the fact of such payment from the listening public.

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 respondents Time Records, Incorporated, and Brent Music Corp. are corporations organized, existing and doing business under and by virtue of the laws of the State of New York, with their principal office and place of business located at 2 West 45th Street, New York, New York; that the corporate respondent Time Records, Incorporated, also does business in commerce under the trade name of Shad Records, and the corporate respondent Brent Music Corp. also does business in commerce under

the trade name of Brent Records, Inc.; and that individual respondent Robert Shad is president and secretary of corporate respondent Time Records, Incorporated, and is president and secretary treasurer of corporate respondent Brent Music Corp., the address of the individual respondent being the same as that of said corporate respondents.

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 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 Time Records, Incorporated, a corporation, Brent Music Corp., a corporation, and their officers, and Robert Shad, individually and as an officer of said corporations, and respondents' agents, representatives, directly or through any corporate or other device, in connection with phonograph records which have been distributed in commerce, or which are used by radio or television stations in broadcasting programs in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(1) Giving or offering to give, without requiring public disclo-

sure, any sum of money or other material consideration, to any person, directly or indirectly, to induce that person to select, or participate in the selection of, and the broadcasting of, any such records in which respondents, or any of them, have a financial interest of any nature;

(2) Giving or offering to give, without requiring public disclosure, any sum of money, or other material consideration, to any person, directly or indirectly, as an inducement to influence any employee of a radio or television broadcasting station, or any other person, in any manner, to select, or participate in the selection of, and the broadcasting of, any such records in which respondents, or any of them, have a financial interest of any nature.

There shall be "public disclosure" within the meaning of this order, by any employee of a radio or television broadcasting station, or any other person, who selects or participates in the selection and broadcasting of a record when he shall disclose, or cause to have disclosed, to the listening public at the time the record is played, that his selection and broadcasting of such record are in consideration for compensation of some nature, directly or indirectly received by him or his employer.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner did, on the 21st day of April, 1960, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Time Records, Incorporated, a corporation; Brent Music Corp., a corporation; and Robert Shad, individually and as an officer of said corporations, shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist.

IN THE MATTER OF

EDWARD S. COHN TRADING AS LESCO DISTRIBUTORS

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

Docket 7692. Complaint, Dec. 17, 1959—Decision, Apr. 26, 1960

Consent order requiring a Philadelphia distributor of phonograph records for several manufacturers to retail outlets and jukebox operators, to cease

giving concealed "payola" to television and radio disc jockeys as inducement to play certain records in order to increase sales.

Mr. John T. Walker and *Mr. James H. Kelley* for the Commission.

Blank, Rudenko, Klaus & Rome, by *Mr. Frederick C. Moesel, Jr.*, of Philadelphia, Pa., for respondent.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The complaint charges respondent, who is engaged in the offering for sale, sale and distribution of phonograph records as an independent distributor for several record manufacturers to retail outlets and jukebox operators in various states of the United States, with violation of the Federal Trade Commission Act, in that respondent, alone or with certain unnamed record manufacturers, has negotiated for and disbursed "payola," i.e., the payment of money or other valuable consideration to disk jockeys of musical programs on radio and television stations, to induce, stimulate or motivate the disk jockeys to select, broadcast, "expose" and promote certain records, in which respondent is financially interested, on the express or implied understanding that the disk jockeys will conceal, withhold or camouflage the fact of such payment from the listening public.

After the issuance of the complaint, respondent, his 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 Edward D. Cohn (erroneously designated in the complaint as Edward S. Cohn) is an individual trading as Lesco Distributors, with his office and principal place of business located at 17 South 21st Street, Philadelphia, Pennsylvania.

The agreement provides, among other things, that respondent admits all the jurisdictional facts alleged in the complaint, and agrees that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations; 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 respondent that he has 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.

Respondent waives any further procedural steps before the hearing examiner and the Commission, the making of findings of fact or conclusions of law, and all of the rights he may have to challenge or contest the validity of the order to cease and desist entered in accordance with 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 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 respondent Edward D. Cohn, an individual trading as Lesco Distributors (erroneously designated in the complaint as Edward S. Cohn), or by any other name, and respondent's agents, representatives and employees, directly or through any corporate or other device, in connection with phonograph records which have been distributed in commerce, or which are used by radio or television stations in broadcasting programs in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(1) Giving or offering to give, without requiring public disclosure, any sum of money or other material consideration, to any person, directly or indirectly, to induce that person to select, or participate in the selection of, and the broadcasting of, any such records in which respondent has a financial interest of any nature;

(2) Giving or offering to give, without requiring public disclosure, any sum of money, or other material consideration, to any person, directly or indirectly, as an inducement to influence any employee of a radio or television broadcasting station, or any other person, in any manner, to select, or participate in the selection of, and the broadcasting of, any such records in which respondent has a financial interest of any nature.

There shall be "public disclosure" within the meaning of this

order, by any employee of a radio or television broadcasting station, or any other person, who selects or participates in the selection and broadcasting of a record when he shall disclose, or cause to have disclosed, to the listening public at the time the record is played, that his selection and broadcasting of such record are in consideration for compensation of some nature, directly or indirectly received by him or his employer.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner did, on the 26th day of April, 1960, become the decision of the Commission; and, accordingly:

It is ordered, That respondent Edward D. Cohn (erroneously designated in the complaint as Edward S. Cohn), an individual trading as Lesco Distributors, 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

JAMIE RECORD CO.

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

Docket 7724. Complaint, Jan. 6, 1960—Decision, Apr. 26, 1960

Consent order requiring a Philadelphia manufacturer of phonograph records for distribution to retail outlets and jukebox operators, to cease giving concealed "payola" to television and radio disc jockeys as inducement to play his records in order to increase sales.

Mr. John T. Walker and *Mr. James H. Kelley* for the Commission.

Mr. Charles R. Weiner, of Philadelphia, Pa., for respondent.

INITIAL DECISION BY EDGAR A. BUTTLE, HEARING EXAMINER

On January 6, 1960, the Federal Trade Commission issued its complaint against the above-named respondent charging it with violating the provisions of the Federal Trade Commission Act in con-

nection with the manufacture, distribution and sale of phonograph records to independent distributors for resale to retail outlets and jukebox operators in various states of the United States. On February 26, 1960, the respondent and counsel supporting the complaint entered into an agreement containing a consent order to cease and desist in accordance with section 3.25(a) of the Rules of Practice and Procedure of the Commission.

Under the foregoing agreement, the respondent admits the jurisdictional facts alleged in the complaint and agrees, among other things, that the cease and desist order there set forth may be entered without further notice and shall have the same force and effect as if entered after a full hearing. The agreement includes a waiver by the respondent of all rights to challenge or contest the validity of the order issuing in accordance therewith; and recites that the said agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission, and that it is for settlement purposes only and does not constitute an admission by the respondent that it has violated the law as alleged in the complaint. The hearing examiner finds that the content of the said agreement meets all the requirements of section 3.25(b) of the Rules of Practice.

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

1. Respondent Jamie Record Co. is a corporation existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its office and principal place of business located at 1330 West Girard Avenue, in the City of Philadelphia, State of Pennsylvania.

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

ORDER

It is ordered, That respondent Jamie Record Co., a corporation, and its officers, and respondent's agents, representatives and employees, directly or through any corporate or other device, in connection with phonograph reocrds which have been distributed, in commerce, or which are used by radio or television stations in broadcasting programs in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Giving or offering to give, without requiring public disclosure, any sum of money or other material consideration, to any person, directly or indirectly, to induce that person to select, or participate in the selection of, and broadcasting of, any such records in which respondent has a financial interest of any nature.

2. Giving, or offering to give, without requiring public disclosure, any sum of money, or other material consideration, to any person, directly or indirectly, as an inducement to influence any employee of a radio or television broadcasting station, or any other person, in any manner, to select, or participate in the selection of, and the broadcasting of, any such records in which respondent has a financial interest of any nature.

There shall be "public disclosure" within the meaning of this order, by any employee of a radio or television broadcasting station, or any other person, who selects or participates in the selection and broadcasting of a record when he shall disclose, or cause to have disclosed, to the listening public at the time the record is played, that his selection and broadcasting of such record are in consideration for compensation of some nature, directly or indirectly, received by him or his employer.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 26th day of April, 1960, become the decision of the Commission; and, accordingly:

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

IN THE MATTER OF

DUMONT RECORD DISTRIBUTING CORP. ET AL.

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

Docket 7776. Complaint, Feb. 5, 1960—Decision, Apr. 26, 1960

Consent order requiring Boston, Mass., distributors of phonograph records to cease giving concealed "payola" to television and radio disc jockeys to induce playing their records in order to increase sales.

Mr. John T. Walker and *Mr. James H. Kelley* for the Commission.

Winer & Brady, by *Mr. Louis Winer*, of Boston, Mass., for respondents.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The complaint charges respondents, who are engaged in the offering for sale, sale and distribution of phonograph records as an independent distributor for several record manufacturers to retail outlets and jukebox operators in various states of the United States, with violation of the Federal Trade Commission Act, in that respondents, alone or with certain unnamed record manufacturers, have negotiated for and disbursed "payola," i.e., the payment of money or other valuable consideration to disk jockeys of musical programs on radio and television stations, to induce, stimulate or motivate the disk jockeys to select, broadcast, "expose" and promote certain records, in which respondents are financially interested, on the express or implied understanding that the disk jockeys will conceal, withhold or camouflage the fact of such payment from the listening public.

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 Assistant Director of the Commission's Bureau of Litigation, and thereafter transmitted to the hearing examiner for consideration.

The agreement states that respondent Dumont Record Distributing Corp. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Massachusetts, with its principal office and place of business located at 1280 Tremont Avenue, Boston, Massachusetts, and that individual respondent

Donald E. Dumont is president of the corporate respondent, his address being the same as that of the said corporate respondent.

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 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 Dumont Record Distributing Corp., a corporation, and its officers, and Donald E. Dumont, individually, and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with phonograph records which have been distributed in commerce, or which are used by radio or television stations in broadcasting programs in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(1) Giving or offering to give, without requiring public disclosure, any sum of money or other material consideration to any person, directly or indirectly, to induce that person to select, or participate in the selection of, and the broadcasting of, any such rec-

ords in which respondents, or either of them, have a financial interest of any nature;

(2) Giving or offering to give, without requiring public disclosure, any sum of money, or other material consideration, to any person, directly or indirectly, as an inducement to influence any employee of a radio or television broadcasting station, or any other person, in any manner, to select, or participate in the selection of, and the broadcasting of, any such records in which respondents, or either of them, have a financial interest of any nature.

There shall be "public disclosure" within the meaning of this order, by any employee of a radio or television broadcasting station, or any other person, who selects or participates in the selection and broadcasting of a record when he shall disclose, or cause to have disclosed, to the listening public at the time the record is played, that his selection and broadcasting of such records are in consideration for compensation of some nature, directly or indirectly received by him or his employer.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner did, on the 26th day of April, 1960, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Dumont Record Distributing Corp., a corporation, and Donald E. Dumont, individually, and as officer of said corporation, shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist.

IN THE MATTER OF

VOLKWEIN BROTHERS, INC., ET AL.

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

Docket 7793. Complaint, Feb. 25, 1960—Decision, Apr. 26, 1960

Consent order requiring a Pittsburgh, Pa., manufacturer of phonograph records for distribution to retail outlets and jukebox operators, to cease giving concealed "payola" to television and radio disc jockeys inducement to play certain records in order to increase sales.

Mr. John T. Walker and *Mr. James H. Kelley* supporting the complaint.

Mr. Homer T. Newlon, Jr., of *Bearer, Masick and Newlon*, of Pittsburgh, Pa., for respondents.

INITIAL DECISION BY HARRY R. HINKES, HEARING EXAMINER

The complaint in this matter charges the respondents with violations of the provisions of the Federal Trade Commission Act by the payment of money or other valuable consideration to induce the playing of certain phonograph records over radio and television stations in order to enhance the popularity of such records.

On March 23, 1960 there was submitted to the undersigned hearing examiner an agreement between the above-named respondents, their counsel, and counsel supporting the complaint providing for the entry of a consent order.

Under the foregoing agreement, the respondents admit all the jurisdictional facts alleged in the complaint. The agreement provides that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and agreement; that the inclusion of findings of fact, and conclusions of law in the decision disposing of this matter is waived, together with any further procedural steps before the hearing examiner and the Commission; that the order hereinafter set forth may be entered in disposition of the proceeding, such order to have the same force and effect as if entered after a full hearing, the respondents specifically waiving any and all rights to challenge or contest the validity of such order; that the order may be altered or set aside in the manner provided for other orders of the Commission; that the complaint may be used in construing the terms of the order; and that the agreement is for settlement purposes only and does not constitute an admission by the respondents that they have violated the law as alleged in the complaint.

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

1. Respondent Volkwein Brothers, Inc. is a corporation existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its office and principal place of business located at 632 Liberty Avenue, in the City of Pittsburgh, State of Pennsylvania.

Respondents Carl R. Volkwein and Walter E. Volkwein are president, and vice-president and treasurer, respectively, of the corporate respondent, and formulate, direct and control the acts and practices of said corporate respondent. The address of the individual respondents is the same as that of said corporate respondent.

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

ORDER

It is ordered, That respondents Volkwein Brothers, Inc., a corporation, and its officers, and Carl R. Volkwein and Walter E. Volkwein, individually, and as officers of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with phonograph records which have been distributed, in commerce, or which are used by radio or television stations in broadcasting programs in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(1) Giving or offering to give, without requiring public disclosure, any sum of money or other material consideration, to any person to select, or participate in the selection of, and the broadcasting of, any such records in which respondents, or any of them, have a financial interest of any nature.

(2) Giving or offering to give, without requiring public disclosure, any sum of money, or other material consideration, to any person, directly or indirectly, as an inducement to influence any employee of a radio or television broadcasting station, or any person, in any manner, to select, or participate in the selection of, and the broadcasting of, any such records in which respondents, or any of them, have a financial interest of any nature.

There shall be "public disclosure" within the meaning of this order, by any employee of a radio or television broadcasting station, or any other person, who selects or participates in the selection and broadcasting of a record when he shall disclose, or cause to have disclosed, to the listening public at the time the record is played, that his selection and broadcasting of such record are in consideration for compensation of some nature, directly or indirectly, received by him or his employer.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

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

April, 1960, 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.

IN THE MATTER OF

LASKY ENTERPRISES, INC., ET AL.

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

Docket 7408. Complaint, Feb. 13, 1959—Decision, Apr. 27, 1960

Order requiring furniture and electrical appliance dealers in St. Louis, Mo., to cease representing falsely in advertising in newspapers, etc.—through use of such statements as "Telephone Lounger . . . Reg. 39.59, 24.88 . . . $219.95 . . . Refrigerator $158"—that the first figure, often following "Reg.," was the usual price for the merchandise concerned and that the difference between the two prices represented savings therefrom.

Mr. Frederick McManus for the Commission.

Shifrin, Treiman, Agatstein & Schermer, of St. Louis, Mo., by *Mr. Edwin G. Shifrin*, for respondents.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

1. Respondents are charged with violation of the Federal Trade Commission Act through the use of fictitious prices in advertising their merchandise. After the filing of respondents' answer to the complaint, hearings were held at which evidence in support of, and in opposition to, the complaint was received. Proposed findings and conclusions have been filed by counsel supporting the complaint, respondents having elected not to file such proposals. Oral argument has been waived, and the case is now before the hearing examiner for final consideration. Any proposed findings and conclusions not included herein have been rejected.

2. Respondent Lasky Enterprises, Inc., is a corporation organized and doing business under the laws of the State of Missouri, with its principal place of business located at 1030 Franklin Avenue, St. Louis, Missouri. The corporation, which trades under the name Franklin Union Furniture Company, also has stores located in the State of Illinois.

Respondents M. B. Lasky, S. H. Jacobson, Ben Schapiro and Harry Lasky are officers of the corporation and formulate, direct and control its policies, acts and practices.

Respondents are engaged in the sale at retail of furniture and electrical appliances, including refrigerators.

3. There is no dispute over the element of interstate commerce, respondents' answer admitting that they sell and ship their merchandise to purchasers located in states of the United States other than Missouri, and that they maintain a substantial course of trade in their merchandise in commerce as that term is defined in the Federal Trade Commission Act.

4. In an advertisement inserted by respondents in the St. Louis Post-Dispatch on October 29, 1958, there appeared, among other statements, the following:

Telephone Lounger with Swivel Lamp

Reg.

$39.59 $24.88

Refrigerators, Freezers, Washers and Dryers

at Big Savings!

$219.95 Hotpoint Family-Size Refrigerator $158

$329.95 Hotpoint 12 cu. ft. Refrigerator $219.

5. Through the use of these statements respondents represented, directly or by implication, that the amounts $39.59, $219.95 and $329.95 were the prices at which the respective articles of merchandise were usually and regularly sold by respondents, and that the differences between those amounts and the prices at which the articles were offered for sale in the advertisement represented savings or reductions from respondents' customary retail prices.

6. During the hearings, respondents frankly acknowledged that they had never sold either the telephone lounger or the Hotpoint family-size refrigerator at the so-called regular prices. Actually, the telephone lounger had regularly been sold by respondents for $24.88, and the refrigerator had regularly been sold by them for $158.00 or for an amount only slightly larger.

As for the last item (the Hotpoint 12 cu. ft. refrigerator), respondents testified that they had made some sales for $329.95. However, there are in the record copies of invoices showing that in August and September 1958 at least five sales of the item had been made for $219.00, the so-called reduced price featured in the October 29, 1958, advertisement. Clearly, $329.95 was not the usual or customary price of the article.

7. Respondents assert by way of defense that the "regular" price of $39.50 on the telephone lounger was the established or prevailing

price in that trade area, that is, that the item had regularly been sold at that price by other furniture dealers. There are two reasons why this defense cannot prevail. In the first place, the evidence fails to establish that the article had in fact been sold by others for $39.59. But even if the evidence did establish this, it would constitute no defense to the use by respondents of the advertisement in question, which represented in effect that the article had regularly been sold by respondents themselves at the higher price.

Respondents further assert that if their customary markup and various items of expense had been added to the wholesale price which they paid for the telephone lounger, the total would have been approximately $39.59. Obviously this defense is without merit.

As to the Hotpoint family-size refrigerator, respondents assert, and the evidence indicates, that a memorandum issued by the manufacturer stated that the manufacturer's "original recommended list" price was $219.95, the amount represented in respondents' advertisement as their own regular or customary prices. Here again the defense is without merit. No action on the part of the manufacturer could justify respondents in representing as their own regular, customary price an amount greatly in excess of the price at which the refrigerator was customarily sold by them.

8. It is therefore concluded that the so-called regular prices shown in respondents' advertisement were fictitious, and that no savings were in fact afforded customers purchasing at the so-called reduced prices. Actually, the "reduced" prices were respondents' usual and customary prices on the articles advertised.

9. The use by respondents of fictitious prices and other misleading statements in advertising their merchandise, as set forth above, has the tendency and capacity to mislead members of the purchasing public with respect to the actual prices of respondents' merchandise, and with respect to savings afforded through the purchase of such merchandise, and the tendency and capacity to cause such members of the public to purchase substantial quantities of respondents' merchandise as a result of the erroneous and mistaken belief so engendered. These acts and practices of respondents are to the prejudice of the public, and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act. The proceeding is in the public interest.

ORDER

It is ordered, That the respondents, Lasky Enterprises Inc., a corporation, and its officers, and M. B. Lasky, S. H. Jacobson, Ben

Schapiro and Harry Lasky, 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 and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of furniture and electrical appliances, or any other merchandise, do forthwith cease and desist from representing, directly or by implication:

1. That any amount is the regular and usual price of respondents' merchandise, when such amount is in excess of the amount at which such merchandise is usually and customarily sold by respondents in the trade area where the representation is made.

2. That any savings are afforded through the purchase of respondents' merchandise, unless the price at which such merchandise is offered constitutes a reduction from the price at which such merchandise has been regularly and customarily sold by respondents in the recent normal course of their business.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 27th day of April, 1960, 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.

IN THE MATTER OF

FIELDCREST MILLS, INC.

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

Docket 7528. Complaint, June 26, 1959—Decision, Apr. 27, 1960

Consent order requiring a large manufacturer of rugs, carpets, and "domestics" in Spray, N.C.—with sales in 1958 of over $62,000,000—to cease violating Secs. 2(d) and (e) of the Clayton Act by granting advertising allowances to favored customers on more generous terms than it offered their competitors, making payments therefor in varying amounts up to 100%; and by furnishing only favored customers with a "Fieldcrest Shop" and providing for training their sales personnel.

COMPLAINT

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

COUNT I

PARAGRAPH 1. Respondent, Fieldcrest Mills, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located in Spray, North Carolina.

PAR. 2. Respondent is now and has been engaged in the manufacture, sale, and distribution of blankets, bedspreads, sheets, pillow cases, and other items known as "domestics," as well as rugs and carpets. Respondent sells its products to a large number of customers located throughout the United States, including retailers, distributors, jobbers, mail order and premium houses, and chain stores.

All sales of respondent's "domestics" products are made through respondent's Fieldcrest Division, and all sales of respondent's rugs and carpets are made through respondent's Karastan Division. Respondent's sales of its products are substantial, amounting in the year 1958 to over $62,000,000.

PAR. 3. In the course and conduct of its business, respondent has engaged and is now engaging in commerce, as "commerce" is defined in the Clayton Act, as amended. Respondent sells and causes its products to be transported from the respondent's principal place of business, located in North Carolina, to customers located in other states of the United States and in the District of Columbia. There has been at all times mentioned herein a continuous course of trade in commerce in said products across state lines between said respondent and the buyers of such products.

PAR. 4. In the course and conduct of its business in commerce, respondent paid or contracted for the payment of something of value to or for the benefit of some of its 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 cus-

tomers competing in the sale and distribution of respondent's products.

PAR. 5. As illustrative of such practices respondent has:

(1) paid advertising or other allowances to some customers based on different contract terms than allowances paid to competing customers, but did not offer or accord or make available such allowances to all competing customers on proportionally equal terms;

(2) paid advertising or other allowances to some customers not in accordance with the terms set forth in the customers' signed contracts, thus favoring said customers, but did not offer or otherwise accord or make available such allowances to all competing customers on proportionally equal terms;

(3) paid advertising or other allowances to some customers which were determined by individual negotiations by or between respondent and such customers but did not offer or otherwise accord or make available such allowances to all competing customers in equal amounts, or proportionally equal by any other test;

(4) paid advertising or other allowances in varying amounts up to 100% to some customers but did not offer or otherwise accord or make available such allowances to all competing customers in equal amounts, or proportionally equal by any other test.

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

COUNT II

PAR. 7. Paragraphs 1 through 3 of Count I hereof are hereby set forth by reference and made a part of this Count II as fully and with the same effect as if quoted here verbatim.

PAR. 8. In the course and conduct of its business in commerce, respondent has discriminated in favor of many of its purchasers buying its commodities by contracting to furnish, or furnishing, or by contributing to the furnishing, of such favored competing purchasers, services or facilities connected with the handling, sale, or offering for sale of such commodities so purchased upon terms not accorded to other competing purchasers on proportionally equal terms.

As illustrative of such practices, respondent has furnished certain of its customers with a "Fieldcrest Shop," and also has provided for the training of sales personnel of such favored customers, while not according such services and facilities to all other competing purchasers on proportionally equal terms.

PAR. 9. The acts and practices of respondent as alleged herein are in violation of subsection (e) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

Mr. Cecil G. Miles and *Mr. John Perechinsky* for the Commission.
Lovejoy, Morris, Wasson & Huppuch, of New York, N.Y., for respondent.

INITIAL DECISION BY EDGAR A. BUTTLE, HEARING EXAMINER

On June 26, 1959, the Federal Trade Commission issued its complaint against the above-named respondent, charging it with violating subsections (d) and (e) of section 2 of the Clayton Act, as amended, in connection with the manufacture, sale, and distribution of blankets, bedspreads, sheets, pillow cases, and other items known as "domestics," as well as rugs and carpets.

On January 29, 1960, the respondent and counsel supporting the complaint entered into an agreement containing a consent order to cease and desist in accordance with section 3.25 (a) of the Rules of Practice and Procedure of the Commission.

Under the foregoing agreement, the respondent admits the jurisdictional facts alleged in the complaint and agrees, among other things, that the cease and desist order there set forth may be entered without further notice and shall have the same force and effect as if entered after a full hearing. The agreement includes a waiver by the respondent of all rights to challenge or contest the validity of the order issuing in accordance therewith; and recites that the said agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission, and that it is for settlement purposes only and does not constitute an admission by the respondent that it has violated the law as alleged in the complaint. The hearing examiner finds that the content of the said agreement meets all the requirements of section 3.25(b) of the Rules of Practice.

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

1. Respondent Fieldcrest Mills, Inc. is a corporation organized,

existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located in Spray, North Carolina.

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 subsections (d) and (e) of section 2 of the Clayton Act, as amended.

ORDER

It is ordered, That respondent Fieldcrest Mills, Inc., a corporation, and its officers, employees, agents and representatives, directly or through any corporate or other device, in or in connection with the offering for sale, sale or distribution of any of its products sold under any of its trademarks, trade names, or labels in commerce, as "commerce" is defined in the Clayton Act, as amended, do forthwith cease and desist from:

1. 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 advertising, or promotional activities, or other services or facilities furnished by or through such customer in connection with the handling, offering for sale, or sale or distribution of any product or products of respondent, unless such payment or consideration is offered or otherwise made available on proportionally equal terms to all other customers competing in the distribution or sale of such product or products.

2. Furnishing, contracting to furnish, or contributing to the furnishing of any fixtures, display facilities, training programs or other services or facilities in connection with the handling, processing, sale or offering for sale of any product or products of respondent to any purchaser from respondent of such product or products bought for resale, unless such fixtures, display facilities, training programs, or other services or facilities are offered or otherwise made available on proportionally equal terms to all other purchasers from respondent who resell such product or products in competition with such purchasers who receive such fixtures, display facilities, training programs, or other services or facilities.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 27th day of April, 1960, become the decision of the Commission; and, accordingly:

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

IN THE MATTER OF

VELOX SERVICE, INC., ET AL.

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

Docket 7649. Complaint, Nov. 3, 1959—Decision, Apr. 27, 1960

Consent order requiring two affiliated New York City mail order distributors of general merchandise to cease such false advertising as misrepresenting the country of origin of Japanese knives and their availability and price, guarantees of watches, performance, quality, and value of razor blades, etc.

Mr. Terral A. Jordan for the Commission.
Mr. George Landesman, of New York, N.Y., for respondents.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

The complaint in this matter charges the respondents with violation of the Federal Trade Commission Act through the making of certain misrepresentations in connection with hunting knives, watches and razor blades sold by them. An agreement has now been entered into by respondents and counsel supporting the complaint which provides, among other things, that respondents admit all of the jurisdictional allegations in the complaint; that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and agreement; that the inclusion of findings of fact and conclusions of law in the decision disposing of this matter is waived, together with any further procedural steps before the hearing examiner and the Commission; that the order hereinafter set forth may be entered in disposition of the proceeding, such order to have the same force and effect as if entered after a full hearing, respondents specifically waiving any and all rights to challenge or contest the validity of such order; that the order may be altered, modified, or set aside in the manner provided for other orders of the Commission; that the complaint may be used in construing the terms of the order; and that the agreement is for settlement purposes only and does not constitute an

admission by respondents that they have violated the law as alleged in the complaint.

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

1. Respondents Velox Service, Inc., and Thoresen, Inc., are corporations organized, existing and doing business under and by virtue of the laws of the State of New York. Respondents Nelson Torelli and Caesar Torelli are individuals and are officers of each of said corporate respondents. The office and principal place of business of the respondents is located at Room 5308, 350 Fifth Avenue, New York, New York.

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

ORDER

It is ordered, That respondents Velox Service, Inc., a corporation, and its officers, and Thoresen, Inc., a corporation, and its officers, and Nelson Torelli and Caesar Torelli, individually and as officers of each of said corporations, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of hunting knives, watches, razor blades and other articles of merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the expression "Black Forest Hunting Knife" as descriptive of knives without conspicuously revealing in immediate connection therewith the name of the country other than Germany in which said knives are manufactured; or using any other words or pictures which represent, directly or indirectly, that any of the aforesaid articles of merchandise were manufactured in a country other than the true country of origin without conspicuously revealing in immediate connection therewith, the true country of origin of said articles of merchandise;

2. Representing, directly or indirectly, that the number or quantity of said articles of merchandise available to the purchaser is limited or restricted unless such is the fact;

3. Representing, directly or indirectly, that any price not the total price of an article or combination of articles of merchandise is the total price;

4. Representing, directly or indirectly, that said articles of merchandise are guaranteed unless the nature and extent of the guarantee and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed;

5. Representing, directly or indirectly, that razor blades give a specified number of shaves or perform or have a quality or value equal to higher priced razor blades unless 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 27th day of April, 1960, 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.

IN THE MATTER OF

BERCUT-RICHARDS PACKING COMPANY, INC.

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

Docket 7651. Complaint, Nov. 3, 1959—Decision, Apr. 27, 1960

Consent order requiring a Sacramento, Calif., canner of fruits, vegetables, and juices—with annual sales exceeding $12,000,000—to cease violating Sec. 2(d) of the Clayton Act by paying favored purchasers advertising allowances which were not made available on proportionally equal terms to all their competitors.

COMPLAINT

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

PARAGRAPH 1. Respondent, Bercut-Richards Packing Company, Inc., is a corporation organized, existing, and doing business under

and by virtue of the laws of the State of California, with its office and principal place of business located at North Seventh Street and Richards Avenue, Sacramento, California.

PAR. 2. Respondent is now and has been engaged in the business of selling and distributing a wide variety of canned food products, including fruits, vegetables, tomato juice and other juices, all of which it processes and cans at its plant in Sacramento, California. Respondent sells and distributes its canned food products under the private labels or brands of its purchasers, and also under its own labels or brands.

Respondent sells its products through brokers, and also directly to wholesalers and retailers, including retail chain store organizations. Sales made by respondent of its products are substantial, exceeding $12,000,000 annually.

PAR. 3. In the course and conduct of its business respondent has engaged and is now engaging in commerce, as "commerce" is defined in the Clayton Act, as amended, in that respondent sells and causes its products to be transported from the respondent's principal place of business, located in California, to customers located in other states of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of its business in commerce, since January 1, 1956, respondent paid or contracted for the payment of something of value to or for the benefit of some of its 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 Seeman Brothers, Inc., a wholesaler in New York, New York, $1,000 as compensation or as allowances for advertising or other service or facility furnished by or through Seeman Brothers, Inc., in connection with its offering for sale or sale of products sold to it by respondent. Such compensation or allowances were not offered or otherwise made available on proportionally equal terms to all other customers competing with Seeman Brothers, Inc., in the sale and distribution of products of like grade and quality from respondent.

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

Mr. Fredric T. Suss and *Mr. John Perechinsky* for the Commission.

Mr. Robert R. Harlan, of Sacramento, Calif., for respondent.

INITIAL DECISION BY WALTER R. JOHNSON, HEARING EXAMINER

In the complaint dated November 3, 1959, the respondent is charged with violating the provisions of subsection (d) of Section 2 of the Clayton Act, as amended.

On February 16, 1960, the respondent and its attorney entered into an agreement with counsel in support of the complaint for a consent order.

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

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

The hearing examiner being of the opinion that the agreement and the proposed order provide an appropriate basis for disposition of this proceeding as to all of the parties, the agreement is hereby accepted and it is ordered that the agreement shall not become a part of the official record of the proceeding unless and until it becomes a part of the decision of the Commission. The following jurisdictional findings are made and the following order issued.

1. Respondent Bercut-Richards Packing Company, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at North Seventh Street, in the City of Sacramentou, State of California.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent.

ORDER

It is ordered, That respondent Bercut-Richards Packing Company, Inc., a corporation, its officers, employees, agents and representatives, directly or through any corporate or other device, in or in connec-

tion with the sale of canned food products in commerce, as "commerce" is defined in the Clayton Act, as amended, do forthwith cease and desist from:

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

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 27th day of April, 1960, become the decision of the Commission; and, accordingly:

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

IN THE MATTER OF

ALBERT EHLERS, INC.

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

Docket 7663. Complaint, Nov. 24, 1959—Decision, Apr. 27, 1960

Consent order requiring a Brooklyn, N.Y., distributor of coffee, tea, spices, extracts, and dried foods to wholesale jobbers, chain stores, restaurants, etc., to cease discriminating in price between competing customers—

In violation of Sec. 2(a) of the Clayton Act by means of (1) three classifications of price lists with the lowest applied to customers taking warehouse deliveries, the next to those taking delivery by drop shipment, and the highest to other independent retail grocers, and with additional discounts for cash to the first two classes, but none at all to others; (2) 2% payable quarterly for warehousing in addition to aforesaid lower prices; (3) end of year quantity rebates; (4) advertising and promotional allowances; (5) a coordinating discount of 1% of total purchases to customers stocking a full line of respondent's products; and (6) granting substantial quantities of free goods upon the opening of new stores; and

In violation of Sec. 2(d) of the Clayton Act by paying sums of money as

compensation for advertising furnished in connection with the sale of its products—such as $20,000 paid to Food Fair Stores, Inc., Linden, N.J.; $14,500 paid to Grand Union Co., Paterson, N.J.; and $10,000 paid to Wakefern Food Corp., Elizabeth, N.J.—without making comparable allowances available to competitors of said favored customers.

COMPLAINT

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

COUNT I

PARAGRAPH 1. Respondent Albert Ehlers, 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 office and place of business located at 1300 Flushing Avenue, Brooklyn, New York.

PAR. 2. Respondent is now, and for many years has been, engaged in the wholesale distribution of coffee, tea, spices, extracts, and dried foods. Respondent's annual sale volume of said products is approximately $14,000,000. Within the New York and New Jersey area, respondent sells its products directly to chain stores, voluntary cooperative associations of retail grocers, other independent retail grocers, and restaurants. Beyond the New York-New Jersey area, the respondent sells its products to wholesale jobbers and chain stores.

PAR. 3. In the course and conduct of its business, respondent has engaged in commerce, as "commerce" is defined in the aforesaid Clayton Act, as amended, having shipped its products or caused said products to be shipped or transported from its place of business located in the State of New York to its purchasers with places of business located in various states of the United States other than the State of New York.

PAR. 4. Respondent, in the course and conduct of its business, as above described, has been for many years, and is now, discriminating in price, directly or indirectly, between different purchasers of food products, who are in competition with each other, by selling said products of like grade and quality to some of such purchasers at substantially higher prices than to other of such purchasers.

PAR. 5. Among the many methods by which respondent discriminates between said purchasers are the following:

During the years 1956 through 1959, inclusive, respondent has sold its products to competing purchasers on a basis of three classifications of price lists. The lowest price lists applied to those purchasers who took warehouse deliveries; the next higher price lists applied to those purchasers who took deliveries by drop shipments; and the highest price lists applied to other independent retail grocer purchasers.

Additional cash discounts for payment within ten days were allowed to the first two classes of purchasers in the amount of 2% on coffee, tea and spice purchases and 1% on packaged rice and beans. No such discounts were allowed to other competing retail grocer purchasers although they paid cash on delivery.

Additional discounts were granted on purchases of spices and extracts as follows:

Warehousing: 2% payable quarterly in addition to the lower prices quoted to warehouse receivers;

End of year quantity rebates:

	Discount On Purchases Of
1%	$3,500 and over
2%	5,000 and over
3%	10,000 and over
5%	20,000 and over

Advertising allowance, 3% of purchases; promotional allowance, 5% on all purchases for each of twelve yearly promotions.

In addition to all of the above discounts, respondent also has been, and is now, granting a coordinating discount of 1% of total purchases of all products, to those purchasers who stock respondent's major products including coffee, tea, spices, extracts and dried foods. This coordinating discount is not granted to those purchasers who do not stock the full line of respondent's major products regardless of the quantity or number of such products which they may purchase during the year.

Respondent has also granted price discriminations to some favored customers in the form of free goods upon the opening of new stores. During the year 1958, such free goods in the amount of approximately $700 were given to each of the following favorite customers in the State of New Jersey: United Super Markets, Newark; Farmingdale Super Markets, Farmingdale; Green's Discount Market, Keyport; Hollywood Food Center, Asbury Park; Mayfair Super Market, Plainfield; National Grocery Company, Elizabeth; Park Food Town, Newark. No such free goods allowances were granted to respondent's purchasers who compete with the purchasers so favored.

PAR. 6. The effects of such discriminations in price as alleged

herein may be substantially to lessen competition or tend to create a monopoly in the lines of commerce in which respondent and its customers are respectively engaged; or to injure, destroy or prevent competition with respondent or with purchasers therefrom who receive the benefit of such discrimination.

PAR. 7. The aforesaid acts and practices of respondent constitute violations of the provisions of subsection (a) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act, approved June 19, 1936, (U.S.C. Title 15, Section 13).

COUNT II

PAR. 8. The allegations of paragraphs 1, 2 and 3 of Count I of this complaint are hereby adopted and incorporated herein by reference and made a part of this Count II as if they were repeated herein verbatim.

PAR. 9. In the course and conduct of its business in commerce, respondent paid, or contracted for the payment of, something of value to or for the benefit of some of its customers as compensation or in consideration for services and facilities furnished by or through such customers in connection with their offering for sale or sale of products sold to them by said respondent, and such payments were not made available on proportionately equal terms to all customers competing in the distribution of respondent's products.

PAR. 10. For example, during the year 1958, respondent paid to the following:

Food Fair Stores, Inc., Linden, New Jersey, $20,000 as compensation or as an allowance for advertising or other service or facility furnished by or through Food Fair Stores, Inc. in connection with the offering for sale or sale of products sold to Food Fair Stores by respondent. Such compensation or allowance was not offered or otherwise made available on proportionately equal terms to all other customers in competition with Food Fair Stores in the sale of respondent's products.

Grand Union Company, Paterson, New Jersey, $14,500 as compensation or as an allowance for advertising or other service or facility furnished by or through Grand Union Company in connection with the offering for sale or sale of products sold to Grand Union Company by respondent. Such compensation or allowance was not offered or otherwise made available on proportionately equal terms to all other customers in competition with Grand Union Company in the sale of respondent's products.

Wakefern Food Corporation, Elizabeth, New Jersey, $10,000 as compensation or as an allowance for advertising or other service

or facility furnished by or through Wakefern Food Corporation in connection with the offering for sale or sale of products sold to Wakefern Food Corporation by respondent. Such compensation or allowance was not offered or otherwise made available on proportionately equal terms to all other customers in competition with Wakefern Food Corporation in the sale of respondent's products.

PAR. 11. The acts and practices alleged in paragraphs 9 through 10 were and are in violation of subsection (d) of Section 2 of the aforesaid Clayton Act, as amended.

Mr. Frederic T. Suss for the Commission.
Breed, Abbott & Morgan, of New York, N.Y., for the respondent.

INITIAL DECISION BY EDGAR A. BUTTLE, HEARING EXAMINER

On November 24, 1959, the Federal Trade Commission issued its complaint against the above-named respondent charging it with violating the provisions of subsections (a) and (d) of Section 2 of the Clayton Act, as amended in connection with the sale and distribution of food products. On February 15, 1960, the respondent and counsel supporting the complaint entered into an agreement containing a consent order to cease and desist in accordance with Section 3.25(a) of the Rules of Practice and Procedure of the Commission.

Under the foregoing agreement, the respondent admits the jurisdictional facts alleged in the complaint and agrees, among other things, that the cease and desist order there set forth may be entered without further notice and shall have the same force and effect as if entered after a full hearing. The agreement includes a waiver by the respondent of all rights to challenge or contest the validity of the order issuing in accordance therewith; and recites that the said agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission, and that it is for settlement purposes only and does not constitute an admission by the respondent that it has violated the law as alleged in the complaint. The hearing examiner finds that the content of the said agreement meets all the requirements of Section 3.25(b) of the Rules of Practice.

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

ment, the hearing examiner makes the following jurisdictional findings and order.

Subparagraph 2 of the following order to cease and desist is not intended to require uniform prices throughout the country nor to limit or enlarge the statutory defenses available to the respondent under 15 U.S.C. 13 (a) and (b).

1. Respondent Albert Ehlers, 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 1300 Flushing Avenue, Brooklyn, New York.

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 subsections (a) and (d) of the Clayton Act, as amended.

ORDER

It is ordered, That respondent Albert Ehlers, Inc., its officers, employees, agents and representatives, directly or through any corporate or other device, in connection with the sale or distribution of food products in commerce, as "commerce" is defined in the Clayton Act, as amended, do forthwith cease and desist from discriminating directly or indirectly in the price of such products of like grade and quality:

1. By selling such products to any purchaser at net prices higher than the net prices charged any other purchaser competing in the resale or distribution of such products.

2. By selling such products to any purchaser at a price which is lower than the price charged any other purchaser engaged in the same line of commerce, where such lower price undercuts the price at which the purchaser charged the lower price may purchase such products of like grade and quality from another seller.

It is further ordered, That respondent Albert Ehlers, Inc., its officers, employees, agents and representatives, directly or through any corporate or other device, in the course of its business in commerce, as "commerce" is defined in the Clayton Act, as amended, do forthwith cease and desist from:

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 other services or facilities furnished by or through such customer, in connection with the handling, resale or offering for resale of products manufactured, sold, or offered for sale by respondent, unless such payment or consideration is affirmatively offered or otherwise made available on proportionally equal

terms to all other customers competing in the resale or 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 27th day of April, 1960, become the decision of the Commission; and, accordingly:

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

IN THE MATTER OF

WELLESLEY DRESS SHOP, INC., ET AL.

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

Docket 7664. Complaint, Nov. 24, 1959—Decision, Apr. 27, 1960

Consent order requiring a furrier in Niagara Falls, N.Y., to cease violating the Fur Products Labeling Act by mutilating labels on fur products prior to ultimate delivery; by setting forth on labels the name of an animal other than that producing certain fur, and failing to set forth such terms as "Dyed Broadtail-processed Lamb"; by advertising comparative prices as "were" prices without designating the time when they were in effect, and failing to keep adequate records as a basis therefor; and by failing in other respects to comply with labeling and invoicing requirements.

Mr. Garland S. Ferguson supporting the complaint.

Kavinoky, Cook, Hepp & Sandler by *Mr. Harold S. Sandler*, of Buffalo, N.Y., for respondents.

INITIAL DECISION BY EDWARD CREEL, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on November 24, 1959 charging them with having violated the Fur Products Labeling Act, the Rules and Regulations issued thereunder, and the Federal Trade Commission Act by misbranding, falsely invoicing and falsely advertising certain of their fur products.

On March 3, 1960 there was submitted to the undersigned hearing examiner an agreement between respondents, their counsel, and coun-

sel supporting the complaint providing for the entry of a consent order.

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

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

The hearing examiner having considered the agreement and proposed order, and being of the opinion that they provide an appropriate basis for settlement and disposition of this proceeding, the agreement is hereby accepted, and it is ordered that said agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission. The following jurisdictional findings are made and the following order issued.

1. Corporate respondent Wellesley Dress Shop, 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 1801 Main Street, Niagara Falls, New York. Individual respondents Harold Kirtz and Donald King are officers of said corporation. They formulate, direct and control the practices of the corporate respondent. Their address is the same as that of the corporate respondent.

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

ORDER

It is ordered, That respondents Wellesley Dress Shop, Inc., a corporation, and its officrs and Harold Kirtz and Donald King, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the sale, advertising, or offering for sale in commerce, or the transportation or distribution in commerce of fur products, or in connection with the sale, advertising, offering for sale, transporta-

tion, 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 in words and figures plainly legible all of the information required to be disclosed by each of the subsections of Section 4(2) of the Fur Products Labeling Act.

2. Setting forth on labels affixed to fur products the name or names of any animal or animals other than the name or names provided for in Section 4(2)(A) of the Fur Products Labeling Act.

3. Setting forth on labels affixed to fur products:

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

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

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

4. Failing to set forth the term "Dyed Broadtail-processed Lamb" in the manner required by Rule 10 of said Rules and Regulations.

5. Affixing to fur products labels that do not comply with the minimum size requirements of one and three-quarter inches by two and three-quarter inches.

6. Failing to set forth on labels the item number or mark assigned to a fur product.

B. Mutilating, or causing or participating in the mutilation of, prior to the time any fur product is sold and delivered to the ultimate consumer, any label required by the Fur Products Labeling Act to be affixed to such fur product.

C. Falsely or deceptively invoicing fur products by:

1. Failing to furnish to purchasers of fur products an invoice showing all the information required to be disclosed by each of the subsections of Section 5(b)(1) of the Fur Products Labeling Act.

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

D. 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. Sets forth "were" prices or former prices without designating the time of such "were" prices or former prices.

2. Misrepresents in any manner the savings available to purchasers of respondents' fur products.

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

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall on the 27th day of April, 1960, 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

EDWARD J. KASNICKA TRADING AS MASTER DESIGNER

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

Docket 7682. Complaint, Dec. 7, 1959—Decision, Apr. 27, 1960

Consent order requiring a Chicago seller of home study books on clothes designing and tailoring to cease representing falsely that employment opportunities, increased earnings and other benefits would be afforded purchasers of his books, that he had authority to award diplomas he sold for a consideration and that they would assure holders of better paying positions, etc.

Mr. William A. Somers supporting the complaint.

Mr. Frank E. Gettleman, of Chicago, Ill., for respondent.

INITIAL DECISION BY LEON R. GROSS, HEARING EXAMINER

On December 7, 1959, the Federal Trade Commission, pursuant to the provisions of the Federal Trade Commission Act, caused its

complaint to be issued in this proceeding to which Edward J. Kasnicka, an individual trading as Master Designer, is respondent. A true copy of said complaint was served upon the respondent as required by law. The complaint charges the respondent with violating the Federal Trade Commission Act in the sale of home study books entitled "Modern Garment Design and Grading Clothing for Men and Boys," "Modern Method of Women and Children's Garment Design," and "Modern Custom Tailoring for Men." The complaint further alleges that respondent sells diplomas to purchasers of his books for a consideration, which diplomas purport to evidence proficiency in the subject matters covered by said books. Respondent causes said books, diplomas and other printed matter to be transported from his place of business in the State of Illinois to purchasers thereof located in various states of the United States other than the State of Illinois, and maintains, and has maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act. After being served with the complaint, respondent appeared by counsel and filed his answer to said complaint. Thereafter respondent entered into an agreement dated February 29, 1960, which purports to dispose of all of this proceeding as to all parties without the necessity of conducting a hearing. The agreement has been signed by the respondent, his counsel, and by counsel supporting the complaint; and the agreement has been approved by the Director and the Assistant Director of the Bureau of Litigation of this Commission. Said agreement contains, *inter alia*, an agreement by the parties that certain amendments be made to the complaint, which amendments, in the opinion of the hearing examiner, do not materially affect the gravamen of the complaint as originally issued, and the hearing examiner has, by order dated March 2, 1960, amended the complaint as agreed to by respondent and counsel supporting the complaint. In the agreement of February 29, 1960, the parties have agreed that it is dispositive of the issues involved in this proceeding, after giving effect to the amendment to the complaint of March 2, 1960. On March 1, 1960, the said agreement was submitted to the above named hearing examiner for his consideration in accordance with Section 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings.

Respondent, pursuant to the aforesaid agreement of February 29, 1960, has admitted all of the jurisdictional facts alleged in the complaint and agreed that the record may be taken as if findings of such jurisdictional facts had been duly made in accordance with such allegations. Said agreement further provides that respondent

waives any further procedural steps before the hearing examiner and the Commission; the making of findings of fact or conclusions of law; and all of the rights he may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement. In the agreement of February 29, 1960, the parties, *inter alia*, agree that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the amended complaint and the agreement; that the order to cease and desist issued in accordance with the said agreement shall have the same force and effect as if entered after a full hearing; that the order may be altered, modified or set aside in the manner provided for other orders; that the amended complaint may be used in construing the terms of the order; that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the amended complaint and the agreement; and that said agreement is for settlement purposes only and does not constitute an admission by the respondent that he has violated the law as alleged in the amended complaint.

This proceeding now having come on for final consideration on the amended complaint and the aforesaid agreement of February 29, 1960, containing consent order, and it appearing that the order provided for in said agreement covers all of the allegations of the amended complaint and provides for an appropriate disposition of this proceeding as to all parties, the aforesaid agreement of February 29, 1960, is hereby accepted and ordered filed at the same time that this decision becomes the decision of the Federal Trade Commission pursuant to Sections 3.21 and 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings; and

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, makes the following jurisdictional findings, and issues the following order:

JURISDICTIONAL FINDINGS

1. That the Federal Trade Commission has jurisdiction over the parties and the subject matter of this proceeding;

2. Edward J. Kasnicka, respondent, is an individual trading and doing business as Master Designer with his office and principal place of business located at 400 South State Street, Chicago, Illinois. Respondent presently is engaged, and for several years last past has been engaged in the sale and distribution of home study books entitled "Modern Garment Design and Grading Clothing for

Men and Boys," "Modern Method of Women and Children's Garment Design," and "Modern Custom Tailoring for Men." Respondent also sells diplomas to purchasers of his books for a consideration, and these diplomas purport to evidence proficiency in the subject matters covered by said books.

3. Respondent is engaged in commerce as "commerce" is defined in the Federal Trade Commission Act;

4. The amended complaint herein states a cause of action against said respondent under the Federal Trade Commission Act, and this proceeding is in the public interest.

ORDER

It is ordered, That respondent Edward J. Kasnicka, individually and doing business under the name of Master Designers, or under any other name, and respondent's representatives, agents and employees, directly or through any corporate or other device, in connection with offering for sale, sale and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of home study books designated as "Modern Garment Design and Grading Clothing for Men & Boys," "Modern Method of Women & Children's Garment Design" and "Modern Custom Tailoring for Men," or any other books of whatever names containing substantially the same subject matter, do forthwith cease and desist from representing, directly or by implication, that:

1. Respondent has the authority to award diplomas.

2. Respondent's diplomas are recognized by employers, tailors or any other members of the public.

3. The possession of one of respondent's diplomas will be useful or helpful in finding employment or influence the public to patronize the holder's business establishment.

4. Respondent's diplomas will assure persons of better paid positions or jobs or increase their incomes or prestige.

5. Respondent's books are the equivalent to a classroom study course on the same subjects.

6. Persons, after studying respondent's books, will thereby be competent or able to perform the functions, acts, and duties of skilled craftsmen in drafting, grading, cutting or tailoring, or will be so recognized as such craftsmen by the trade.

7. Persons who study respondent's books will for this reason be employed by the garment industry or tailors as drafters, graders, cutters or tailors.

8. Persons who study respondent's books are assured of success or better pay in the garment industry or tailoring business.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 27th day of April, 1960, become the decision of the Commission; and, accordingly:

It is ordered, That respondent Edward J. Kasnicka, an individual trading as Master Designer 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

EQUITABLE COAT 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 7755. Complaint, Jan. 26, 1960—Decision, Apr. 27, 1960

Consent order requiring New York City manufacturers to cease violating the Wool Products Labeling Act by failing to label girls' and teenage coats as required, and by representing said coats falsely in circulars to be "100% Wool Luxury Fabric" when they contained substantially less than 100% woolen fibers.

Mr. Frederick McManus supporting the complaint.
Respondents, *pro se*.

INITIAL DECISION OF JOHN LEWIS, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on January 26, 1960, charging them with having violated the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, and the Federal Trade Commission Act, through the misbranding of certain wool products and misrepresenting the fiber content of certain of their products. After being served with said complaint, respondents appeared and entered into an agreement containing consent order to cease and desist, dated February 23, 1960, purporting to dispose of all of this proceeding as to all parties. Said agreement, which has been signed by all respondents and by counsel supporting the complaint, and approved by the Director and Assistant Director of the Commission's Bureau of Litigation, has been submitted to

the above-named hearing examiner for his consideration, in accordance with Section 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings.

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

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

1. Respondent Equitable Coat Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York.

Respondents Melvin Gelfand and Irving Gelfand are officers of the corporate respondent, and also trade as co-partners under the firm name of Little Maid Coat Company.

Said individual respondents cooperate in formulating, directing and controlling the acts, policies and practices of the corporate respondent. All respondents have their office and principal place of business at 580 8th Avenue, in the City of New York, State of New York.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents hereinabove named. The complaint states a cause of action against said respondents

under the Wool Products Labeling Act of 1939 and the Federal Trade Commission Act, and this proceeding is in the interest of the public.

ORDER

It is ordered, That the respondents Equitable Coat Co., Inc., a corporation, and its officers, and Melvin Gelfand and Irving Gelfand, individually and as officers of said corporation, and as copartners trading as Little Maid Coat Company, or under any other name, and respondents' representatives, agents, and employees, directly or through any corporate or other device, in connection with the introduction 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 girls' and teenage coats or other wool products, as such products are defined in and subject to said Wool Products Labeling Act, do forthwith cease and desist from misbranding such products by failing to affix labels to such products showing each element of information required to be disclosed by Section 4(a)(2) of the Wool Products Labeling Act of 1939.

It is further ordered, That respondents Equitable Coat Co., Inc., a corporation, and its officers, and Melvin Gelfand and Irving Gelfand, individually and as officers of said corporation, and as copartners trading as Little Maid Coat Company, or under any other name, and respondents' representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of girls' and teenage coats or other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting the character or amount of the constituent fibers contained in said product in advertising, or in any other manner.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 27th day of April, 1960, 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

OLIVE TABLET COMPANY ET AL.

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

Docket 5090. Complaint, Dec. 1, 1943—Decision, Apr. 28, 1960

Consent order requiring the legal successors to the respondents named in the complaint, distributors of "Dr. Edwards' Olive Tablets," and their advertising agency, to cease advertising falsely that their said medicinal preparation would increase the flow of bile from the liver and cause the evacuation of bile from the gall bladder, and that it would tone up intestinal muscular action.

Mr. Fletcher G. Cohn supporting the complaint.

Mr. E. B. Kimpel, Jr., of Memphis, Tenn., and *Clark, Carr and Ellis* of New York, N.Y., for respondents.

INITIAL DECISION BY EDWARD CREEL, HEARING EXAMINER

On December 1, 1943, the Federal Trade Commission issued its complaint charging respondents named in the caption hereof with violating the Federal Trade Commission Act by making false and deceptive representations in advertising the product known as "Dr. Edwards' Olive Tablets." Thereafter these respondents agreed to discontinue making the representations alleged to be false and deceptive pending final disposition of similar issues in Carter Products, Inc., Docket No. 4970, and they also agreed to execute a stipulation as to the facts based on the facts relating to these issues as would be found by the Commission in the Carter Case. On account of this agreement, proceedings in this matter have been held in abeyance until this time.

Since the issuance of the complaint all of the outstanding stock of respondent Olive Tablet Company, a corporation, has been acquired by Plough, Inc., a corporation, and Olive Tablet Company has been dissolved as a corporation. Also during this interval Erwin, Wasey, Ruthrauff and Ryan, a corporation, has become the legal successor to respondent Erwin, Wasey and Company, a corporation.

An agreement has been entered into between counsel supporting the complaint and Plough, Inc., a corporation, and Erwin, Wasey, Ruthrauff and Ryan, a corporation, and their attorneys, in which these two corporations consent that they may be legally bound as successors in interest by the complaint served on their predecessors

as though the complaint had been served upon them, and they consent that they may be made parties respondent herein.

The agreement referred to above with the existing respondents was submitted to the hearing examiner on March 8, 1960. This agreement also provides for the entry of a consent order. Under the agreement, the respondents admit the jurisdictional facts alleged in the complaint. The parties agree, among other things, that the cease and desist order there set forth may be entered without further notice and have the same force and effect as if entered after a full hearing and the document includes a waiver by the respondents of all rights to challenge or contest the validity of the order issuing in accordance therewith. The agreement further recites that it is for settlement purposes only and does not constitute an admission by the respondents that they have violated the law as alleged in the complaint.

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

The hearing examiner having considered the agreement and proposed order, and being of the opinion that they provide an appropriate basis for settlement and disposition of this proceeding, the agreement is hereby accepted, and it is ordered that said agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission. The following jurisdictional findings are made and the following order issued.

1. Respondent Plough, Inc. is a corporation organized and existing under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 3022 Jackson Avenue, Memphis, Tennessee, and is the legal successor to respondent Olive Tablet Company, now dissolved.

2. Respondent Erwin, Wasey, Ruthrauff and Ryan is a corporation existing by virtue of the laws of the State of Delaware, with its office and principal place of business located at 711 Third Avenue, New York, New York, and is the legal successor to respondent Erwin, Wasey and Company, a corporation which is no longer in existence.

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

ORDER

It is ordered, That the respondents Plough, Inc., a corporation, and Erwin, Wasey, Ruthrauff & Ryan, a corporation (the legal

successors to the Olive Tablet Company, and Erwin, Wasey and Company, which were named as respondents in the original complaint), and their respective officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of the products designated "Dr. Edwards' Olive Tablets," or any other product of substantially similar composition or possessing substantially similar properties under whatever name sold, do forthwith cease and desist from:

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

(a) That said preparation will aid in promoting the flow of bile or that it will increase or beneficially influence the formation, secretion or flow of bile from the liver or gall bladder;

(b) That said preparation will have any favorable effect on the toning up of any intestinal muscular action;

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

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 28th day of April, 1960, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Plough, Inc., a corporation, and Erwin, Wasey, Ruthrauff & Ryan, a corporation (the legal successors to the Olive Tablet Company, and Erwin, Wasey and Company, which were named as respondents in the complaint), 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.

Complaint

IN THE MATTER OF

ANCHOR CHEMICAL COMPANY, INC.

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

Docket 7701. Complaint, Dec. 21, 1959—Decision, Apr. 28, 1960

Consent order requiring a manufacturer of chemical specialties for the graphic arts industry, with principal office in Brooklyn, N.Y., to cease discriminating in price in violation of Sec. 2(d) of the Clayton Act by making payments as compensation for services or facilities furnished by some of its customers without making comparable payments to their competitors, such as $2,800 paid for advertising to Foster Type and Equipment Co. of Philadelphia.

COMPLAINT

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, Section 13), as amended by the Robinson-Patman Act, hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. 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 827 Bergen Street, Brooklyn, New York.

PAR. 2. Respondent is now, and has been since 1945, engaged in the manufacture, sale and distribution of chemical specialties for the graphic arts industry. It sells its products to a large number of customers throughout the United States. Respondent makes sales directly to consumers in the New York City area, and in other parts of the country sales are made through 400 dealers who are in competition with each other and who resell anywhere in the United States. Respondent's total sales during the year 1958 were in excess of $500,000.

PAR. 3. In the course and conduct of its business, respondent has engaged, and is now engaging, in commerce, as "commerce" is defined in the Clayton Act, as amended. Respondent causes its products to be transported from the State of New York to its customers located throughout the country in various states other than the State of New York.

PAR. 4. In the course and conduct of its business in commerce, respondent paid, or contracted for the payment of, something of

value to or for the benefit of some of its 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 said respondent, and such payments were not made available on proportionally equal terms to all customers competing in the sale and distribution of respondent's products.

PAR. 5. For example, during the period between July 1, 1958 and June 30, 1959, respondent contracted to pay and did pay to Foster Type and Equipment Company, Philadelphia, Pennsylvania, $2,800 as compensation or as an allowance for advertising or other service or facilities furnished by or through Foster Type and Equipment Company, Inc., in connection with its offering for sale or sale of products sold to it by respondent. Such compensation or allowance was not offered or otherwise made available on proportionally equal terms to all other customers competing with Foster Type and Equipment Company, Inc. in the sale and distribution of respondent's products.

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

Mr. Fredric T. Suss for the Commission.
Mr. Morris Mostoff, of New York, N.Y., for respondent.

INITIAL DECISION BY EDGAR A. BUTTLE, HEARING EXAMINER

On December 21, 1959, the Federal Trade Commission issued its complaint against the above-named respondent, charging it with violating the provisions of subsection (d) of section 2 of the Clayton Act, as amended, in connection with the manufacture, sale, and distribution of chemical specialties for the graphic arts industry.

On February 23, 1960, the respondent and counsel supporting the complaint entered into an agreement containing a consent order to cease and desist in accordance with Section 3.25(a) of the Rules of Practice and Procedure of the Commission.

Under the foregoing agreement, the respondent admits the jurisdictional facts alleged in the complaint and agrees, among other things, that the cease and desist order there set forth may be entered without further notice and shall have the same force and effect as if entered after a full hearing. The agreement includes a waiver by the respondent of all rights to challenge or contest the validity of the order issuing in accordance therewith; and recites that the said agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission, and that

it is for settlement purposes only and does not constitute an admission by the respondent that it has violated the law as alleged in the complaint. The hearing examiner finds that the content of the said agreement meets all of the requirements of Section 3.25(b) of the Rules of Practice.

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

1. Respondent Anchor Chemical Company, 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 827 Bergen Street, Brooklyn, New York.

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 subsection (d) of Section 2 of the Clayton Act, as amended.

ORDER

It is ordered, That respondent Anchor Chemical Company, Inc., its officers, employees, agents and representatives, directly or through any corporate or other device, in the course of its business in commerce, as "commerce" is defined in the Clayton Act, as amended, do forthwith cease and desist from:

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 other services or facilities furnished by or through such customer, in connection with the handling, resale or offering for resale of products manufactured, sold, or offered for sale by respondent, unless such payment or consideration is affirmatively offered or otherwise made available on proportionally equal terms to all other customers competing in the resale or 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 28th

day of April, 1960, become the decision of the Commission; and, accordingly:

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

IN THE MATTER OF

COSNAT DISTRIBUTING CORP. ET AL.

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

Docket 7703. Complaint, Dec. 22, 1959—Decision, Apr. 28, 1960

Consent order requiring several associated corporations and their common officers located variously in New York City, Cleveland, Ohio, and Detroit, Mich., engaged in distributing phonograph records for several manufacturers, to cease giving concealed "payola" to television and radio disc jockeys to incduce playing their records in order to increase sales.

Mr. John T. Walker and *Mr. James H. Kelley* supporting the complaint.

Mr. Milton Somerfield, of New York, N.Y., for respondents.

INITIAL DECISION BY EDWARD CREEL, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on December 22, 1959, charging them with having violated the provisions of the Federal Trade Commission Act by unfairly paying money or other valuable consideration to induce the playing of phonograph records over radio and television stations in order to enhance the popularity of such records.

On March 22, 1960 there was submitted to the undersigned hearing examiner an agreement between the above-named respondents, their counsel, and counsel supporting the complaint providing for the entry of a consent order.

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

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

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

The hearing examiner having considered the agreement and proposed order, and being of the opinion that they provide an appropriate basis for settlement and disposition of this proceeding, the agreement is hereby accepted, and it is ordered that said agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission. The following jurisdictional findings are made and the following order issued.

1. Respondent Cosnat Distributing Corp., 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 315 West 47th Street, New York, New York.

2. Respondent Cosnat Distributing Corp. of Cleveland is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its office and principal place of business located at 1233 West Ninth Street, Cleveland, Ohio.

3. Respondent Cosnat Distributing Detroit Corp. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Michigan, with its office and principal place of business located at 3727 Woodward Avenue, Detroit, Michigan.

4. Respondent Jay-Gee Record Company, 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 315 West 47th Street, New York, New York.

5. Respondents Jerry Blaine and Elliott Blaine are president and executive vice president and secretary treasurer, respectively, of corporate respondents Cosnat Distributing Corp. and Cosnat Distributing Corp. of Cleveland. Said individual respondents are also president and secretary treasurer, respectively, of corporate respondents Cosnat Distributing Detroit Corp. and Jay-Gee Record Company, Inc.

6. Respondent Charles Gray is vice president of corporate respondent Cosnat Distributing Detroit Corp. and Respondent Bennett Blaine is vice president of corporate respondent Jay-Gee Record Company, Inc. All of the above-named individual respondents formulate, direct and control the acts and practices of the respective corporate respondents in which they are officers. The addresses

of the individual respondents are the same as those of their respective corporations.

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

ORDER

It is ordered, That respondents Cosnat Distributing Corp., a corporation, Cosnat Distributing Corp. of Cleveland, a corporation, Cosnat Distributing Detroit Corp., a corporation, and Jay-Gee Record Company, Inc., a corporation, and their officers, and Jerry Blaine, Elliot Blaine, Bennett Blaine, and Charles Gray, individually and as officers of said corporations, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with phonograph records which have been distributed, in commerce, or which are used in radio or television stations in broadcasting programs in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(1) Giving or offering to give, without requiring public disclosure, any sum of money or other material consideration, to any person, directly or indirectly, to induce that person to select, or participate in the selection of, and the broadcasting of, any such records in which respondents, or any of them, have a financial interest of any nature.

(2) Giving or offering to give, without requiring public disclosure, any sum of money, or other material consideration, to any person, directly or indirectly, as an inducement to influence any employee of a radio or television broadcasting station, or any other person, in any manner, to select, or participate in the selection of, and the broadcasting of, any such records in which respondents, or any of them, have a financial interest of any nature.

There shall be "public disclosure" within the meaning of this order, by any employee of a radio or television broadcasting station, or any other person, who selects or participates in the selection and broadcasting of a record when he shall disclose, or cause to have disclosed, to the listening public at the time the record is played, that his selection and broadcasting of such record are in consideration for compensation of some nature, directly or indirectly, received by him or his employer.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner did on the 28th day

of April, 1960, 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

ATLANTIC RECORDING CORPORATION ET AL.

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

Docket 7711. Complaint, Dec. 30, 1959—Decision, Apr. 28, 1960

Consent order requiring New York City manufacturers and distributors of phonograph records to cease giving concealed "payola" to television and radio disc jockeys to induce playing their records in order to increase sales.

Mr. John T. Walker and *Mr. James H. Kelley* for the Commission.

Marshall & Ziffer, of New York, N.Y., by *Mr. Paul G. Marshall*, for respondents.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

The complaint in this matter charges the respondents with violation of the Federal Trade Commission Act in connection with the sale and distribution of phonograph records. An agreement has now been entered into by respondents and counsel supporting the complaint which provides, among other things, that respondents admit all of the jurisdictional allegations in the complaint; that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and agreement; that the inclusion of findings of fact and conclusions of law in the decision disposing of this matter is waived, together with any further procedural steps before the hearing examiner and the Commission; that the order hereinafter set forth may be entered in disposition of the proceeding, such order to have the same force and effect as if entered after a full hearing, respondents specifically waiving any and all rights to challenge or contest the validity of such order; that the order may be altered, modified, or set aside in the manner provided for other orders of the Commission; that the complaint may be used in construing the terms of the order; and that the agreement is for settlement purposes only and does not constitute

an admission by respondents that they have violated the law as alleged in the complaint.

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

1. Respondent Atlantic Recording Corporation 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 157 West 57th Street, New York, New York. Individual respondents Ahmet M. Ertegun, Miriam Bienstock, Gerald Wexler, Nesuhi Ertegun and Vahdi Sabit are, respectively, president, vice-president, vice-president, vice-president, and secretary-treasurer of the respondent corporation. Their address 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 Atlantic Recording Corporation and its officers, and Ahmet M. Ertegun, Miriam Bienstock, Gerald Wexler, Nesuhi Ertegun and Vahdi Sabit, individually and as officers of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with phonograph records which have been distributed, in commerce, or which are used by radio or television stations in broadcasting programs in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(1) Giving or offering to give, without requiring public disclosure, any sum of money or other material consideration, to any person, directly or indirectly, to induce that person to select, or participate in the selection of, and the broadcasting of, any such records in which respondents, or any of them, have a financial interest of any nature.

(2) Giving or offering to give, without requiring public disclosure, any sum of money, or other material consideration, to any person, directly or indirectly, as an inducement to influence any employee of a radio or television broadcasting station, or any other person, in any manner, to select, or participate in the selection of, and the broadcasting of any such records in which respondents, or any of them, have a financial interest of any nature.

There shall be "public disclosure" within the meaning of this order, by any employee of a radio or television broadcasting station, or any other person, who selects or participates in the selection and broadcasting of a record when he shall disclose, or cause to have disclosed, to the listening public, at the time the record is played, that his selection and broadcasting of such record are in consideration for compensation of some nature, directly or indirectly, received by him or his employer.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 28th day of April, 1960, 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.

IN THE MATTER OF

ALL SOUTH DISTRIBUTING CORPORATION ET AL.

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

Docket 7760. Complaint, Jan. 27, 1960—Decision, Apr. 28, 1960

Consent order requiring New Orleans distributors of phonograph records to cease giving concealed "payola" to television and radio disc jockeys to induce playing their records in order to increase sales.

Mr. John T. Walker and *Mr. James H. Kelley* for the Commission.
Mr. Herman J. Agregaard, of New Orleans, La., for respondents.

INITIAL DECISION BY EDGAR A. BUTTLE, HEARING EXAMINER

On January 27, 1960, the Federal Trade Commission issued its complaint against the above-named respondents charging them with violating the provisions of the Federal Trade Commission Act in connection with the offering for sale, sale and distribution of phonograph records as an independent distributor for several record manufacturers to retail outlets and jukebox operators in various states of the United States.

On February 29, 1960, the respondents and counsel supporting the complaint entered into an agreement containing a consent order to cease and desist in accordance with section 3.25(a) of the Rules of Practice and Procedure of the Commission.

Under the foregoing agreement, the respondents admit the jurisdictional facts alleged in the complaint and agree, among other things, that the cease and desist order there set forth may be entered without further notice and shall have the same force and effect as if entered after a full hearing. The agreement includes a waiver by the respondents of all rights to challenge or contest the validity of the order issuing in accordance therewith; and recites that the said agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission, and that it is for settlement purposes only and does not constitute an admission by the respondents that they have violated the law as alleged in the complaint. The hearing examiner finds that the content of the said agreement meets all the requirements of section 3.25 (b) of the Rules of Practice.

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

1. Respondent All South Distributing Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Louisiana, with its principal office and place of business located at 630 Baronne Street, City of New Orleans, State of Louisiana.

Respondents Henry J. Hildebrand, Jr., Evelyn K. Hildebrand, and Henry J. Hildebrand, Sr., are president, vice president, and secretary treasurer, respectively, of the corporate respondent, and formulate, direct and control the acts and practices of said corporate respondent. The address of the individual respondents is the same as that of said corporate respondent.

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

ORDER

It is ordered, That respondent All South Distributing Corporation, a corporation, and its officers, and respondents Henry J. Hildebrand, Jr., Evelyn K. Hildebrand, and Henry J. Hildebrand, Sr., individually, and as officers of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with phonograph records which have been distributed, in commerce, or which are used by radio or television stations in broadcasting programs in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(1) Giving or offering to give, without requiring public disclosure, any sum of money or other material consideration, to any person, directly or indirectly, to induce that person to select, or participate in the selection of, and the broadcasting of, any such records in which respondents, or any of them, have a financial interest of any nature.

(2) Giving or offering to give, without requiring public disclosure, any sum of money, or other material consideration, to any person, directly or indirectly, as an inducement to influence any employee of a radio or television broadcasting station, or any other person, in any manner, to select, or participate in the selection of, and the broadcasting of, any such records in which respondents, or any of them, have a financial interest of any nature.

There shall be "public disclosure" within the meaning of this order, by any employee of a radio or television broadcasting station, or any other person, who selects or participates in the selection and broadcasting of a record when he shall disclose, or cause to have disclosed, to the listening public at the time the record is played, that his selection and broadcasting of such record are in consideration for compensation of some nature, directly or indirectly, received by him or his employer.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner did, on the 28th day of April, 1960, 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

SUPERIOR RECORD SALES CO., INC., ET AL.

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

Docket 7761. Complaint, Jan. 27, 1960—Decision, Apr. 28, 1960

Consent order requiring New York City distributors of phonograph records to cease giving concealed "payola" to television and radio disc jockeys to induce playing their records in order to increase sales.

Mr. John T. Walker and *Mr. James H. Kelley* for the Commission.

Mr. Joseph Klotz, of New York, N.Y., for respondents.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The complaint charges respondents, who are engaged in the offering for sale, sale and distribution of phonograph records to independent distributors for resale to retail outlets and jukebox operators in the New York-New Jersey-Connecticut area, with violation of the Federal Trade Commission Act, in that respondents, alone or with certain unnamed record manufacturers, have negotiated for and disbursed "payola," i.e., the payment of money or other valuable consideration to disk jockeys of musical programs on radio and television stations, to induce, stimulate or motivate the disk jockeys to select, broadcast, "expose" and promote certain records, in which respondents are financially interested, on the express or implied understanding that the disk jockeys will conceal, withhold or camouflage the fact of such payment from the listening public.

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 Assistant Director of the Commission's Bureau of Litigation, and thereafter transmitted to the hearing examiner for consideration.

The agreement states that the respondent Superior Record Sales Co., Inc., is a corporation existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 656 Tenth Avenue, New York, New York, and that individual respondent Sam Weiss is president of the corporate respondent, his address being the same as that of said corporate respondent.

The agreement provides, among other things, that respondents ad-

mit 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 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 Superior Record Sales Co., Inc., a corporation, and its officers, and Sam Weiss, individually, and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with phonograph records which have been distributed in commerce, or which are used by radio or television stations in broadcasting programs in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(1) Giving or offering to give, without requiring public disclosure, any sum of money or other material consideration, to any person, directly or indirectly, to induce that person to select, or participate in the selection of, and the broadcasting of, any such records in which respondents, or either of them, have a financial interest of any nature;

(2) Giving or offering to give, without requiring public disclosure, any sum of money, or other material consideration, to any person,

directly or indirectly, as an inducement to influence any employee of a radio or television broadcasting station, or any other person, in any manner, to select, or participate in the selection of, and the broadcasting of, any such records in which respondents, or either of them, have a financial interest of any nature.

There shall be "public disclosure" within the meaning of this order, by any employee of a radio or television broadcasting station, or any other person, who selects or participates in the selection and broadcasting of a record when he shall disclose, or cause to have disclosed, to the listening public at the time the record is played, that his selection and broadcasting of such record are in consideration for compensation of some nature, directly or indirectly received by him or his employer.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner did, on the 28th day of April, 1960, 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

FURY RECORDS, INC., ET AL.

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

Docket 7694. Complaint, Dec. 18, 1959—Decision, Apr. 30, 1960

Consent order requiring New York City manufacturers of phonograph records to cease giving concealed "payola" to television and radio disc jockeys to induce playing their records in order to increase sales.

Mr. John T. Walker and *Mr. James H. Kelley* for the Commission.

Mr. M. Warren Troob, of New York, N.Y., for respondents.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The complaint charges respondents, who are engaged in the manufacture, distribution and sale of phonograph records to independent

distributors for resale to retail outlets and jukebox operators in various states of the United States, with violation of the Federal Trade Commission Act, in that respondents, alone or with certain unnamed record distributors, have negotiated for and disbursed "payola," i.e., the payment of money or other valuable consideration to disk jockeys of musical programs on radio and television stations, to induce, stimulate or motivate the disk jockeys to select, broadcast, "expose" and promote certain records, in which respondents are financially interested, on the express or implied understanding that the disk jockeys will conceal, withhold or camouflage the fact of such payment from the listening public.

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 Fury Records, 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 office and place of business located at 266 West 123rd Street (formerly 271 West 125th Street), New York, New York, and that individual respondents Morgan Robinson and Clarence L. Lewis are president and secretary treasurer, respectively, of the corporate respondent, and formulate, direct and control the acts and practices of said corporate respondent, their address being the same as that of the said corporate respondent.

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 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 Fury Records, Inc., a corporation, and its officers, and Morgan Robinson and Clarence L. Lewis, individually and as officers of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with phonograph records which have been distributed, in commerce, or which are used by radio or television stations in broadcasting programs in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(1) Giving or offering to give, without requiring public disclosure, any sum of money or other material consideration, to any person, directly or indirectly, to induce that person to select, or participate in the selection of, and the broadcasting of, any such records in which respondents, or any of them, have a financial interest of any nature;

(2) Giving or offering to give, without requiring public disclosure, any sum of money, or other material consideration, to any person, directly or indirectly, as an inducement to influence any employee of a radio or television broadcasting station, or any other person, in any manner, to select or participate in the selection of, and the broadcasting of, any such records in which respondents, or any of them, have a financial interest of any nature.

There shall be "public disclosure" within the meaning of this order, by any employee of a radio or television broadcasting station, or any other person, who selects or participates in the selection and broadcasting of a record when he shall disclose, or cause to have disclosed, to the listening public, at the time the record is played, that his selection and broadcasting of such record are in consideration for compensation of some nature, directly or indirectly, received by him or his employer.

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 30th day of April, 1960, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Fury Records, Inc., a corporation, and Morgan Robinson and Clarence L. Lewis, 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

CHARLES A. EATON CO. TRADING AS CHARLES CHESTER SHOE CO. ET AL.

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

Docket 7610. Complaint, Oct. 19, 1959—Decision, May 1, 1960

Consent order requiring shoe manufacturers at Brockton, Mass., to cease representing falsely, in catalogs and sales aids furnished to their commission salesmen, that their "Charles Chester Air Cushion" stock shoes, produced by usual quantity production methods, would assure better body balance, furnish support of the feet where found to be individually indicated, and eliminate bunion pressure and fatigue, aid circulation and improve foot health.

Mr. Ames Williams for the Commission.

Haussermann, Davison & Shattuck, by *Mr. Eugene F. Endicott* of Boston, Mass. for respondents.

INITIAL DECISION BY EDGAR A. BUTTLE, HEARING EXAMINER

On October 19, 1959, the Federal Trade Commission issued its complaint against the above-named respondents charging them with violating the provisions of the Federal Trade Commission Act in connection with the manufacture and sale of shoes designated as Charles Chester Air Cushion Shoes.

On February 11, 1960, the respondents and counsel supporting the complaint entered into an agreement containing a consent order to cease and desist in accordance with section 3.25 (a) of the Rules of Practice and Procedure of the Commission.

Under the foregoing agreement, the respondents admit the jurisdictional facts alleged in the complaint and agree, among other things, that the cease and desist order there set forth may be entered without further notice and shall have the same force and effect as if entered after a full hearing. The agreement includes a waiver by the respondents of all rights to challenge or contest the validity of the order issuing in accordance therewith. Said agreement is entered into subject to the condition that the effective date of the initial decision based thereon shall be stayed by the Commission until May 1, 1960; and recites that said agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission, and that it is for settlement purposes only and does not constitute an admission by the respondents that they have violated the law as alleged in the complaint.

The agreement further provides that the complaint insofar as it concerns respondent Carl F. Bauer should be dismissed for the reasons set forth in an affidavit attached thereto to the effect that said respondent is not now, and was not at the time the complaint issued, an officer of the corporate respondent, and that during the time said respondent served as an officer of said company he was not active in formulating, directing or controlling the acts and practices of the company and it is not contemplated that said respondent will have any connection with said company in the future. The hearing examiner finds that the content of the said agreement meets all the requirements of section 3.25(b) of the Rules of Practice.

This proceeding having now come on for final consideration by the hearing examiner on the complaint and the aforesaid agreement for consent order, and it appearing that said agreement provides for an appropriate disposition of this proceeding, the aforesaid agreement is hereby accepted and is ordered filed upon becoming part of the Commission's Decision in accordance with section 3.21 of the Rules of Practice; and in consonance with the terms of said agreement, the following jurisdictional findings are made and the following order to cease and desist may be entered in this proceeding by the Commission without further notice to respondents, subject to the condition as set out above:

1. Corporate respondent Charles A. Eaton Co. is a corporation organized and existing under and by virtue of the laws of the State of Massachusetts. Its office and principal place of business is located at Brockton, Massachusetts.

Respondents Charles C. Eaton, Jr., Robert A. Eaton, Louis F. Eaton, and Edward B. Hutton are officers of the corporate respondent. They formulate, direct and control the acts and practices of

the corporate respondent, including the acts and practices hereinafter set forth. Their business address is the same as the corporate respondents.

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 subsection (d) of section 2 of the Clayton Act, as amended.

ORDER

It is ordered, That the respondents Charles A. Eaton Co., a corporation, trading as Charles Chester Shoe Co., or under any other name or names, and its officers, and Charles C. Eaton, Jr., Robert A. Eaton, Louis F. Eaton and Edward B. Hutton, individually and as officers of Charles A. Eaton Co., 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 shoes, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, by any means, that the wearing of their shoes:

1. Will assure better body balance:

2. Will furnish support of the feet in those cases where support is found to be individually indicated;

3. Will eliminate bunion pressure, eliminate fatigue, aid circulation or improve the health of the feet.

It is further ordered, That the complaint be, and it hereby is, dismissed as to respondent Carl F. Bauer.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

This matter having come on to be heard by the Commission upon its review of the hearing examiner's initial decision; and

The Commission having determined that the erroneous reference in the initial decision to subsection (d) of Section 2 of the Clayton Act, as amended, should be deleted:

It was ordered, On the 12th day of April, 1960, that the second sentence contained in paragraph 2 of the initial decision be, and it hereby is, modified to read as follows:

"The complaint states a cause of action."

It was further ordered, That the initial decision, as herein modified, did, on the 1st day of May, 1960, become the decision of the Commission.

It is further ordered, That the respondents named in the preamble

of the order to cease and desist shall, on or before June 30, 1960, 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

STEIN'S STORES, INC.

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

Docket 7729. Complaint, Jan. 6, 1960—Decision, May 5, 1960

Consent order requiring a New York City operator of an interstate chain of some 85 retail stores, to cease violating the Wool Products Labeling Act by tagging as "Dacron and Worsted," men's suits which were in fact 48% dacron, 44% wool, and 8% rayon, as disclosed by a separate label; and to cease representing falsely in advertising that certain suits had regularly sold at an excessive price set out as "Value," and were selling at "Factory Price," and that the fabric therein was "guaranteed" without disclosing the extent of the guarantee.

John J. Mathias, Esq., for the Commission.
Drechsler & Leff, of New York, N.Y., for respondent.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

The Federal Trade Commission (sometimes also hereinafter referred to as the Commission) on January 6, 1960, issued its complaint herein, charging the respondent Stein's Stores, Inc., a corporation, with having violated the provisions of both the Federal Trade Commission Act and the Wool Products Labeling Act, together with the Rules and Regulations promulgated thereunder, and the respondent was duly served with process. In September 1959, the respondent changed its corporate name to Coghlen Corp., and subsequent to the filing of the complaint herein, pursuant to joint motion of the parties, the complaint was ordered amended to accord with such changed name.

On February 17, 1960, 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 February 11, 1960, 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 Coghlen Corp. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 71 Fifth Avenue, in the City of New York, State of New York.

It is stipulated and agreed that the complaint may be amended to state that the above address is the correct address of respondent.

In September 1959, corporate respondent caused its name to be changed from Stein's Stores, Inc., to Coghlen Corp. Joint motion of counsel was filed to amend the complaint accordingly.

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

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

4. Respondent waives:

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

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

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

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

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

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

8. The following order to cease and desist may be entered in this proceeding by the Commission without further notice to respondent. When so entered it shall have the same force and effect as if entered after a full hearing. It may be altered, modified or set aside in the manner provided for other orders. The amended 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 respondent herein; that the complaint states a legal cause for complaint under the Federal Trade Commission Act and the Wool Products Labeling Act and the Rules and Regulations promulgated by the Commission under the latter 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:

It is ordered, That respondent Coghlen Corp., a corporation, and its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the offering for sale, sale, transportation, or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, of woolen men's clothing 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:

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

It is further ordered, That respondent Coghlen Corp., a corporation, and its officers, representatives, and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale, or distribution of men's clothing or other merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Representing, directly or indirectly:

1. That any amount is respondent's usual and customary retail price of merchandise when it is in excess of the price at which said merchandise has been customarily and usually sold by respondent in the recent, regular course of its business;

2. That respondent sells its merchandise at the price charged by the factory;

3. That such merchandise is guaranteed, unless the nature and extent of the guarantee, and the manner in which the guarantor will perform thereunder, are clearly and conspicuously set forth;

B. Misrepresenting in any manner the amount of savings available to purchasers of respondent's merchandise.

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 5th day of May, 1960, become the decision of the Commission; and, accordingly:

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

IN THE MATTER OF

VIRGINIA EXCELSIOR MILLS, INC., ET AL.

MODIFIED ORDER IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION ACT

Docket 6630. Order, May 6, 1960

Order modifying desist order of Oct. 25, 1957 (54 F.T.C. 455, 465), to carry out the direction of the Court of Appeals, Fourth Circuit, of June 4, 1958 (256 F. 2d 538, 6 S. & C.D. 428), to limit the prohibition against the maintenance of a common selling agent to its utilization in aid of the unlawful practices inhibited by preceding sections of the order.

Before *Mr. Abner E. Lipscomb*, hearing examiner.

Mr. Floyd O. Collins for the Commission.

Mason & Stehl, of Bowling Green, Va., and *Daniel & Smith*, of Washington, D.C., for respondent.

ORDER MODIFYING ORDER TO CEASE AND DESIST AND ORDER TO CEASE AND DESIST AS MODIFIED

Respondents having filed in the United States Court of Appeals for the Fourth Circuit their petition for review of and to set aside or, in the alternative, to modify the order to cease and desist issued by the Commission on the 25th day of October, 1957; and, the Court having heard the cause on briefs and oral argument and having thereafter, on the 4th day of June, 1958, handed down its opinion, and on the same date entered its decree, in which it modified the aforesaid order by "limiting the prohibition against the maintenance

of a common selling agent to its utilization in aid of a purpose which could not be lawfully accomplished under the order by a direct agreement among the participating producers" and, as thus modified, affirmed and enforced the said order; and,

The Commission being of the opinion that its said order to cease and desist issued on the 25th day of October, 1957, as aforesaid, should be modified so as to bring it into conformity with the decision of the United States Court of Appeals for the Fourth Circuit; it is therefore,

Ordered, That the said order to cease and desist be modified by striking therefrom paragraph numbered 1, renumbering the remaining numbered paragraphs and adding the following paragraph to be numbered 6:

6. Operating, maintaining or utilizing Respondent Virginia Excelsior Mills, Inc., or any other central agency, as an instrument or medium for promoting, aiding, or making more effective any cooperative or concerted efforts to suppress or eliminate competition by or through any of the means or methods set forth in the preceding paragraphs numbered 1 to 5, inclusive, of this order;

and as thus modified to issue and serve upon Respondents the following modified order:

It is ordered, That respondents Virginia Excelsior Mills, Inc., a corporation, W. H. Baker, T. Frank Flippo, H. L. Taylor and F. C. Flippo, individuals and officers of Respondent Virginia Excelsior Mills, Inc., T. Frank Flippo, F. Carter Flippo and Arthur P. Flippo, individuals and copartners trading as T. F. Flippo & Sons, H. L. Taylor, H. Ashton Taylor, G. K. Coleman, Sr., and G. K. Coleman, Jr., individuals and copartners trading as Ruther Glen Excelsior Company, T. Nelson Haley and Jesse C. Haley, individuals and copartners trading as Haley Excelsior Company, W. H. Baker, an individual trading as Hallsboro Manufacturing Company, S. D. Quarles and J. R. Gilman, individuals and copartners trading as Penola Excelsior Company, C. J. Haley, an individual trading as Ashland Excelsior Company, H. L. Taylor and Thomas H. Chewning, individuals and copartners trading as Caroline Excelsior Company, and as Chilesburg Excelsior Company, Benjamin Jeter, an individual trading as Benjamin Jeter, S. D. Quarles Lumber Company, Inc., a corporation, C. T. Smith, an individual trading as C. T. Smith, Ray S. Campbell, Addie C. Doswell, Elliot Campbell, E. May Campbell, and Bessie S. Campbell, individuals and copartners trading and doing business as Milford Excelsior Company, and said respective Respondents' officers, agents, representatives and employees, in or in connection with the production, offer-

ing for sale, sale or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of excelsior, do forthwith cease and desist from entering into, continuing, cooperating in, or carrying out any combination, agreement, understanding, or planned common course of action between any two or more of said respondents, or between or among any one or more of said respondents and others not parties hereto, to do or perform any of the following acts or practices:

1. Fixing the selling price of excelsior or maintaining any prices so fixed;

2. Fixing or in any wise regulating production quotas;

3. Restricting manufacturers in selling and offering excelsior for sale by

a. designating the party to whom they or either of them can sell;

b. designating the party to whom they or either of them can offer to sell;

c. designating the party to whom they or either of them can quote prices;

d. designating the prices which they or either of them can quote; or

e. imposing any other restriction, or enforcing any such restriction by the imposition of penalties, or otherwise;

4. Classifying excelsior for pricing purposes;

5. Designating conditions under which mill owners who own stock in respondent Virginia Excelsior Mills, Inc., may sell their mills or machines;

6. Operating, maintaining or utilizing respondent Virginia Excelsior Mills, Inc., or any other central agency, as an instrument or medium for promoting, aiding, or making more effective any cooperative or concerted efforts to suppress or eliminate competition by or through any of the means or methods set forth in the preceding paragraphs numbered 1 to 5, inclusive, of this order;

It is further ordered, That the complaint herein, insofar as it relates to respondents Thomas L. Blanton, Noah Markey, Catherine C. Wright and Dorothy E. Campbell, 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.

It is further ordered, That respondents, Virginia Excelsior Mills, Inc., a corporation, W. H. Baker, T. Frank Flippo, H. L. Taylor and F. C. Flippo, individuals and officers of said corporation, F. Carter Flippo, Arthur P. Flippo, H. Ashton Taylor, G. K. Coleman, Sr., G. K. Coleman, Jr., T. Nelson Haley, Jesse C. Haley, S. D. Quarles, J. R. Gilman, C. J. Haley, Thomas H. Chewning, Benjamin Jeter,

S. D. Quarles Lumber Company, Inc., a corporation, C. T. Smith, Ray S. Campbell, Addie C. Doswell, Elliot Campbell, E. May Campbell, Bessie S. Campbell, shall, within sixty (60) days after service upon them of this modified order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with the modified order to cease and desist.

IN THE MATTER OF

FIBER ENTERPRISES, INC., ET AL.

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

Docket 7440. Complaint, Mar. 12, 1959—Decision, May 6, 1960

Order requiring two associated corporations, in New York City and Danbury, Conn., respectively, and their common officer, engaged in reprocessing fur products by separating the hair from the skin and selling the resultant fiber to cloth manufacturers, to cease violating the Wool Products Labeling Act by falsely labeling and invoicing as "Vicuna," "100% Processed Vicuna," etc., interstate shipments of hair fibers which were those of the guanaquito or young guanaco of the "Llama" genus.

Mr. Alvin D. Edelson for the Commission.

Mr. Samuel Young, of New York, N.Y., for respondents and *pro se*.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The respondents are charged with having violated the Federal Trade Commission Act and the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, in that (a) they misbranded certain wool products as "vicuna" whereas in fact said products contained a substantial quantity of other fibers, (b) certain of their products were not labeled as required by §4(a)(2) of the Act and the Rules thereunder, and (c) the fiber content of certain of their products was misrepresented on invoices covering their shipment in commerce.

These charges were denied on behalf of both respondent corporations and himself by respondent Samuel Young, who appeared at the hearings *pro se* and as an officer of each of said corporations. After completion of the hearings, proposed findings, conclusions and order were submitted by counsel supporting the complaint.

Upon the basis of the entire record, the following findings are made, conclusions reached and order issued: