4. The U.S. Bureau of Standards made tests of granite taken from a quarry named Quarry 115 or that respondent is the owner of the quarry from which the granite tested under Serial No. 115, as shown in Research Paper RP1320, was taken, or that respondent is the exclusive user of said granite.

5. The granite used by the respondent is from the same quarry as the sample tested by the U.S. Bureau of Standards as Serial No. 115 in its Research Paper RP1320.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall on the 17th day of September, 1959, become the decision of the Commission; and, accordingly:

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

IN THE MATTER OF

MARTIN STUART WOOLEN COMPANY ET AL.

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

Docket 7479. Complaint, Apr. 30, 1959—Decision, Sept. 17, 1959

Consent order requiring New York City manufacturers to cease violating the Wool Products Labeling Act by labeling and identifying on invoices and shipping memoranda as "100% Cashmere," fabrics which contained a substantial quantity of fibers other than cashmere, and by failing to label wool products as required.

Mr. Frederick McManus supporting the complaint.

Mr. Sidney Silverstein of *Higgins & Silverstein*, of Woonsocket, R.I., for respondents.

INITIAL DECISION BY JOHN B. POINDEXTER, HEARING EXAMINER

On April 30, 1959, the Federal Trade Commission issued a complaint charging that Martin Stuart Woolen Company, a corporation, and Abraham Baker, individually and as an officer of said corporation, hereinafter referred to as respondents, had violated the provisions of the Federal Trade Commission Act, the Wool Products

Labeling Act of 1939 and the Rules and Regulations promulgated under the last-named act.

After issuance and service of the complaint, the respondents and their 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. The agreement disposes of the matters complained about.

The pertinent provisions of said agreement are as follows: Respondents admit all jurisdictional facts; the complaint may be used in construing the terms of the order; the order shall have the same force and effect as if entered after a full hearing and the said agreement shall not become a part of the official record of the proceeding unless and until it becomes a part of the decision of the Commission; the record herein shall consist solely of the complaint and the agreement; respondents waive the requirement that the decision must contain a statement of findings of fact and conclusions of law; respondents waive further procedural steps before the hearing examiner and the Commission, and the order may be altered, modified, or set aside in the manner provided by statute for other orders; respondents waive any right to challenge or contest the validity of the order entered in accordance with the agreement and the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

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

JURISDICTIONAL FINDINGS

1. Respondent Martin Stuart Woolen Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Rhode Island, with its office and principal place of business located at 450 7th Avenue, New York, New York.

2. Respondent Abraham Baker is an officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent including the acts and practices hereinafter set forth. His office is also located at 450 7th Avenue, New York, New York.

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 Martin Stuart Woolen Company, a corporation, and its officers, and Abraham Baker, 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 offering for sale, sale, transportation or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, of wool products, as such products are defined in and subject to the Wool Products Labeling Act of 1939, do forthwith cease and desist from misbranding such products by:

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

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

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

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

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

It is further ordered, That the respondents Martin Stuart Woolen Company, a corporation, and its officers, and Abraham Baker, individually, and as an officer of said corporation, and respondents' representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of fabrics in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from, directly or indirectly:

Misrepresenting the character or amount of the constituent fibers contained in such products in invoices or shipping memoranda applicable thereto, or in any other manner.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall on the 17th day of September, 1959, become the decision of the Commission; and, accordingly:

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

IN THE MATTER OF

NEPTUNE GARMENT COMPANY ET AL.

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

Docket 7481. Complaint, May 6, 1959—Decision, Sept. 17, 1959

Consent order requiring a Boston rain wear manufacturer to cease representing falsely by such means as attached labels that raincoats it sold to Air Force Post Exchanges were "Approved by Headquarters Air Materiel Command USAF * * * Mfd'd in Strict Accordance with Specification No. MILR 3386A With AF Approved Material."

Mr. Alvin D. Edelson for the Commission.
Mr. George W. Gold, of Boston, Mass., for respondents.

INITIAL DECISION BY WALTER R. JOHNSON, HEARING EXAMINER

In the complaint dated May 6, 1959, the respondents are charged with violating the provisions of the Federal Trade Commission Act.

On July 21, 1959, the respondents and their attorney entered into an agreement with counsel in support of the complaint for a consent order.

Under the foregoing agreement, the respondents admit the jurisdictional facts alleged in the complaint. The parties agree, among other things, that the cease and desist order there set forth may be entered without further notice and have the same force and effect as if entered after a full hearing and the document includes a waiver by the respondents of all rights to challenge or contest the validity of the order issuing in accordance therewith. The agreement further recites that it is for settlement purposes only and does not constitute an admission by the respondents that they have violated the law as alleged 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 Neptune Garment Company 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 242 Dover Street, Boston, Massachusetts.

Individual respondent Cecil S. Rose is president of the corporate respondent with his principal office and place of business at the same address as 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 Neptune Garment Company, a corporation, and its officers, and Cecil S. Rose, individually and as an officer of the corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of rain-wear or any other merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing that said merchandise has been manufactured in accordance with Air Force or any other military or governmental specifications, or with Air Force or any other military or governmentally approved material when such is not in accordance with the facts.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 17th day of September, 1959, become the decision of the Commission; and, accordingly:

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

Decision

IN THE MATTER OF

INTERNATIONAL HOUSEWARES INC., ET AL.

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

Docket 7485. Complaint, May 7, 1959—Decision, Sept. 17, 1959

Consent order requiring Niagara Falls, N.Y., distributors of "Kitchen Queen Stainless Steel Waterless Cookware" to cease representing falsely in advertising literature furnished their distributors—including sales training manuals, charts, leaflets, cookbooks, and brochures—that use of said utensils and the "waterless" method of cooking would protect health; that the utensils were new and revolutionary; that their sales personnel were members of their advertising department and that the offer they made was a "special advertising offer" at special reduced prices and only to selected customers; and that they manufactured their products and tested them in their own laboratory.

Mr. Morton Nesmith 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 May 7, 1959, charging them with the use of unfair and deceptive acts and practices and unfair methods of competition, in commerce, in violation of the Federal Trade Commission Act, by making various false and misleading statements in connection with the advertising and selling of cooking utensils distributed by them. After being served with said complaint, respondents appeared and entered into an agreement, dated July 13, 1959, containing a consent order to cease and desist purporting to dispose of all of this proceeding as to all parties, except as to subparagraph (c) of paragraph 5 of the complaint which it has been agreed may be dismissed as not being sustainable. 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 agreed that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations. Said agreement

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

This proceeding having now come on for final consideration on the complaint and the aforesaid agreement containing consent order, and it appearing that the order provided for in said agreement covers all 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 International Housewares, 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 706 Ninth Street, Niagara Falls, New York. The individual respondents Richard J. Day, Andrew Foti, and Anthony Geraci are officers of said respondent corporation, and 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, International Housewares, Inc., a corporation, and its officers, and Richard J. Day, Andrew Foti, and Anthony Geraci, individually and as officers of said corporation, and respondents' agents, representatives, and employees, directly or through any corporate or other device, in connection with the offer-

ing for sale, sale or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of stainless steel cooking utensils or any other cooking utensils of substantially similar composition, design, construction, or purpose, do forthwith cease and desist from:

1. Representing, directly or by implication:

(a) That the use of respondents' utensils and the "waterless" method of cooking will promote or is conducive to better health of the users thereof. However, nothing contained herein shall prevent respondents from representing that more vitamins and minerals are retained in food cooked in their utensils and using the "waterless" method of cooking than when cooked in other utensils requiring substantially larger quantities of water.

(b) That respondents' utensils are new and revolutionary;

(c) That respondents' sales personnel are members of their advertising department or are other than salesmen;

(d) That respondents' offer to sell said utensils is for the purpose of advertising or is a "special advertising offer";

(e) That the prices at which respondents' utensils are offered for sale are special or reduced prices, unless such is the fact;

(f) That respondents do not sell their utensils to everyone but only to selected customers, or those who qualify;

(g) That respondents own, operate or control a factory wherein said utensils are manufactured or that respondents own, operate or control a laboratory wherein said utensils are tested.

2. Furnishing means or instrumentalities to others by and through which they may mislead and deceive the public respecting the matters set forth in paragraph 1 hereof.

It is further ordered, That the charge contained in paragraph 5(c), "That purchasers of said utensils will save on their fuel and food bills," be and the same hereby is, dismissed.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 17th day of September, 1959, become the decision of the Commission; and, accordingly:

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

IN THE MATTER OF

STEVEN HASSO ET AL. TRADING AS HASSO'S FURS

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

Docket 7522. Complaint, June 16, 1959—Decision, Sept. 17, 1959

Consent order requiring a furrier in Troy, N.Y., to cease violating the Fur Products Labeling Act by attaching to fur products, labels containing fictitious prices, represented thereby as the regular retail selling prices; by advertising in newspapers which falsely represented "savings of as much as 40% and 70%," and represented prices falsely as reduced from regular prices which were in fact fictitious; and by failing to maintain adequate records on which such pricing claims were based.

Mr. Garland S. Ferguson for the Commission.

Murphy, Aldrich, Guy, Brodrick & Simon, by *Mr. Bruce W. Hislop*, of Troy, N.Y., for respondents.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The complaint charges respondents with misbranding and falsely and deceptively advertising certain of their fur products, and with failing to maintain full and adequate records disclosing the facts upon which were based certain pricing and saving claims and representations made by respondents in advertisements of said fur products, in violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder, and of the Federal Trade Commission Act.

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

The agreement states that respondents Steven Hasso and Richard Hasso are individuals and copartners trading as Hasso's Furs, with their office and principal place of business located at 44 Fourth Street, Troy, New York.

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 Fur Products Labeling Act and the Rules and Regulations promulgated thereunder, and of the Federal Trade Commission Act. Accordingly, the hearing examiner finds this proceeding to be in the public interest, and accepts the agreement containing consent order to cease and desist as part of the record upon which this decision is based. Therefore,

It is ordered, That Steven Hasso and Richard Hasso, individually and as copartners, trading as Hasso's Furs or under any other name, 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, transportation or distribution, in commerce, of fur products; or in connection with the sale; advertising, offering for sale, transportation, or distribution of fur products which are made in whole or in part of fur which has been shipped and received in commerce, as "commerce," "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

1. Misbranding fur products by:

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

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 regular or usual price of any fur products is any amount which is in excess of the price at which respondents have usually and customarily sold such products in the recent regular course of business;

B. 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 and regular course of business are reduced in direct proportion to the amount of savings stated, when contrary to fact;

C. 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 17th day of September, 1959, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Steven Hasso and Richard Hasso, individually and as copartners trading as Hasso's Furs, 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

GENERAL MILLS, INC.

ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF SEC. 3 OF THE CLAYTON ACT

Docket 6926. Complaint, Oct. 31, 1957—Decision, Sept. 19, 1959

Dismissal, for failure of proof, of Count II of complaint charging violation of Sec. 3, Clayton Act, in that respondent had unlawful exclusive-dealing sales contracts with Grand Union supermarket food chain under which the latter agreed not to handle sponges made by duPont.

Count I was settled by consent on Sept. 10, 1959, p. 295, herein.

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

Mr. Donald R. Moore and *Mr. Charles J. Steele* supporting the complaint.

Davis, Polk, Wardwell, Sunderland & Kiendl, by *Mr. James J. Higginson*, of New York, N.Y.; and *Mr. John F. Finn*, of Minneapolis, Minn., for respondents.

Initial Decision as to Count II of Complaint

Statement of Proceedings

The Federal Trade Commission issued its complaint against the above-named respondent on October 31, 1957, charging it with having violated the provisions of Section 2(d) and Section 3 of the Clayton Act, as amended (15 U.S.C. Sections 13 and 14), in connection with its sale and distribution of sponges in commerce. Copies of said complaint and notice of hearing were duly served upon respondent. Said complaint charges respondent, in Count I thereof, with having made certain discriminatory advertising allowances to certain of its customers, including The Grand Union Company, and in Count II with having entered into preclusive sales contracts with The Grand Union Company, pursuant to which the latter agreed to refrain from handling the products of one or more of respondent's competitors. Following service of the complaint upon it, respondent appeared by counsel and filed answer to such complaint denying, in substance, the violations charged.

Thereafter, and following a series of postponements to enable counsel for the parties to negotiate a stipulation of facts covering a number of the material facts in the proceeding, a hearing was held on July 28, 1958, in New York, New York. At said hearing counsel supporting the complaint requested that leave be granted to limit the presentation of evidence to Count II of the complaint, inasmuch as counsel for the parties were negotiating an agreement with respect to Count I thereof which would dispose of such count without the necessity of holding a hearing. There being no objection, the hearing proceeded with respect to Count II. A stipulation of facts pertaining thereto was spread upon the record, and the testimony of several witnesses and various documentary evidence were offered in support of the complaint. All parties were represented by counsel, participated in the hearing and were afforded full opportunity to be heard and to examine and cross-examine witnesses.

At the close of the evidence offered in support of the complaint further hearings were suspended, pending the filing by respondent of a motion to dismiss the complaint. Thereafter a motion, together with a supporting memorandum, was filed by counsel for respondent

to dismiss Count II of the complaint on two grounds, viz., that (1) upon the facts and law no right to relief has been shown and (2) the maintenance of this proceeding is no longer in the public interest. A memorandum brief in opposition to respondent's motion to dismiss was subsequently filed by counsel supporting the complaint, and a reply to the memorandum of counsel supporting the complaint was thereafter filed by counsel for respondent.

Subsequent to the holding of the hearing with respect to Count II of the complaint, the parties entered into an agreement purporting to dispose of Count I without hearing. Said agreement has heretofore been submitted to the hearing examiner and is the subject of a separate initial decision. Accordingly, no further reference to such count need be made herein.

After careful consideration of the motion to dismiss Count II of the complaint and the memoranda filed in support of and in opposition thereto, the examiner has concluded that on the facts and the law counsel supporting the complaint have established no right to relief and that the motion to dismiss should, accordingly, be granted. Consequently, upon consideration of the entire record herein and from his observation of the witnesses, the hearing examiner makes the following:

FINDINGS OF FACT

1. General Mills, Inc. (hereinafter called General Mills) is a corporation organized, existing and doing business under the laws of the State of Delaware. Prior to March 1, 1958, its headquarters was located at 400 Second Avenue South, Minneapolis, Minnesota, and since that date has been located at 9200 Wayzata Boulevard in the same city. It is now, and for many years has been, engaged in the production and sale of flour and other grain products, feeds, soybean products, chemicals, sponges and sponge products. Its gross annual sales of all products were $516,052,804 in the fiscal year ending May 31, 1956, and $527,701,677 in the fiscal year ending May 31, 1957.

2. General Mills entered the sponge business in 1952 by the purchase of the assets of O-Cel-O, Inc., a New York corporation engaged in the manufacture and sale of cellulose and polyurethane sponges and sponge products. Between 1952 and 1957 the operations of General Mills in connection with the manufacture, distribution and sale of sponges and sponge products were conducted through its O-Cel-O Division, with headquarters in Buffalo, New York. During most of this period, i.e., from July 1, 1954 to September 30, 1957, the sale of sponges and sponge products were made through 70 inde-

pendent food brokers representing the O-Cel-O Division throughout the United States.

In September 1957 there was a complete reorganization of the General Mills sponge operation in which the O-Cel-O Division was abolished and full responsibility for the manufacture and sale of sponges was transferred to the Grocery Products Division of General Mills in Minneapolis. The sale of sponges through brokers was discontinued and the key officials who were in charge of the operations and sales of the O-Cel-O Division were separated from the company.

3. General Mills has a plant for the manufacturing of sponges and sponge products at Tonawanda, New York, and an office and processing plant at 1200 Niagara Street, Buffalo, New York. It sells its sponges to customers with places of business located throughout the several states of the United States and in the District of Columbia, for resale to consumers in the United States. Its customers include retail grocery chains, supermarkets and independent retail grocery stores. Among its retail grocery chain accounts are: Acme, Atlantic & Pacific, Bohack, Big Ben, Dilbert, Gristede, Food Fair, Hills, Safeway and Stop 'n Shop. General Mills' sales of sponges and sponge products amounted to $4,777,000 in the fiscal year May 31, 1956, and $4,063,000 in the fiscal year ending May 31, 1957.

4. General Mills is now, and for many years has been, engaged in "commerce," as that term is defined in the Clayton Act. It transports or causes to be transported its products from the state of manufacture to customers located in other states of the United States and in the District of Columbia. There is, and has been, a constant stream of trade and commerce in these products among the various states and the District of Columbia.

5. In the course and conduct of its business in commerce, as above found, General Mills is, and since 1952 has been, in competition with other corporations, persons, firms and partnerships in the sale and distribution of sponges and sponge products in commerce. Its principal competitors have been and are E. I. duPont de Nemours & Company of Wilmington, Delaware; Nylonge Corporation of Cleveland, Ohio; Burgess Cellulose Company of Freeport, Illinois; Ivalon Division of Simonize Company of Chicago, Illinois; and American Sponge and Chamois Company of New York, New York. These five companies and General Mills together account for approximately 80 percent of the sales of sponges and sponge products in the Eastern United States.

6. The contract which is the subject of Count II of the complaint was entered into in January 1955, while General Mills' O-Cel-O Division was being represented in the New York metropolitan area

by the independent brokerage firm of Gash, Ferolie Corporation (hereinafter called Gash), of 162 East 64th Street, New York, New York. Gash was and is a food broker, selling primarily to the grocery trade, and O-Cel-O products were only one type of a wide variety of grocery trade products, produced by many different manufacturers, handled by it.

7. Among the customers of General Mills in the sale of sponges and sponge products is The Grand Union Company (hereinafter referred to as Grand Union), which has its headquarters in East Paterson, New Jersey and operates a chain of retail grocery stores and supermarkets selling a great variety of edible and non-edible household products. There are approximately 340 stores operated by Grand Union in five divisions located in Vermont, Massachusetts, Connecticut, New York, New Jersey, Pennsylvania, and other Atlantic seaboard and eastern states. Grand Union also owns all of the stock of two other grocery chains, one of which operates in Canada and the other in Washington, D.C., Maryland and Virginia. General Mills sponges and sponge products were sold to Grand Union through its broker, Gash, during the period from October 1954 to September 1957.

Grand Union purchased from General Mills for resale, sponges and sponge products which were shipped by General Mills to Grand Union stores or Grand Union warehouses located in states other than that from which General Mills made the shipments. Grand Union maintained warehouses in the State of New Jersey and shipped General Mills sponges and sponge products from such warehouses into the State of New York for ultimate sale in retail stores to consumers.

8. The gross sales volume of Grand Union and subsidiaries for the fiscal year ending March 3, 1956, was $283,003,166, and for the year ending March 2, 1957, was $374,155,488. Grand Union's sponge purchases from General Mills were as follows, for the years indicated:

1953	$14,913.95
1954	19,092.40
1955	45,861.80
1956	60,402.31
1957	28,236.00
1958 (through June 30)	10,870.00

Sales to Grand Union through September 1957 were made by the O-Cel-O Division of General Mills and thereafter were made directly by General Mills.

9. On or about January 5, 1955 a contract was executed between the O-Cel-O Division of General Mills and Douglas Leigh, Inc., an

advertising company of New York, New York, which was the owner and operator of an electric spectacular display sign located in Times Square, New York City. Said sign contained a stylized representation of a Grand Union food market and an electrically animated cartoon panel which communicated the messages of participating advertisers. The agreement related to the advertising of General Mills sponges and sponge products on the spectacular sign. The effective period of the contract and its renewal expired on December 14, 1956.

10. Substantially contemporaneous with the agreement between General Mills and Douglas Leigh, General Mills' broker, Gash, entered into an agreement with Grand Union, which was embodied in a letter dated January 6, 1955, addressed to Grand Union by Gash. The letter agreement referred to the agreement with Douglas Ligh and to certain in-store advertising which was to be coordinated with the spectacular sign. Most of the agreement between O-Cel-O and Grand Union, as reflected in the letter of January 6, 1955, is immaterial to the disposition of Count II of the complaint, except for paragraph 2 of such letter, which provides:

> The Grand Union Company agrees to discontinue the sale of DuPont sponges.

The agreement pursuant to which Grand Union was to discontinue its purchase of duPont sponges was preceded by a period of negotiation between Grand Union and Gash, in which Gash sought to induce Grand Union to discontinue Nylonge sponges as well as duPont sponges, as the quid pro quo for General Mills agreeing to participate in the Broadway sign and make further advertising expenditures in connection with the sale of its sponges in Grand Union stores. Grand Union refused to accede to this request. It did agree, in the letter agreement of January 6, to give "serious and sympathetic consideration to the stocking of O-Cel-O's wet pack sponges" when this new item became available in several months, but it did not agree to discontinue the comparable Nylonge sponge at that time.

11. During 1954 Grand Union's total purchases of sponges amounted to approximately $75,500. Its purchases of sponges, other than O-Cel-O sponges, were approximately as follows:[1]

duPont	$39,500
Ivalon	10,000
Nylonge	12,500

[1] The figures cited are apparently rough approximations since the exhibit in the record from which such figures are taken gives the purchases of O-Cel-O sponges as $13,500, whereas the stipulation entered into by the parties cites the 1954 O-Cel-O purchases as being $19,092.40.

Following the agreement between General Mills' broker and Grand Union in January 1955, Grand Union ceased the purchase of duPont sponges, although it continued to sell the duPont sponges which it then had on hand in its warehouse for some undisclosed period until the existing supply was exhausted.[2] The purchase of duPont sponges was not resumed until February 1957, after General Mills participation in the Broadway spectacular sign had ceased. During the intervening period Grand Union continued to purchase Ivalon and Nylonge sponges, although the amount thereof is not revealed by the record except for the year 1954. It also appears that sometime in 1955 Grand Union began to purchase Amsco sponges manufactured by American Sponge and Chamois Company, but the amount thereof does not appear from the record.

12. The only indication in the record of General Mills' position in the New York metropolitan market with respect to its sponge business is the statement in a letter from its broker Gash to Grand Union, dated November 23, 1954, when he was seeking to obtain a larger share of the Grand Union business, that—

* * * the O-Cel-O Company enjoys practically 100 percent distribution in the market. In fact, the only chain that doesn't stock it is Safeway.

The only reference in the record indicative of duPont's position in the same market is a statement appearing in an interoffice memorandum by a Grand Union official, who was considering the proposal to stop buying duPont and Nylonge sponges, that duPont sponges were carried only by Grand Union and Safeway "of the major chains in this area." The same source also refers to Nylonge sponges as being carried only by Grand Union and American Stores "of the major chains."

CONTENTIONS AND CONCLUSIONS

Section 3 of the Clayton Act makes it unlawful for any person engaged in commerce, in the course of such commerce, to sell goods on the condition, agreement or understanding that the purchaser will not use or deal in the goods of a competitior or competitors of the seller, where the effect of such arrangement "may be to substantially lessen competition or tend to create a monopoly in any line of commerce."

There is no serious dispute as to most of the basic facts. It is conceded that General Mills is engaged in commerce and that its sales to Grand Union were made in the course of such commerce.

[2] While the agreement provides that General Mills would "discontinue the sale of duPont sponges," it was understood and interpreted by the parties as permitting the disposition of duPont sponges which were then in stock.

For purposes of this proceeding it is conceded that the broker for General Mills' O-Cel-O Division was authorized to enter into the agreement or arrangement pursuant to which Grand Union agreed that it would cease the further purchase of duPont sponges. There is some uncertainty in the record as to the geographic or market area in which the agreement was to operate and as to its duration. General Mills' broker was under the impression that the agreement not to purchase duPont sponges only applied to the Grand Union stores in the New York metropolitan area where he represented General Mills, whereas Grand Union's understanding of the arrangement was that it was to cease purchasing such sponges for all of its 340 stores in the Eastern United States. For purposes of this decision the hearing examiner will assume that the agreement applied to all Grand Union stores in the Eastern United States.

The agreement is silent with respect to the period of its duration. However, the testimony of General Mills' broker and that of a representative of Grand Union indicates that they understood the arrangement as being coterminous with the separate arrangement between General Mills and Douglas Leigh pertaining to the former's participation in the Broadway spectacular sign, on which Grand Union was featured. The original agreement to participate in the sign was for a period of one year and was renewed on April 20, 1956, which renewal expired on December 14, 1956.

The basic question at issue is whether there is sufficient evidence in the record to warrant a finding that the arrangement between General Mills and Grand Union, pursuant to which the latter agreed to cease its purchase of duPont sponges, "may tend to substantially lessen competition or tend to create a monopoly in any line of commerce." For purposes of deciding this question, the examiner must, of course, view the evidence and all inferences therefrom in the light most favorable to counsel supporting the complaint, as counsel for respondent concede. *Vulcanized Rubber and Plastics Co.*, 52 FTC 533.

It is the position of counsel for respondent that there is no record basis for any finding of probable lessening of competition or tendency to monopoly since the record fails to establish that General Mills is a dominant factor in the sponge market in the United States or in the eastern portion thereof, or that competition has been foreclosed in a substantial share of the sponge market. In the latter connection, respondent urges that there can be no substantial foreclosure of competition where a competitor is excluded from the outlets of only a single customer. Counsel supporting the complaint argue that it is unnecessary to establish that General Mills dom-

inated the sponge market, and that from the facts with respect to its total sales of sponges, the number of Grand Union stores involved, and the quantity of duPont products foreclosed by the arrangement, the probability of a substantial lessening of competition may be inferred.

Counsel for both sides are in agreement that, on the one hand, it is not necessary to show that there has been any actual injury to competition in order to meet the stautory requirement of a probable substantial lessening of competition, and that, on the other hand, Section 3 is not a per se statute, so that there must be an affirmative showing of facts, beyond the mere preclusive agreement, sufficient to give rise to an inference that the arrangement will have a probable substantial adverse competitive impact. The main disagreement between counsel is as to the operative facts which will support such an inference. The position of counsel for respondent appears to be that there must be a general sales policy of an exclusive nature by a dominant producer, tying up a substantial proportion of the outlets in the line of commerce affected, before it can be found that such agreement will have the statutory effect. The argument of counsel supporting the complaint, on the other hand, appears to suggest that if the quantum of commerce tied up by the arrangement is more than "insignificant or insubstantial," the statutory test is met, without any proof as to the seller's relative position in the market or as to the relative proportion of the share of commerce affected.

While the hearing examiner is not in agreement with some aspects of the argument of counsel for respondent, particularly with respect to the requirement for showing dominance by the seller, the position of counsel supporting the complaint is even less tenable. Much of the confusion in the argument springs from the attempt to apply the holdings of the "tying" cases to the instant situation. From the supposed holding of such cases that the producer must have a monopolistic or dominant position with respect to the tying product, respondent seeks support for its contention that a failure in the evidence to show such a position on the part of General Mills is a fatal weakness in the case of counsel supporting the complaint. From the holding of such cases that a seller possessing such power violates the law if the amount of commerce in the tied product is more than inconsequential, counsel supporting the complaint seek support for their position that the requisite showing of potential injury has been made. The trouble with both arguments is that this is not a "tying" case.

A tying arrangement involves—

> * * * an agreement by a party to sell one product on the condition that the buyer also purchases a different (or tied) product, or at least agrees that he will not purchase that product from any other supplier. *Northern Pacific Railway Co.* v. *U.S.*, 356 U.S. 1, 5.

Since "tying arrangements serve hardly any purpose beyond the suppression of competition" (*Standard Oil Co. of California* v. *U.S.*, 337 U.S. 293, 305–306), they are considered "unreasonable in and of themselves whenever a party has sufficient economic power with respect to the tying product to appreciably restrain free competition in the market for the tied product and a 'not insubstantial' amount of interstate commerce is affected. *International Salt Co.* v. *U.S.* 332 U.S. 392." *Northern Pacific Railway Co.* v. *U.S.*, *supra*, at 6.

In the tying cases, proof of a monopolistic or dominant position in the market for the tying product has been deemed sufficient to establish the probability of competitive injury, within the meaning of Section 3 of the Clayton Act, with very little evidence, if any, with respect to the amount of commerce involved in the tied product. In one of the earliest tying cases, *United Shoe Machinery Corp.* v. *U.S.*, 258 U.S. 451 (1922), a seller occupying a "dominant position" in the shoe machinery industry was deemed to have violated Section 3 of the Clayton Act by contracts tying the purchase of other types of machinery and supplies to the lease of the machine in which it enjoyed dominance, without any showing as to the volume of commerce involved with respect to the tied products.[3] In *International Salt Co.* v. *U.S.*, 332 U.S. 392, 396, the lessor of a patented machine for dispensing salt, which was leased on condition that the lessees purchase salt sold by lessor, was held to have violated both Section 3 of the Clayton Act and Section 1 of the Sherman Act upon a showing that the lessor enjoyed monopolistic control over the patented machine and that the amount of commerce in salt which was tied up by the arrangement was "not insignificant or insubstantial."

However, while proof of a monopolistic or dominant position over the tying product, with little more, is deemed sufficient to establish a Section 3 Clayton Act violation, it does not follow that proof of dominance is a sine qua non to the establishment of such a violation. This was made abundantly clear by the Supreme Court in *Times-Picayune Publishing Co.* v. *U.S.*, 345 U.S. 594, 608, when it stated:

[3] See *Times-Picayune Publishing Co.* v. *U.S.* 345 U.S. 594, 606, interpreting the *United Shoe* case as involving a situation where the necessary proof of competitive effect was based on the seller's dominant position with respect to the tying product, "without more."

From the "tying" cases a perceptible pattern of illegality emerges: When the seller enjoys a monopolistic position in the market for the "tying" product, *or* if a substantial volume of commerce in the "tied" product is restrained, a tying arrangement violates the narrower standards expressed in § 3 of the Clayton Act because from either factor the requisite potential lessening of competition is inferred.

The Court in the *Times-Picayune* case went on to hold that for purposes of establishing a Section 1 Sherman Act violation, proof of both elements was necessary. However, this holding, insofar as it appeared to require proof of dominance in a Sherman Act case was later modified in *Northern Pacific Railway Co.* v. *U.S.*, *supra* at 6, where it was held to be sufficient to show that the party charged had "sufficient economic power with respect to the tying product to appreciably restrain free competition in the market for the tied product * * *."

Since tying contracts are deemed to "serve hardly any purpose beyond the suppression of competition," the courts have required a minimal showing with respect to the amount of commerce involved in the tied product whenever it appears that the seller or lessor enjoys a monopolistic or dominant position in the tying product, or has sufficient economic power therein to use it as leverage against users of the tied product. The vice of such arrangements does not lie in the minor amount of commerce involved in the tied product but, as expressed by the court in an early case (upon which counsel supporting the complaint place considerable reliance), in the fact that the seller "seeks by contract to extend * * * the monopoly of the patent to supplies not covered by the patent." *Oxford Varnish Corp.* v. *Ault*, 83 F. 2d 764, 766 (CA 6, 1936). In other words, it is the effort to extend a monopolistic or dominant position to another field with which the law is concerned in most tying cases, rather than with the amount of commerce involved in the tied product. Consequently counsel supporting the complaint can receive little comfort from the fact that a very minor amount of commerce in the tied product was involved in many of such cases, since the holding of probable effect was based primarily on the seller's strong position in the tying product. On the other hand, it is also clear from the tying cases that a Section 3 Clayton Act violation may be found to exist, even without proof of dominance or the equivalent, where the substantiality of the commerce tied up is of such proportions as to support an inference of probable lessening of competition.

The instant case does not involve a tying arrangement, i.e., an effort to use economic power in one field as leverage for acquiring power in another. Consequently the concept of dominance, as devel-

oped in the tying cases, is not apposite. Conversely, the holding of such cases with respect to the minor amount of commerce in the field of the tied product which is required to be shown, where a seller is dominant in the field of the tying product, has limited application.

The arrangement here involved falls within the general category of what is known as requirements contracts, in which the restrictive element of the arrangement has no connection with another field of commerce. Typically, such contracts require the buyer to purchase all of his requirements of a given product from the seller, or conversely, not to purchase such products from anyone else. The arrangement in this case involves a less extreme version of such contracts, in that the buyer is not required to buy all of his requirements of the product in question from the seller or to cease buying them from all other competitors, but only to refrain from buying them from one of the seller's competitors.

It has been recognized that, unlike tying agreements which "serve hardly any purpose beyond the suppression of competition" requirements contracts "may well be of economic advantage to buyers as well as sellers." *Standard Oil Co. of California* v. *U.S.*, *supra*, at 306. Consequently, while the statute makes no distinction between tying and requirements-type cases, the courts have tended to require a stronger showing in the latter cases to support an inference of probable adverse competitive effect. The inquiry in such cases has not centered, as in the tying cases, primarily on the seller's important position in the field of the tying product and only incidentally on his position in the line of commerce of the tied product, but rather on the substantiality of the foreclosure in the line of commerce tied up or limited by the preclusive agreement.

As stated in the *Standard Stations* case (*Standard Oil Co. of California* v. *U.S.*, *supra* at 314), the test applied in requirements cases is whether "competition has been foreclosed in a substantial share of the line of commerce affected." While counsel supporting the complaint nominally accept the test in the *Standard Stations* case as controlling, they interpret the affirmative requirement of that case that the share of commerce foreclosed must be "substantial," as tantamount to the negative test applied in the tying cases to dominant sellers, viz., that the amount of commerce involved in the tied product be *not* "insignificant or insubstantial." However, as already pointed out, the basis of the prediction of probable adverse competitive effect in the tying cases is based on the dominance or near dominance of the seller in the field of the tying product and the effort

to extend that position to another field, rather than the minor amount of commerce in the tied product.

Aside from this tendency to interpret "substantial" as equivalent to the "not insignificant" test used in the tying cases, counsel supporting the complaint attempt, incorrectly, to treat substantiality as a single-dimensional concept. Their position appears to be that substantiality can be determined solely from the number of outlets and amount of commerce tied up by the agreement, without any comparison with the total number of outlets or total amount of commerce in the line of commerce involved. However, in the opinion of the examiner, such a determination can very rarely be made on such a single-dimensional basis. Counsel supporting the complaint rely, in this respect, on the District Court's decision in the *Standard Stations* case (78 F. Supp. 850, 875), where it was found that the exclusive contracts covered "a substantial number of outlets and a substantial amount of commerce, whether considered comparatively or not." It is not entirely clear what the court meant by the phrase "whether considered comparatively or not." However, from the evidence in the record of a comparative nature, the examiner interprets this reference, as did the Supreme Court, to be to statistical evidence "on the comparative status of Standard and its competitors before and after the adoption of that [exclusive] system." While that type of comparative evidence may be unnecessary, since it relates to actual injury, this does not mean that comparative evidence may not be required to furnish the basis for an informed judgment as to the substantiality of the number of outlets and amount of commerce involved.

In any event, whatever may have been the opinion of the District Court in the *Standard Stations* case, it is clear that the Supreme Court's affirmance of its conclusions was based on the existence of significant evidence in the record of a relative or comparative nature. The Court noted the fact that the gross business of $58,000,000 tied by the defendant's requirements contracts involved 6.7 percent of the gasoline business in the western area, and that the 5,937 stations constituted 16 percent of the retail outlets in the area. The Court noted that while Standard Oil did not "by itself dominate the market," it was "the largest seller of gasoline in the area" and was a "major competitor." Also considered by the Court was the fact that its six leading competitors also used exclusive contracts and between them controlled 42.5 percent of the gasoline sold in the area. With this factual background the Court concluded:

* * * it is clear that the affected proportion of retail sales of petroleum products is substantial. In view of the widespread adoption of such contracts by Stand-

ard's competitors and the availability of alternative ways of obtaining an assured market, evidence that competitive activity has not actually declined is inconclusive. Standard's use of the contracts creates just such a potential clog on competition as it was the purpose of § 3 to remove wherever, were it to become actual, it would impede a substantial amount of competitive activity.

In all the other cases following the *Standard Stations* case, there has been evidence over and above the mere quantitative amount of commerce foreclosed, from which it could be found that such amount constituted a "substantial share" of the line of commerce involved. In *Anchor Serum Co.* v. *FTC*, 217 F. 2d 867 (CA 7, 1954), cited by counsel supporting the complaint, not only did it appear that respondent was "the largest producer" in its field, and had entered into exclusive dealing contracts with 16 of its distributors some of whose purchases exceeded $500,000, but that two of the distributors were the largest distributors in the two states which were the largest market for the product in the United States. In *Dictograph Products, Inc*, 217 F. 2d 821 (CA 2, 1954), not only did it appear that the amount of business covered by the contracts was of the order of magnitude of $2,000,000, but that such contracts "foreclosed competitors from dealing with more than 22% of the nation's choicest retail outlets * * *." Also noted by the court was the fact that respondent was "one of the top three in the business, and at least two other leading manufacturers maintain effective control of a substantial number of established distributors by means of similar restrictive, exclusive-dealing agreements."

Other recent decisions of the Commission, which have not reached the court of appeals, contain similar evidence indicating the relative amount of the commerce foreclosed or other facts from which the substantiality thereof and the probability of a substantial lessening of competition could be inferred. In the *Revlon* case, 51 FTC 260, not only did it appear that respondent was "the leader and is dominant" in its field, but that the jobbers whom it had tied up constituted 17 percent of the jobbers who were "recognized by competitors as being the very best jobbers in the field." Respondent's sales to these jobbers amounted to approximately one and a half million dollars. In the *Harley-Davidson Motor Co.* case, 50 FTC 1047, the respondent was found to be the "largest manufacturer of motorcycles in the United States" with sales of over $15,000,000, was the "dominant domestic factor" in an industry in which few domestic producers remained, and had tied up by exclusive contracts approximately 800 dealers who constituted "the largest and best dealer organization

in the field." In the *Outboard, Marine & Manufacturing Co.* case, 52 FTC 1553, respondent's percentage of the market was found to be between 32 percent to 50 percent during the postwar period, and it was found to be a dominant or at least a substantial factor in the market. It had tied up by exclusive agreements dealers who accounted for at least one-third of the outlets in the industry.

The most recent case to come before the Commission, *Insto-Gas Corp.*, Docket 5851, December 19, 1957, would appear to dispose of counsel supporting the complaint's position that a finding of substantiality can be based on a single-dimensional showing regarding the quantity of commerce involved in an exclusive arrangement. In that case respondent had entered into tying agreements with dealers to which it leased gas cylinders requiring that only gas sold by respondent would be used in refilling such cylinders. The record disclosed that respondent's sales of propane gas were approximately $300,000, of which "the great majority" involved gas used in the cylinders in question. In that case it was held, contrary to the position urged by counsel supporting the complaint, that it could not be determined whether the amount of commerce foreclosed by such agreements was substantial merely on the basis of these figures and "without any comparison with sales by competitors or any information as to respondent's comparative standing in the industry."

Counsel supporting the complaint seek to distinguish the instant case from the *Insto-Gas* case on the ground that it involved a tying arrangement, whereas the present proceeding does not. This, however, is a distinction without a significant difference. As already noted, in most tying cases the finding of probable injury is based on the seller's dominance in the field of the tying product. Such evidence was lacking in the *Insto-Gas* case. However, as indicated in *Times-Picayune*, an alternative basis for a finding of probable injury is the showing that "a substantial volume in the 'tied' product is restrained." This alternative basis is equivalent to the "substantial share of the line of commerce affected" in the requirements cases. It is clear from the holding in the *Insto-Gas* case that a finding of substantiality cannot be made based merely on a single-dimensional showing that the amount of commerce restrained was in excess of $150,000.

While seeking to distinguish the *Insto-Gas* case on the ground that it was a tying case, counsel supporting the complaint themselves rely on a number of tying cases to support their position as to the minimal showing which need be made with respect to the amount of commerce restrained by a preclusive agreement. They cite the *International Salt* case, 332 U.S. 392, in which the company's sales

in the tied product amounting to $500,000 was found to be "not insignificant or insubstantial." Also cited is *Oxford Varnish Corp.* v. *Ault*, 83 F. 2d 764, in which the fact that the seller's business in the tied product was only one-half of one percent of the national business did not prevent a finding of a violation of Section 3. Counsel overlook the fact that in the *International Salt* case the company had a monopoly in the machine to which it was seeking to tie its sales of salt, and that it was this, rather than the "more than insignificant" volume of business in salt, that was the primary basis for the Court's holding. As previously noted, in the earlier *United Shoe Machinery* case, Section 3 was held to be violated without any showing at all as to the volume of commerce in the tied product, since it appeared that the seller was dominant in the tying product. In the *Oxford Varnish* case the basis of the court's holding was not the negligible share of commerce in the tied product, but the fact that the seller had a monopoly in the tying product and was seeking "to extend the monopoly of the patent to supplies not covered by the patent."

The evidence which counsel supporting the complaint contend establishes a prima facie case of potential substantial lessening of competition falls into two main categories, (a) that relating to respondents alleged position as a leading producer and (b) that relating to the alleged substantiality of the commerce foreclosed. The evidence with respect to each is discussed below.

(a) *Position of General Mills.* Counsel supporting the complaint argue that because respondent is "a large national seller of grocery and related products" and because its sponge sales are "substantial" that this constitutes it "a leading or major * * * seller." The short answer to this argument is that respondent's other sales in its diverse line, including flour and other grain products, feeds, soybean products and chemicals, have nothing to do with its status in the line of commerce here involved. The figures for this miscellany of products cannot be married to its sponge sales to constitute it a leading producer. This is not a case of using economic power in one field as leverage in another.

Nor does the fact that respondent's sponge sales exceed $4,000,000 annually, or the fact that it is one of six companies which, together, account for 80 percent of the sponge sale in the Eastern United States, mean anything. Since there is no evidence as to the total sponge sales in the industry, there is nothing to which to relate the $4,000,000 figure. Likewise, there is nothing to indicate what proportion of the 80 percent figure is accounted for by respondent's sales. For aught that appears from the record, it may be the smallest

of the six producers and may have only one percent, or even less, of the 80 percent figure attributed to all six companies.

Counsel supporting the complaint also cite the "practically 100% distribution" of respondent's sponges among chain stores in the market, as being indicative of its leading position in the market. Assuming the accuracy of the puffing statement made by respondent's broker in seeking to enlarge its sponge business with Grand Union, it has little meaning by itself. There is nothing to indicate that it is a major seller in such chain stores or as to the proportion of sponges sold in chain stores, as compared with the rest of the sponge market in the Eastern United States.

(b) *Substantiality of Market Foreclosed.* The evidence concerning foreclosure is on a par with that relating to respondent's position in the market. While, as previously noted, dominance or leadership in the market is not an indispensable element in a Section 3 case, its presence has a bearing on the substantiality of the commerce foreclosed, and the probability of injury. Where the evidence fails to establish market leadership, a stronger showing with respect to the share of the market foreclosed would appear to be required to support an inference of probable lessening of competition. In any event, the evidence here involved fails to establish substantial foreclosure under any standard of measurement.

The facts on which counsel supporting the complaint rely are, (1) that duPont sponges were foreclosed from approximately 300 Grand Union stores, (2) that duPont was one of respondent's "principal competitors," (3) that duPont sponge sales prior to the preclusive agreement was $39,500 and accounted for approximately half of Grand Union's sponge purchases, and (4) that respondent's sponge sales increased from $19,092 to $45,861 during the first year of the agreement and to $60,402 in the second year.

These facts, separately or in combination, fail to establish substantial foreclosure. Since there is no evidence as to the proportion of sponge sales in the Eastern United States or in the New York metropolitan area which is made through Grand Union stores, there is no basis for determining whether the amount of commerce which duPont lost or which respondent gained is substantial. There is nothing in the order of magnitude of the figures cited to warrant an inference of substantial foreclosure. The fact that respondent increased its sales to Grand Union by approximately $26,000 in 1955 and by $40,000 in 1956, or that duPont's sales in the preceding year were $39,500, has no more significance than the fact that respondent in the *Insto-Gas* case tied up over $150,000 in gas sales. These are

single-dimensional figures which have little significance in the absence of other evidence to which to relate them.

The fact that duPont was foreclosed from approximately 300 outlets likewise proves nothing, in the absence of evidence as to the proportion of sponge sales in the market which move through these outlets. Such evidence as there is would indicate that there are many thousands of retail stores selling sponges. There is nothing to indicate that the Grand Union outlets constitute some of the choicest outlets in the market, as was the case in *Anchor Serum*, *supra*, where two of the distributors were the largest outlets in the two states which constituted the largest market for respondent's product. There is no more reason why the Grand Union outlets should be considered as constituting a substantial share of the market, than were the 150 to 200 distributors and 200 bulk filling stations involved in the *Insto-Gas* case.

The fact that duPont is one of respondent's "principal competitors" likewise establishes nothing, in the absence of evidence as to the relative standing of each in the market, and as to the relative share of commerce foreclosed. While duPont, with respondent and four other companies have 80 percent of the sponge business in the Eastern United States, there is nothing to indicate duPont's standing among the six companies. Furthermore, even if it be assumed that duPont is a major factor in the market, it does not follow that the General Mills is a major factor or that the commerce it has foreclosed is substantial. General Motors is a principal competitor of Studebaker, but this does not make Studebaker a major factor in the automobile business or mean that there has been a substantial foreclosure of competition because Studebaker has taken over a General Motors distributor.

There is nothing in any of the facts and figures in the record from which it can be inferred that the arrangement here involved may substantially lessen competition. Respondent's total sales to Grand Union in the peak year 1956 constituted less than 1½ percent of its total sponge sales ($60,402 out of $4,770,000). Only part of its increase over 1954 can be assumed to be due to the preclusive arrangement. Its sales in 1954 were more than $4,000 above those for 1953, even without any agreement with Grand Union. While duPont sales in 1954 were $39,500, only part of this business was acquired by General Mills in 1955 since its sales in that year increased by only $26,700. Since the figures of other sponge companies' sales are not in the record, it is not possible to determine whether there was a general increase in sponge purchases by Grand Union. However, it does appear that in 1955 it took on the additional Amsco

line, despite the agreement with respondent. In any event, the exclusion of a single competitor from approximately $27,000 to $40,000 worth of sponge business through a single distribution outlet, albeit one having over 300 stores, is hardly a state of facts from which it can be inferred, without more, that there is a reasonable probability of a substantial impairment of competition.

In so holding the examiner does not intend to indicate any concurrence with the position of respondent that there can be no substantial foreclosure unless there is a "general sales policy of exclusion." While the difficulty of establishing substantial foreclosure obviously increases in a case where the preclusive policy is a limited one, this does not mean that there may not be cases where a preclusive arrangement involving only a single distribution outlet or affecting a single competitor will violate the law. The statute, by its very terms, applies to contracts not to "use or deal in the goods * * * of a competitor or competitors." In the *Revlon* case, *supra* at 281, the Commission specifically recognized that Section 3 "is not limited to exclusive dealing agreements but applies equally to agreements not to deal with a competitor or class of competitors." In *Tampa Electric Co.* v. *Nashville Coal Co.*, 168 F. Supp. 456 (M.D. Tenn., 1958), an agreement by a single customer to buy its entire requirements of coal from one company was held to violate Section 3 where it appeared that the quantity of coal involved, one million tons, was more coal than was then being consumed in the entire state. While there were 16 distributors involved in the *Anchor Serum* case, the finding of potential injury rested largely on the position of two distributors, each of whom was the largest distributor in the two states which were, respectively, the largest users of the product in question.

Apparently mindful of the almost de minimis nature of the showing here, counsel supporting the complaint fall back on the cases which hold that the Commission has the power to stop monopolistic practices in their incipiency. Such cases do not, however, excuse the introduction of substantial evidence to support an inference that the arrangement in question is reasonably calculated to have the proscribed statutory impact. Counsel argue that while the arrangement in question involved only one customer, it is necessary "to bear in mind the potentiality of an extension of such restrictive sales" in the light of respondent's overall size. However, there is not the slightest record basis for anticipating the extension of such arrangement.

On the contrary, as counsel supporting the complaint themselves have argued in a separate proceeding against Grand Union for

knowingly inducing respondent and others to participate in the Broadway spectacular sign, the arrangement was part of a specially "tailored" deal. The agreement by Grand Union to discontinue handling duPont sponges was part of the *quid pro quo* for respondent's agreeing to participate in the sign. When its participation in the sign came to an end, the preclusive arrangement came to an end soon thereafter. There is no reason to anticipate from these facts that respondent is likely to enter into similar arrangements with other customers. There is not the slightest indication that the arrangement in question was the opening gun in a campaign which is likely to lead to the adoption of other such arrangements.

Respondent has urged, conversely, that the whole proceeding is now moot in view of the fact that the preclusive arrangement came to an end following the termination of respondent's participation in the Broadway sign, and in view of the lack of likelihood of its being renewed inasmuch as the services of the broker and officials responsible for the arrangement have been terminated and the O-Cel-O Division has been integrated into respondent's general operations. While respondent's argument in this respect is not without appeal, the examiner finds it unnecessary to pass upon it in view of his conclusions on the merits of the case.

In accordance with the findings above made and for the reasons above given, it is concluded and found that counsel supporting the complaint have failed to establish that the arrangement between respondent and Grand Union, whereby the latter agreed not to sell or handle duPont sponges, resulted in a foreclosure of competition in a substantial share of the line of commerce affected, or that there is a reasonable probability that the arrangement will substantially lessen competition or tend to monopoly in any line of commerce.

CONCLUSION OF LAW

It is concluded that counsel supporting the complaint have failed to establish, by reliable, probative and substantial evidence, that respondent has engaged in any unlawful conduct in violation of Section 3 of the Clayton Act, as alleged in the complaint, and that Count II of the complaint should, accordingly, be dismissed.

ORDER

It is ordered, That Count II of the complaint herein be, and the same hereby is, dismissed.

DECISION OF THE COMMISSION

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 19th day of September 1959, become the decision of the Commission.

IN THE MATTER OF

OFFICE OF LABOR STATISTICS, ET AL.

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

Docket 7506. Complaint, June 3, 1959—Decision, Sept. 23, 1959

Consent order requiring a concern in Newark, N.J., engaged in the sale of collection forms and questionnaires to obtain information concerning delinquent debtors, to cease representing falsely that it was an agency of the U.S. Government, through use of the name "Office of Labor Statistics * * * Washington, D.C." with the picture of an eagle similar to that used on the U.S. Government seal.

Mr. Michael J. Vitale for the Commission.
Mr. Irving H. Hellman, of Newark, N.J., for respondents.

INITIAL DECISION BY EVERETT F. HAYCRAFT, HEARING EXAMINER

On June 3, 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 sale of a printed mailing form, featuring its corporate name, "Office of Labor Statistics," and otherwise purporting that it is a United States Government organization, which was sold to collection agencies, merchants and others for the purpose of obtaining information concerning delinquent debtors of the purchasers.

On July 14, 1959, the respondents and their attorney 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. The parties 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; 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 as to all parties, 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, Office of Labor Statistics, is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its office and principal place of business located at 441 Springfield Avenue, Newark, New Jersey.

Individual respondent Lois G. Kaplan is an officer of said corporation and is located at 665 Bruce Street, Ridgefield, New Jersey. Individual respondent Pearl Escort is an officer of said corporation and is located at 415 West 52nd Street, New York, New York.

Individual respondent Ronald Kaplan is located at 665 Bruce Street, Ridgefield, New Jersey.

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, Office of Labor Statistics, a corporation, and its officers, and Lois G .Kaplan and Pearl Escort, individually and as officers of said corporation, and Ronald Kaplan, individually, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the business of obtaining information concerning delinquent debtors, or the offering for sale, sale or distribution of forms or other materials, for use in obtaining information concerning delinquent debtors, or in the collection of, or attempting to collect

accounts, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the term "Office of Labor Statistics" or the picturization of an eagle, or any other word or phrase, or picturization of similar import to designate, describe or refer to respondents' business; or otherwise representing, directly or by implication, that requests for information concerning delinquent debtors are from the United States Government or any agency, or branch thereof, or that their business is in any way connected with the United States Government.

2. Using, or placing in the hands of others for use, any forms, questionnaires or other materials, printed or written, which do not clearly reveal that the purpose for which the information is requested is that of obtaining information concerning delinquent debtors.

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 23rd day of September, 1959, become the decision of the Commission; and, accordingly:

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

IN THE MATTER OF

SIMON LIEBERMAN TRADING AS ARTISTIC FUR SHOP

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

Docket 7509. Complaint, June 5, 1959—Decision, Sept. 23, 1959

Consent order requiring a Buffalo, N.Y., furrier to cease violating the Fur Products Labeling Act by labeling as "natural," fur products composed of dyed fur, by failing to set forth the term "Dyed Mouton-processed Lamb" as required, and by failing in other respects to comply with labeling and invoicing requirements.

Mr. S. F. House, for the Commission.

No appearances for the respondent.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

The Federal Trade Commission (sometimes also hereinafter referred to as the Commission) on June 5, 1959, issued its complaint herein, charging the above-named respondent with having violated the provisions of both the Federal Trade Commission Act and the Fur Products Labeling Act, together with the Rules and Regulations promulgated thereunder, and the respondent was duly served with process.

On August 7, 1959, there was submitted to the undersigned hearing examiner of the Commission for his consideration and approval an "Agreement Containing Consent Order To Cease And Desist," which had been entered into by and between respondent and counsel supporting the complaint, under date of July 31, 1959, subject to the approval of the Bureau of Litigation of the Commission, which had subsequently duly approved the same.

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

1. Respondent Simon Lieberman is an individual trading as Artistic Fur Shop, with his office and principal place of business located at 909 Broadway, in the City of Buffalo, State of New York.

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 he 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 respondent that he 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 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 Fur 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:

ORDER

It is ordered, That respondent Simon Lieberman, individually and trading as Artistic Fur Shop, or trading under any other name or names, and his representatives, agents and employees, directly or through any corporate or other device in connection with the introduction, manufacture for introduction, 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, manufacture for sale, advertising, offering for sale, transportation or distribution of fur products which have been made in whole or in part of fur which has been shipped and received in commerce, as "commerce," "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

A. Misbranding fur products by:

(1) Failing to affix labels to fur products showing in words and figures plainly legible all information required to be disclosed by

each of the subsections of §4(2) of the Fur Products Labeling Act;

(2) Failing to affix labels to fur products showing the item number or mark assigned to a fur product;

(3) Setting forth on labels affixed to fur products:

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

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

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

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

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

(6) Affixing to fur products labels that do not comply with the minimum size requirements of 1¾" x 2¾";

(7) Failing to set forth separately on labels attached to fur products composed of two or more sections containing different animal furs, the information required under §4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder with respect to the fur comprising each section;

(8) Failing to set forth the term "Dyed Mouton Processed Lamb" in the manner required.

B. Falsely or deceptively invoicing fur products by:

(1) 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 §5(b)(1) of the Fur Products Labeling Act;

(2) Failing to furnish invoices to purchasers of fur products showing the item number or mark assigned to a fur product;

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

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 23rd day of September, 1959, become the decision of the Commission; and, accordingly:

It is ordered, That respondent Simon Lieberman, an individual trading as Artistic Fur Shop, 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

EDWARD GLICKMAN

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

Docket 7532. Complaint, July 13, 1959—Decision, Sept. 23, 1959

Consent order requiring a furrier in New York City to cease violating the invoicing requirements of the Fur Products Labeling Act by setting forth on invoices the name of an animal in addition to that producing the fur, by failing to set forth the term "dyed Mouton-processed Lamb" in the manner required, by improper use of the term "blended," and by failing in other respects to comply with invoicing requirements.

Mr. Charles W. O'Connell, for the Commission.
No appearances for the respondent.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

The Federal Trade Commission (sometimes also hereinafter referred to as the Commission) on July 13, 1959, issued its complaint herein, charging the above-named respondent with having violated the provisions of both the Federal Trade Commission Act and the Fur Products Labeling Act, together with the Rules and Regulations promulgated thereunder, and the respondent was duly served with process.

On August 6, 1959, there was submitted to the undersigned hearing examiner of the Commission for his consideration and approval an "Agreement Containing Consent Order To Cease And Desist," which had been entered into by and between respondent and counsel supporting the complaint, under date of August 4, 1959, subject to the approval of the Bureau of Litigation of the Commission, which had subsequently duly approved the same.

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

1. Respondent Edward Glickman is an individual doing business in his own name with his office and principal place of business located at 251–255 West 30th Street, New York 1, New York. He formerly did business at 312 Seventh Avenue, New York, New York.

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 he 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 respondent that he 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 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 Fur Prod-

ucts 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:

ORDER

It is ordered, That Edward Glickman, an individual doing business in his own name, 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 or manufacture for introduction into commerce, or the sale, advertising, 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 have been made in whole or in part of fur which has been shipped and received in commerce as "commerce," "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

1. Falsely and 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 sub-sections of §5(b)(1) of the Fur Products Labeling Act;

B. Setting forth on invoices pertaining to fur products the name or names of any animal or animals in addition to the name or names provided for in §5(b)(1)(A) of the Fur Products Labeling Act;

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

D. Failing to set forth the term "Dyed Mouton-processed Lamb" in the manner required;

E. Setting forth the term "blended" as part of the information required under §5(b)(1) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder to describe the pointing, bleaching, dyeing or tip-dyeing of furs;

F. Failing to set forth on invoices the item number or mark assigned to a fur product.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 23rd day of September, 1959, become the decision of the Commission; and, accordingly:

It is ordered, That respondent Edward Glickman, an individual, 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

DUREX HARDWARE MANUFACTURING CORP. ET AL.

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

Docket 7507. Complaint, June 5, 1959—Decision, Sept. 25, 1959

Consent order requiring New York City distributors of hardware products, including various types of hand tools, to cease selling imported products without adequate notice to the buying public of their foreign origin; representing falsely, through use of the word "Manufacturing" as a part of their corporate name, that they were manufacturers of all the products they offered for sale; and representing falsely that their "Town and Country" sprinkler was guaranteed without limitation.

Mr. S. F. House for the Commission.

INITIAL DECISION BY WALTER R. JOHNSON, HEARING EXAMINER

In the complaint dated June 5, 1959, the respondents are charged with violating the provisions of the Federal Trade Commission Act.

On July 17, 1959, the respondents entered into an agreement with counsel in support of the complaint for a consent order.

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

an admission by the respondents that they have violated the law as alleged 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 Durex Hardware Manufacturing Corp. 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 527-31 W. 34th Street, in the City of New York, State of New York.

Respondents Joseph L. Smith and Stanley Smith are officers of said corporation and formulate, direct and control the policies, acts and practices of the corporate respondent. Their address is the same as that of the corporate respondent.

2. 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 Durex Hardware Manufacturing Corp., a corporation, and its officers, and Joseph L. Smith and Stanley Smith, individually and as officers of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the sale and distribution of their products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Offering for sale or selling products which are in whole or substantial part of foreign origin, without clearly and conspicuously disclosing on such products, and if the products are enclosed in a package or carton, on said package or carton, in such a manner that it will not be hidden or readily obliterated, the country of origin thereof.

2. Using the word "Manufacturing" or any other word of the same import or meaning as a part of their corporate or trade name in

connection with products not manufactured by them; or representing in any manner or by any means that they manufacture any product that is not manufactured in a factory owned, operated or controlled by them.

3. Representing, directly or by implication, that any product is guaranteed when there are limitations in said guarantee unless the nature and the extent of the guarantee and the manner in which the guarantor will perform thereunder are clearly disclosed.

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 25th day of September, 1959, become the decision of the Commission; and, accordingly:

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

IN THE MATTER OF

R. C. MYRICK TRADING AS CAREY SURGICAL APPLIANCE CO. ET AL.

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

Docket 7330. Complaint, Dec. 10, 1958—Decision, Sept. 26, 1959

Order dismissing for failure of efforts to serve respondent with notice of hearing, complaint charging seller of a hernia truss with misrepresenting effectiveness, comparative merits, unique nature, and other relevant facts concerning his devices.

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

No appearance for respondents.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

This matter is before the hearing examiner upon a motion filed by counsel supporting the complaint to dismiss the complaint without prejudice. The complaint was issued on December 10, 1958, and the initial hearing was set for February 19, 1959, in Chicago, Illinois.

It appears that service of the complaint was obtained upon both of the respondents in regular course.

On January 16, 1959, in response to a letter received by the hearing examiner from respondent R. C. Myrick, an order was issued extending to February 6, 1959, the time for the filing by respondents of their answers to the complaint. No answers having been filed by February 17, 1959, (subsequently on April 2, 1959, an answer was filed by respondent Dorothy M. Myrick) and it appearing that there would be no contest of the proceeding, an order was issued by the hearing examiner on that date postponing the initial hearing to March 17, 1959, and changing the place of hearing from Chicago, Illinois, to Washington, D.C. Service of this notice, however, was not obtained upon respondent R. C. Myrick, and on March 6, 1959, a further order was issued by the hearing examiner postponing the initial hearing to April 21, 1959. Again there was a failure to obtain service upon respondent R. C. Myrick, and a further order was issued by the hearing examiner on April 17, 1959, cancelling the initial hearing, subject to its being reset at any time in the future upon ten days' notice.

In summary, it appears that except for the complaint itself it has not been possible to obtain service of any of the notices of hearing upon respondent R. C. Myrick, although efforts to obtain service have been made not only by registered mail but also by the Commission's Bureau of Investigation.

Apparently respondent R. C. Myrick, who is the principal respondent in the proceeding, has discontinued his business operations, and respondent Dorothy M. Myrick, who seems to have been only an employee in the business, is now employed by another business concern. Even if service could be obtained upon respondent R. C. Myrick, it appears very doubtful that there is any longer any public interest in the proceeding.

ORDER

It is therefore ordered. That the complaint be, and it hereby is, dismissed, without prejudice to the right of the Commission to take such further action in the matter in the future as may be warranted by the then existing circumstances.

DECISION OF THE COMMISSION

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 26th day of September, 1959, become the decision of the Commission.

Decision

IN THE MATTER OF

CHESTER G. SCHWEDLER DOING BUSINESS AS SOUTHWEST BUSINESS SERVICE

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

Docket 7501. Complaint, May 29, 1959—Decision, Sept. 26, 1959

Consent order requiring an individual in Phoenix, Ariz., to cease using deception in selling real estate advertising, including such false claims as that his advertising would sell properties, that he disseminated flyers to a great number of prospective buyers throughout the country describing the property for sale, and that he continued to advertise each property until it was sold.

Mr. John J. Mathias and *Mr. John W. Brookfield, Jr.*, supporting the complaint.

Respondent, *Pro Se.*

INITIAL DECISION BY JOHN B. POINDEXTER, HEARING EXAMINER

On May 29, 1959, the Federal Trade Commission issued a complaint charging Chester G. Schwedler, an individual trading and doing business as Southwest Business Service, hereinafter referred to as respondent, with violating the provisions of the Federal Trade Commission Act by use of false, misleading and deceptive representations, acts and practices in connection with his business of soliciting the sale of advertising, and advertising for sale, real estate and other properties.

After issuance and service of the complaint, the respondent 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. The agreement disposes of the matters complained about.

The pertinent provisions of said agreement are as follows: Respondent admits all jurisdictional facts; the complaint may be used in construing the terms of the order; the order shall have the same force and effect as if entered after a full hearing and the said agreement shall not become a part of the official record of the proceeding unless and until it becomes a part of the decision of the Commission; the record herein shall consist solely of the complaint and the agreement; 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 he 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 Chester G. Schwedler is an individual trading and doing business as the Southwest Business Service, with his principal office and place of business located at 1511 E. Cypress Street, Phoenix, Arizona.

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

ORDER

It is ordered, That respondent Chester G. Schwedler, trading and doing business as Southwest Business Service, or under any other name or names, and respondent's representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, or sale of advertising or of other services or facilities in connection with the offering for sale, selling, buying or exchanging of business or any other kind of property, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that:

1. Property advertised by respondent will be sold as a result of such advertising or other services;

2. Respondent disseminates flyers describing the property for sale to a great number of prospective buyers throughout the country; or to any number of prospective buyers in any location that is not in accordance with the fact;

3. Respondent continues to advertise each property until it is sold, or continues to advertise the property for any length of time that is not in accordance with 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 26th day of September, 1959, become the decision of the Commission; and, accordingly:

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

IN THE MATTER OF

MANDEL BROTHERS, INC.

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

Docket 6434. Modified order, Sept. 29, 1959

Order rephrasing, in accordance with the order of the Supreme Court of May 4, 1959, 359 U.S. 385, affirming as thus modified, the Commission's order of July 5, 1957, 54 F.T.C. 50, requiring cessation of false invoicing, false advertising, and misbranding of fur products.

MODIFIED ORDER TO CEASE AND DESIST

This proceeding having been heard by the Commission upon the whole record, including briefs and oral argument; and the Commission having rendered its decision and having issued its order to cease and desist on July 5, 1957; and

Respondent Mandel Brothers, Inc., having filed in the United States Court of Appeals for the Seventh Circuit its petition to review and set aside the order to cease and desist issued herein, and that court having rendered its decision on April 1, 1958, modifying said order of the Commission [1]; and

The Supreme Court of the United States thereafter on May 4, 1959, having reversed the United States Court of Appeals for the Seventh Circuit with respect to the modification ordered and the Supreme Court having directed that the said order of the Commission, in certain respects be rephrased [2]; and

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1 254 F. 2d 18.
2 359 U.S. 385.

The United States Court of Appeals for the Seventh Circuit having denied the petition of respondent to set aside the Commission's order to cease and desist, and having thereafter on September 3, 1959, entered its final decree modifying, in accordance with the decision of the Supreme Court of the United States, and affirming and enforcing, as modified, the order to cease and desist issued by the Commission on July 5, 1957:

Now, therefore, it is hereby ordered, That respondent, Mandel Brothers, Inc., 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 sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce, of any fur product, or in connection with the sale, advertising, offering for sale, transportation or distribution of any fur product which has been made in whole or in part of fur which has been shipped and received in commerce, as "commerce," "fur" and "fur products" are defined in the Fur Products Labeling Act, do forthwith cease and desist from—

A. Misbranding fur products by—

1. Failing to affix labels to fur products showing each element of information required by the Act;

2. Setting forth on labels attached to fur products—

(a) Required information in abbreviated form or in handwriting;

(b) Non-required information mingled with required information.

B. Falsely or deceptively invoicing fur products by—

1. Failing to furnish invoices to purchasers of fur products showing each element of information required by the Act:

2. Setting forth required information in abbreviated form;

3. Failing to show the item number or mark of fur products on the invoices pertaining to such products.

C. Falsely or deceptively advertising fur products through the use of any advertisement, 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 regular or usual price of any fur product is any amount which is in excess of the price at which respondent has usually and customarily sold such products in the recent regular course of its business;

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

It is further ordered, That the respondent, Mandel Brothers, 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

METROPOLITAN VACUUM CLEANER COMPANY, INC., ET AL.

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

Docket 7406. Complaint, Feb. 13, 1959—Decision, Sept. 29, 1959

Consent order requiring two associated New York City distributors of vacuum cleaners and sewing machines to cease representing—in advertising media and instruction booklets—fictitious amounts as the usual retail prices; and to cease deceptive use of such expressions as "fully guaranteed" and "lifetime service insurance policy" in connection with their products.

Mr. Michael J. Vitale for the Commission.
Mr. Samuel Mirkin, of New York, N.Y., for respondents.

INITIAL DECISION BY WALTER R. JOHNSON, HEARING EXAMINER

In the complaint dated February 13, 1959, the respondents are charged with violating the provisions of the Federal Trade Commission Act.

On July 31, 1959, the respondents and their attorney entered into an agreement with counsel in support of the complaint for a consent order.

Under the foregoing agreement, the respondents admit the jurisdictional facts alleged in the complaint. The parties agree, among other things, that the cease and desist order there set forth may be entered without further notice and have the same force and effect as if entered after a full hearing and the document includes a waiver by the respondents of all rights to challenge or contest the validity of the order issuing in accordance therewith. The agreement further recites that it is for settlement purposes only and does not constitute an admission by the respondents that they have violated the law as alleged 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 agreement provides that the complaint insofar as concerns respondents Jules Stern and Pearl Stern in their individual capacities should be dismissed for the reasons set forth in affidavits attached thereto that said respondents do not now and never have formulated, directed or controlled the acts and policies of the said corporations.

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, Metropolitan Vacuum Cleaner Company, Inc., and Metropolitan Wholesalers, Inc., 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 4143 Third Avenue, Bronx, New York.

Individual respondent Israel Stern and respondents Jules Stern and Pearl Stern are officers of the corporate respondents and have the same address as that of the corporate respondents.

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

ORDER

It is ordered, That respondent Metropolitan Vacuum Cleaner Company, Inc., a corporation, respondent Metropolitan Wholesalers, Inc., a corporation, and their officers, and respondent Israel Stern, individually and as an officer of said corporations, and Jules Stern and Pearl Stern as officers 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 vacuum cleaners, sewing machines or any other merchandise in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication:

(a) That any price is the usual and regular retail price of merchandise when it is in excess of the price at which said merchandise is usually and regularly sold at retail in the normal course of business.

(b) That any merchandise offered for sale, or sold, is guaranteed, unless the nature and extent of the guarantee and the manner in

which the guarantor will perform thereunder are clearly and conspicuously disclosed.

(c) That merchandise offered for sale, or sold by respondents is covered by a service insurance policy of any nature.

2. Placing in the hands of others, means or instrumentalities which may be used to misrepresent the regular and usual retail prices of merchandise.

It is further ordered, That the complaint, insofar as it relates to respondents Jules Stern and Pearl Stern in their individual capacities be, and the same hereby is, dismissed.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 29th day of September, 1959, become the decision of the Commission; and, accordingly:

It is ordered, That the respondents Metropolitan Vacuum Cleaner Company, Inc., a corporation, Metropolitan Wholesalers, Inc., a corporation, Israel Stern, individually and as an officer of said corporations, and Jules Stern and Pearl Stern as officers 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

RALPH H. MILLER, INC., ET AL.

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

Docket 7508. Complaint, June 5, 1959—Decision, Sept. 29, 1959

Consent order requiring a New York City furrier to cease violating the Fur Products Labeling Act by failing to invoice fur products as required.

Mr. S. F. House for the Commission.

Respondents, *pro se*.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

The Federal Trade Commission (sometimes also hereinafter referred to as the Commission) on June 5, 1959, issued its complaint herein, charging respondents with having violated the provisions of

the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder, by falsely and deceptively advertising certain of their fur products, which acts and practices of respondents constitute unfair and deceptive acts and practices in commerce, in violation of the provisions of the Federal Trade Commission Act. Respondents were duly served with process.

On August 18, 1959, there was submitted to the undersigned hearing examiner of the Commission for his consideration and approval an "Agreement Containing Consent Order To Cease And Desist," which had been entered into by and between respondents and counsel supporting the complaint, under date of August 5, 1959, subject to the approval of the Bureau of Litigation of the Commission, which had subsequently duly approved the same.

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

1. Respondent Ralph H. Miller, Inc., is a corporation 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 505 Eighth Avenue, New York, New York.

Individual respondent Ralph H. Miller is an officer of said corporation and controls, directs and formulates the acts, practices and policies of the said corporation. His office and principal place of business 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, 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 respondents herein; that the complaint states a legal cause for complaint under the Federal Trade Commission Act and the Fur Products Labeling Act and the Rules and Regulations promulgated by the Commission under the latter Act, against the respondents both generally and in each of the particulars alleged therein; that this proceeding is in the interest of the public; that the following order as proposed in said agreement is appropriate for the just disposition of all of the issues in this proceeding as to all of the parties hereto; and that said order therefore should be, and hereby is, entered as follows:

ORDER

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

1. 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 sub-sections of Section 5(b)(1) of the Fur Products Labeling Act.

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 29th day of September, 1959, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Ralph H. Miller, Inc., a corporation, and Ralph H. Miller, individually and as an officer thereof, 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

PRINCE MACARONI MANUFACTURING CO. ET AL.

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

Docket 7513. Complaint, June 10, 1959—Decision, Sept. 30, 1959

Consent order requiring Lowell, Mass., manufacturers to cease advertising falsely that their macaroni was a low-calorie food, with lower starch and higher protein content than comparative products, and that consumption thereof would result in loss of weight.

Mr. Frederick McManus for the Commission.

INITIAL DECISION BY WALTER R. JOHNSON, HEARING EXAMINER

In the complaint dated June 10, 1959, the respondents are charged with violating the provisions of the Federal Trade Commission Act.

On July 29, 1959, the respondents entered into an agreement with counsel in support of the complaint for a consent order.

Under the foregoing agreement, the respondents admit the jurisdictional facts alleged in the complaint. The parties agree, among other things, that the cease and desist order there set forth may be entered without further notice and have the same force and effect as if entered after a full hearing and the document includes a waiver

by the respondents of all rights to challenge or contest the validity of the order issuing in accordance therewith. The agreement further recites that it is for settlement purposes only and does not constitute an admission by the respondents that they have violated the law as alleged 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 Prince Macaroni Manufacturing Co. is a corporation organized, 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 Prince Avenue, in the City of Lowell, State of Massachusetts.

Respondents Joseph Pellegrino, Anthony J. Cantella, Ugo Trio and Salvatore Cantella are officers of the corporate respondent. These individuals formulate, direct and control the acts and 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, Prince Macaroni Manufacturing Co., a corporation, and its officers, and Joseph Pellegrino, Anthony J. Cantella, Ugo Trio and Salvatore Cantella, individually and as officers of said corporation, and respondents' agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of Prince Macaroni, or any other product of substantially similar composition, whether sold under the same name or under any other name, do forthwith cease and desist from:

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

a. Said product is a low calorie food.

b. The starch content in said product is less than in other macaroni products.

c. The protein content of said product is higher than in other macaroni products.

d. The consumption of said product will result in the loss of body weight.

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 product preparation, 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 30th day of September, 1959, become the decision of the Commission; and, accordingly:

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

IN THE MATTER OF

MAURICE J. FEIL ET AL. TRADING AS THE ENURTONE COMPANY

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

Docket 6564. Complaint, June 7, 1956—Decision, Oct. 2, 1959

Order requiring a Beverly Hills, Calif., concern to cease advertising falsely that its "Enurtone" device would stop all cases of bed wetting.

Mr. John J. McNally for the Commission.

Mr. Harold Easton, Mr. Theodore J. Elias and *Mr. Robert B. Hudson*, all of Los Angeles, Calif., for respondents.

INITIAL DECISION BY EARL J. KOLB, HEARING EXAMINER

This proceeding is before the undersigned hearing examiner for final consideration of the complaint, as amended, answer thereto,

testimony and other evidence and proposed findings as to the facts and conclusions and briefs in support thereof presented by counsel. The hearing examiner has given consideration to the proposed findings of fact and conclusions of law submitted by both parties, and all findings of fact and conclusions of law proposed by the parties respectively, not hereinafter specifically found or concluded, are herewith rejected, and the hearing examiner having considered the record herein and being now fully advised in the premises makes the following findings as to the facts and conclusions drawn therefrom and order:

1. Respondents Maurice J. Feil and Leo A. Loeb are copartners trading as The Enurtone Company, with their principal place of business located at 324 South Beverly Drive, Beverly Hills, California.

2. Respondents, since 1949 up to the present time, have been engaged in the leasing of a device designated as "Enurtone" for use in cases of enuresis or bed-wetting. Up until 1951 respondents traded as King Research Laboratories, at which time they commenced trading under their present trade name of The Enurtone Company.

3. In the course and conduct of their business respondents have caused said "Enurtone" device, when leased, to be transported from their place of business in the State of California to lessees located in various States of the United States, who, in turn, rent said device to members of the general public. Respondent maintain, and at all times mentioned herein have maintained, a substantial course of trade in the leasing of said devices in commerce between the various states of the United States.

4. In the course and conduct of their business and in order to induce the leasing and rental of their said device, respondents have represented by means of statements in advertisements inserted in newspapers and in circulars and other forms of advertising matter that the use of said device will stop bed-wetting and correct the bed-wetting habit. Respondents have on occasion furnished certain of said advertising matter to their lessees, who, in turn, make use of it in soliciting the rental of said device to members of the general public.

5. The Enurtone device consists of a metal and rubber pad and control box which is plugged into an electrical circuit. The pad is placed under the child with a bed sheet in between. At the onset of micturition the moisture closes the circuit causing a bell to ring and a light to light. The bell awakens the child and the purpose of the light is to let him know that he is in familiar surroundings so that he can go to the toilet and empty his bladder. The Enurtone

device is protected by letters patent issued to Dr. H. Wright Seiger and assigned by him to the respondents. There are other persons, firms and corporations who advertise and sell or lease devices which purport to operate on the same principle in competition with the respondents in interstate commerce.

6. The complaint, as amended, charges that the use of the respondents' "Enurtone" device will not be effective in stopping bed-wetting or correcting the bed-wetting habit:

(a) In cases involving organic defects or diseases;

(b) In cases of functional bed-wetting involving emotional tensions.

7. Enuresis is a medical term for bed-wetting. It can be divided into two general classifications—organic and functional. Organic enuresis ranges from infections of the urinary tract to congenital abnormalities and obstructions of the urinary tract. About 15 percent of the enuretics fall within this classification. Functional enuresis is due to slow maturation, habit, or emotional disturbances. Maturation is a normal function, a normal growth and development of the child. Maturation in relation to enuresis has to do with the normal ability of the child to prevent urination in bed without his knowledge. The urinary bladder has its nervous system and its muscle system and usually is fairly well matured by the time the child is four to six years old. In some children this maturing process may be earlier, and in others it may be delayed. Enuresis may also be due to careless habits rather than lack of maturation, and also due to emotional disturbances which either cause the enuresis or arise from the enuresis itself.

8. The use of respondents' device will have no effect upon organic enuresis. This device cannot change or correct any abnormality causing enuresis and will not be effective in removing or curing any underlying cause of organic disease. It is contended by the respondents that their device might be effective where bed-wetting is co-existent with organic conditions or where the bed-wetting persists after the organic cause has been removed. Neither the incidence of co-existence nor the persistence of bed-wetting after removal of the organic cause are sufficient to be significant. To permit unsupervised use of respondents' device in organic conditions on the off chance that the enuretic condition is co-existent with the organic condition might cause a delay in the proper treatment of the organic condition. Generally, when the organic cause has been removed, normal functioning follows, resulting in the disappearance of the enuretic condition.

9. The use of respondents' device in functional enuresis is considered to be effective except where emotional tensions exist. This has been described as where tension exists between the parent and child and the child is using bed-wetting to strike back at the parent or where tension exists as a result of the bed-wetting. In some instances the child may be ready to give up bed-wetting, but because of the tension can find no face-saving device for doing so. Where the emotional problem between parent and child arises from the bed-wetting, it is possible that by removing the enuresis through the use of the respondents' device the emotional problem itself will disappear. In those cases where the enuresis arises from the existing emotional tension and the child wants to be cooperative, the use of the respondents' device might serve as a face-saving medium to terminate bed-wetting. The use of the respondents' device would be of no value in those cases where the child is using the bed-wetting to strike back at the parents with no inclination to discontinue. In such circumstances psychiatric treatment of the whole family or the application of an old-fashioned remedy might be indicated. It is the opinion of the hearing examiner that public interest does not require a limitation of the use of respondents' device in functional enuresis because in some instances the subject may not be amenable to discipline.

CONCLUSIONS

1. The use by the respondents and their lessees of the representations hereinabove described, containing materially misleading statements and representations as to the effectiveness of respondents' device when used in connection with organic enuresis, has had and now has the tendency and capacity to mislead substantial numbers of the public into the erroneous belief that such statements and representations are true and to induce a substantial number of the members of the public to lease respondents' device because of such erroneous beliefs.

2. To the extent that the acts and practices of the respondents constitute, representations that the use of their device will be effective in the treatment of organic enuresis, such representations constitute unfair and deceptive acts and practices and unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

3. The record in this proceeding fails to establish that the incidence of failure of respondents' device in cases of functional enuresis is such as to require the respondents to qualify representa-

tions as to the effectiveness of their device when clearly limited to cases of other than organic enuresis.

ORDER

It is ordered, That respondents Maurice J. Feil and Leo A. Loeb, individually and as co-partners trading as The Enurtone Company, or trading under any other name or names, and their respective agents, representatives, employees and lessees, directly or through any corporate or other device in connection with the offering for sale, sale, leasing or distribution of a device known as "Enurtone," or any other device which functions in substantially the same manner, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or indirectly:

That the use of said device is of value in stopping bed-wetting or correcting the bed-wetting habit, unless expressly limited in a clear and conspicuous manner to cases of bed-wetting not involving organic defects or diseases.

OPINION OF THE COMMISSION

By KERN, *Commissioner:*

In his initial decision, the hearing examiner held that the respondents have engaged in unfair and deceptive acts and practices within the meaning of the Federal Trade Commission Act. Counsel supporting the complaint in appealing from that decision, among other things contends that the order to cease and desist contained therein is deficient and should be modified.

We are confronted here with a problem as old as the ages. It has for centuries plagued most of the inhabitants of most of the nations of the world other than those whose cultures omitted the use of beds. Ever since man began to evolve behavior patterns in civilizations growing increasingly complex, and which, in most instances, included houses and beds, he has been disturbed by his progeny's wetting of the latter. We learn from this proceeding that there is probably no universal panacea for anything in this troubled world, including bed-wetting. The respondents in mistaken self confidence represented in their advertising that they had the problem whipped. It is our conclusion, based on the record before us, that they did "but strut in pride and vaunt their empty claims."

The record discloses that respondents lease a device designated as "Enurtone" to lessees located in various states of the United States.

The lessees in turn rent the devices to members of the general public for use in cases of bed-wetting. Bed-wetting, scientifically known as enuresis, can be divided into two general classifications, organic and functional. The complaint, as amended, charges that in advertisements for inducing leasing and renting of the device, the respondents have represented that such device will stop bed-wetting and correct the bed-wetting habit in all cases; and it further alleges that the statements in that respect are false and deceptive inasmuch as the device will not be effective in stopping bed-wetting in cases involving organic defects or diseases or in cases in the functional category of bed-wetting which involve emotional tension. In the initial decision, the hearing examiner held that the respondents' advertising has contained materially misleading statements and representations as to the effectiveness of the device when used in connection with organic enuresis but he further found that the public interest does not require a limitation on claims for efficacy in cases of functional enuresis. The order contained in the initial decision to which counsel's appeal excepts directs that the respondents cease and desist from representing directly or indirectly:

That the use of such device is of value in stopping bed-wetting or in correcting the bed-wetting habit in cases of enuresis involving organic defects or diseases.

The above language is susceptible to a construction that the order's proscriptions are limited to specific claims that the device will be of value in stopping or correcting cases of bed-wetting involving organic defects or diseases. There, accordingly, is no assurance that the order would be understood to forbid continuance of general statements and representations that the device will be effective in stopping or correcting bed-wetting. The public interest plainly requires that such claims or promises for helping enuretics as may be used in respondents' future promotional matter be limited to cases of enuresis for which benefits reasonably may be expected to be afforded. That a requirement restricting such claims to enuresis cases of the type known to the medical or scientific fraternity as functional would not afford adequate guidance to the public as to the limitations of the device is obvious, however, and warrants no further comment. Hence, the order should be phrased so as to forbid representations of product value in stopping or correcting bed-wetting unless expressly limited to cases not involving organic defects or diseases. The order to cease and desist is being modified accordingly.

In the third numbered paragraph of the section designated in the initial decision as "Conclusions" the hearing examiner stated that the record fails to establish that the incidence of failure of respondents' device in cases of functional enuresis is such as to require respondents to qualify representations as to its effectiveness when limited to functional cases. To the extent that this statement may imply that adequate guidance would be afforded prospective purchasers were future claims for product value required to be expressly limited to functional enuresis, such conclusion is erroneous for reasons noted in the preceding paragraph. Hence, this conclusion of the initial decision also is being modified.

We also have considered the additional exceptions argued by counsel supporting the complaint in his appeal brief, these being referred to in the brief as secondary grounds of appeal. We deem those challenged rulings and findings of the hearing examiner to be free from substantial error, however, and this aspect of the appeal is being denied.

The brief submitted by counsel for respondents is designated "Answering Brief of Respondents and Respondents' Brief on Appeal." Although counsel for respondents seasonably filed notice of intention to appeal from the initial decision, respondents failed to file brief within thirty days after service of the initial decision as prescribed by Sec. 3.22(d) of the Commission's Rules of Practice for Adjudicative Proceedings. Respondents accordingly cannot be deemed to have perfected their appeal. Their brief, however, was filed within the time prescribed by the aforesaid rule for filing of answering briefs.

Under the Rules, no right is accorded counsel supporting the complaint to file brief in answer to the subjects argued in respondents' brief as appeal matters, that is, as bases for their contentions that this proceeding should be dismissed. Although we would be warranted under our rules in limiting our consideration of the brief of respondents to the matters urged in opposition to the appeal of counsel supporting the complaint, we nevertheless have reviewed the record in light of the brief's above-mentioned additional contentions. The Commission has determined, however, that the findings contained in the initial decision are based on the greater weight of the evidence received into the record and that the initial decision is otherwise free from substantial error save as to the matters previously discussed and respecting which the initial decision is being duly modified.

Respondents' contentions of error are accordingly rejected. The initial decision, modified as noted above, is being adopted as the decision of the Commission.

FINAL ORDER

This matter having been heard by the Commission upon the appeal filed by counsel supporting the complaint from the initial decision of the hearing examiner; and the Commission having rendered its decision denying the appeal in part and granting the appeal to the extent noted and having determined, for reasons stated in the accompanying opinion, that the initial decision should be modified:

It is ordered, That the sentence designated by the figure 3 appearing on page 5 of the initial decision be, and it hereby is, modified to read as follows:

3. The record in this proceeding fails to establish that the incidence of failure of respondents' device in cases of functional enuresis is such as to require the respondents to qualify representations as to the effectiveness of their device when clearly limited to cases of other than organic enuresis.

It is further ordered, That the order to cease and desist contained in the initial decision be, and it hereby is, modified to read as follows:

It is ordered, That respondents Maurice J. Feil and Leo A. Loeb, individually and as copartners trading as The Enurtone Company, or trading under any other name or names, and their respective agents, representatives, employees and lessees, directly or through any corporate or other device in connection with the offering for sale, sale, leasing or distribution of a device known as "Enurtone," or any other device which functions in substantially the same manner, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or indirectly:

That the use of said device is of value in stopping bed-wetting or correcting the bed-wetting habit, unless expressly limited in a clear and conspicuous manner to cases of bed-wetting not involving organic defects or diseases.

It is further ordered, That the initial decision, as modified herein, 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

DURHAM'S BUSINESS COLLEGE ET AL.

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

Docket 7500. Complaint, May 21, 1959—Decisions, Oct. 6, 1959

Consent orders requiring Texas distributors of a correspondence course in civil and criminal investigation, operating under the name of "Central Detective Academy," to cease making in advertising and through salesmen false claims concerning employment, demand, and wages for graduates of said courses, limitation and selection of enrollees, competency of instructors, organization, status and size of business, qualifications or status of its salesmen, and the independent status of two wholly owned collection agencies.

Mr. Terral A. Jordan for the Commission.
No appearances for the respondents.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

The Federal Trade Commission (sometimes also hereinafter referred to as the Commission) issued its complaint herein on May 21, 1959, charging the above-named respondents with having violated the provisions of the Federal Trade Commission Act in certain particulars.

On August 25, 1959, there was submitted to the undersigned hearing examiner of the Commission for his consideration and approval "Agreements Containing Consent Orders To Cease And Desist," which had been entered into by and between Elmond F. Gau, individually and as an officer of said corporate respondent, and Harburd E. Tarpley, an individual trading and doing business as Central Detective Academy, and counsel supporting the complaint, under date of August 14, 1959, subject to the approval of the Bureau of Litigation of the Commission, which had subsequently duly approved the same.

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

1. Respondent, Durham's Business College, is a corporation existing and doing business under and by virtue of the laws of the State of Texas. It formerly traded and did business as Central Detective Academy. Respondent Elmond F. Gau is an individual and is president of said corporate respondent. He also trades and does business

as All Purpose Acceptance Company and General Purpose Acceptance Company. Respondents' office and principal place of business is located at Room 1219, Texas National Bank Building in the City of Houston, State of Texas. Respondent Harburd E. Tarpley, is an individual trading and doing business as Central Detective Academy with his office and principal place of business located at 2020 Live Oak Street, in the City of Dallas, Texas.

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. These agreements dispose of all of this proceeding as to said respondents Durham's Business College, Elmond F. Gau and Harburd E. Tarpley. It is stipulated and agreed for the purposes of this proceeding that on or about August 5, 1957, respondent Durham's Business College sold and transferred the ownership and management of the business conducted under the style of Central Detective Academy to respondent Harburd E. Tarpley and that since that time said Harburd E. Tarpley has had no connection whatsoever with Durham's Business College. It is accordingly agreed that the complaint insofar as it relates to respondent Harburd E. Tarpley in connection with respondent Durham's Business College should be dismissed.

It is further stipulated and agreed that the complaint should be dismissed as to respondents Howard G. Patterson and J. S. Talbert for the reasons set forth in the attached affidavit by Elmond F. Gau which is made a part hereof and incorporated herein.

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 orders to cease and desist entered in accordance with these agreements.

5. The record on which the initial decisions and the decisions of the Commission shall be based shall consist solely of the complaint and these agreements.

6. These agreements shall not become a part of the official record unless and until they become a part of the decision of the Commission.

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

ORDER

It is ordered, That Durham's Business College, a corporation, and its officers, and Elmond F. Gau, individually and as an officer of said corporate respondent, and also trading and doing business as All Purpose Acceptance Company and General Purpose Acceptance Company, or under any other name, and Harburd E. Tarpley, an individual trading and doing business as Central Detective Academy, or under any other name, 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 courses of study and instruction, including a course of study and instruction in civil and criminal investigation, or the supplies and equipment used in connection therewith, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or indirectly, that:

1. Persons completing said course of study and instruction in civil and criminal investigation will be employed by respondents or that employment will be secured by respondents for such persons as civil or criminal investigators; or that persons completing said courses of study and instruction will be employed by respondents or employment will be secured by respondents for such persons in any occupation or profession unless such is the fact;

2. There is a great demand by persons, firms or corporations to employ persons completing said course of instruction in civil and criminal investigation as civil or criminal investigators; or that the demand or need for persons completing said courses of study and instruction is greater than it is in fact;

3. Persons completing said course of study and instruction in civil and criminal investigation will be employed by respondents or employment will be secured by respondents for such persons as civil or criminal investigators at wages of $4.00 per hour; or that persons completing said courses of study and instruction will be employed by respondents or employment will be secured by respondents at wages or other compensation greater than will be in fact paid to such persons;

4. The number of persons accepted for enrollment in said course of study and instruction in civil and criminal investigation is limited or restricted; or that enrollment in said courses is limited or restricted to a degree greater than is the fact;

5. Persons accepted for enrollment in said course of study and instruction in civil and criminal investigation are specially selected; or that persons accepted for enrollment in said courses of study and instruction are specially selected unless such is the fact;

6. Persons enrolled in said course of study in civil and criminal investigation perform their studies under the tutelage and guidance of persons trained, competent and proficient in the art of teaching and in the profession of civil and criminal investigation; or that persons enrolled in said courses of study and instruction are under the tutelage and guidance of persons possessing experience, training or other qualifications different or greater than is the fact;

7. Central Detective Academy is or has been a divsion of a college or institution of higher learning; or that said courses of study and instruction are offered by an organization having an academic status or affiliation different or greater than is the fact;

8. Central Detective Academy is the largest institution in the United States for the instruction and training of civil and criminal investigators; or that said courses of study and instruction are offered by an organization of a size or status different or greater than is the fact;

9. Persons offering said course of study in civil and criminal investigation for sale are civil or criminal investigators; or that persons offering said courses of study and instruction for sale have any training, experience, qualifications or status other or different from that which they have in fact;

10. All Purpose Acceptance Company or General Purpose Acceptance Company are independent or separate organizations from the said business enterprise operated under the name of Central Detective Academy or are innocent purchasers for value of the promissory notes executed by enrollees in said course of instruction in civil and criminal investigation; or that any collection agency is an independent or separate organization or an innocent purchaser for value of promissory notes executed by enrollees in said courses of instruction when it is in fact owned, operated or controlled by respondents.

It is further ordered, That the complaint, insofar as it relates to respondent Harburd E. Tarpley in connection with respondent Durham's Business College be, and the same hereby is, dismissed and that the complaint be, and the same hereby is, dismissed as to respondents Howard G. Patterson and J. S. Talbert.

DECISIONS OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

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

It is ordered, That respondents Durham's Business College, a corporation, Elmond F. Gau, individually and as an officer of said corporate respondent, and Harburd E. Tarpley, an individual trading and doing business as Central Detective Academy, shall, within sixty (60) days after service upon them of these orders, file with the Commission reports in writing, setting forth in detail the manner and form in which they have complied with the orders to cease and desist.

IN THE MATTER OF

MARKS FURS, INC., ET AL.

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

Docket 7383. Complaint, Feb. 2, 1959—Decision, Oct. 7, 1959

Consent order requiring a furrier in Detroit, Mich., to cease violating the Fur Products Labeling Act by failing to set forth such terms as "Dyed Mouton-processed Lamb" and "secondhand" or "used fur" where required on labels and invoices and in advertising, and by failing in other respects to comply with labeling and invoicing requirements; failing to disclose in advertising the names of animals producing certain furs or the country

of origin, and to disclose when products contained used, artificially colored, cheap, or waste fur; representing selling prices as reduced from regular prices which were in fact fictitious, and falsely representing percentage savings; and failing to maintain adequate records as a basis for such pricing claims.

Mr. Thomas A. Ziebarth for the Commission.
Mr. Samuel Greenbaum, of Detroit, Mich., for respondents.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The complaint charges respondents with misbranding and falsely and deceptively invoicing and advertising certain of their fur products, and with failing to maintain full and adequate records disclosing the facts upon which were based certain pricing and saving claims and representations made by respondents in advertisements of said fur products, in violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder, and of the Federal Trade Commission Act.

After the issuance of the complaint, respondents, their counsel, and counsel supporting the complaint entered into an agreement containing consent order to cease and desist, which was approved by the Director and an Acting Assistant Director of the Commission's Bureau of Litigation, and thereafter transmitted to the Hearing Examiner for consideration.

The agreement states that respondent Marks Furs, Inc., 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 1211 Griswold Street, Detroit, Michigan, and that individual respondents Abe Abeloff and David Glanzrock are president and vice president, respectively, of said corporate respondent, and have the same address as the 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 com-

plaint; 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 Fur Products Labeling Act and the Rules and Regulations promulgated thereunder, and of the Federal Trade Commission Act. Accordingly, the hearing examiner finds this proceeding to be in the public interest, and accepts the agreement containing consent order to cease and desist as part of the record upon which this decision is based. Therefore,

It is ordered, That Marks Furs, Inc., a corporation, and its officers, and Abe Abeloff and David Glanzrock, 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, offering for sale, transportation or distribution in commerce, of fur products; or in connection with the sale, advertising, offering for sale, transportation, or distribution of fur products which have been made in whole or in part of fur which has been shipped and received in commerce, as "commerce," "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

1. Misbranding fur products by:

A. 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 §4(2) of the Fur Products Labeling Act;

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

C. Setting forth on labels affixed to fur products:

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

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

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

D. Failing to set forth the term "Dyed Mouton-processed Lamb" in the manner required;

E. Failing to disclose that fur products contain or are composed of "secondhand" or "used fur," when such is the fact;

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

2. Falsely or deceptively invoicing fur products by:

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

B. Failing to set forth on each invoice the item number or mark assigned to a fur product;

C. Setting forth on any invoice required information in abbreviated form;

D. Failing to set forth the term "Dyed Mouton-processed Lamb" in the manner required;

E. Failing to disclose that fur products contain or are composed of "secondhand" or "used fur," when such is the fact;

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

A. Fails to disclose:

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

2. That the fur product is composed of used fur when such is the fact;

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

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

5. The name of the country of origin of any imported furs contained in a fur product;

B. Sets forth the name "Hudson Seal" or any other coined or fictitious name in place of the name or names of the animal or animals specified in §5(a)(1) of the Fur Products Labeling Act;

C. Fails to set forth the term "Dyed Broadtail processed Lamb" in the manner required;

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

E. Represents, directly or by implication, 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 fact;

F. Fails to disclose that fur products contain or are composed of "secondhand" or "used fur," when such is the fact;

4. Making price claims and representations of the types referred to in paragraphs D and E above unless respondents maintain full and adequate records disclosing the facts upon which such claims or representations are based.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 7th day of October, 1959, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Marks Furs, Inc., a corporation, and Abe Abeloff and David Glanzrock, 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

WESTINGHOUSE ELECTRIC CORPORATION ET AL.

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

Docket 7150. Complaint, May 14, 1958—Decision, Oct. 13, 1959

Consent order requiring a major manufacturer of electrical appliances, among other products, to cease violating Sec. 2(a) of the Clayton Act by selling consumer goods to competing purchasers at such price differences as the following: Electric refrigerators up to 20%, electric laundermats up to 31.8%, electric ranges up to 22.2%, and electric clothes dryers up to 19.4%;

and to cease violating Sec. 2(d) of the Clayton Act by making disproportionate payments to retailers for newspaper, television, and radio advertising under its "Co-operative Advertising Procedure," and also by paying to some retail customers but not to their competitors, allowances for newspaper advertising in excess of amounts authorized by said "Co-operative" plan and bearing no relation to the actual rates charged.

COMPLAINT

The Federal Trade Commission, having reason to believe that Westinghouse Electric Corporation and Westinghouse Electric Supply Company have violated and are now violating the provisions of sub-sections (a) and (d) of Section 2 of the Clayton Act (15 U.S.C.A., Section 13, as amended) hereby issues its complaint charging as follows:

COUNT I

PARAGRAPH 1. Respondent Westinghouse Electric Corporation is a corporation organized, existing, and doing business under and by virtue of the laws of the Commonwealth of Pennsylvania, with its principal office located at 401 Liberty Avenue, Pittsburgh, Pennsylvania.

PAR. 2. Respondent Westinghouse Electric Supply Company is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal office located at 40 Wall Street, New York 5, New York.

PAR. 3. Respondent Westinghouse Electric Supply Company is a wholly owned subsidiary of respondent Westinghouse Electric Corporation. For brevity the parent corporation will hereinafter be referred to as WELCO and the subsidiary as WESCO.

PAR. 4. Respondent WELCO is a major manufacturer in the United States of apparatus and general industrial products, defense products, and consumer products. Included among respondent WELCO's consumer products are electric appliances which it manufactures at its factories located at Mansfield, Newark, and Columbus, Ohio, and East Springfield, Massachusetts, and television and home radio receivers manufactured at its factories located at Sunbury, Pennsylvania, and Metuchen, New Jersey.

Included among such electric appliances are electric ranges, refrigerators, laundermat automatic washing machines, dishwashers, water heaters, clothes dryers, domestic and commercial refrigerator units, waste-away units, fans, and vacuum cleaners.

PAR. 5. Respondent WESCO is engaged in the business of selling the consumer products manufactured by respondent WELCO and to some extent by other manufacturers. In the furtherance of its sales

activities respondent WESCO maintains 124 branch offices and warehouses located in principal cities throughout the United States. Said respondent's sales of electric appliances which it acquires from respondent WELCO and other manufacturers for the most part are made to retail dealers who resell to consumers.

The sales and other activities of respondent WESCO, including the acts and practices hereinafter to be alleged were and under the direction, supervision, and control of respondent WELCO; and both said corporations are jointly and severally named as respondents herein.

PAR. 6. In the course and conduct of their business respondents WELCO and WESCO are now and for many years have been engaged in commerce, as "commerce" is defined in the Clayton Act, as amended. Respondents ship or cause to be shipped and transported their consumer products in a constant current of commerce from the state or states where such products are manufactured, or are temporarily stored in anticipation of sale and shipment, to purchasers located in other states and in the District of Columbia for use, consumption, or resale therein.

PAR. 7. In the course and conduct of their business in commerce respondents have discriminated in price in the sale of consumer products by selling such products of like grade and quality at different prices to different and competing purchasers.

Included among such sales at discriminatory prices are those which respondents made to retail dealers in which respondents charged substantially higher prices for electric appliances than was charged by respondents to other competing retail dealer-purchasers for such products of like grade and quality.

Instances of such discriminatory practices during the year 1956 are as follows: Respondents' price differences in the sale of electric refrigerators, Model TFJ-115, to different and competing retailer-purchasers amounted to as much as 20% of the price to the least favored competing purchaser.

Respondents' electric laundermats, Model L-9, were sold by respondents to different and competing retailer-purchasers at price differences amounting to as much as 31.8% of the price to the least favored competing purchaser.

Respondents' electric ranges, Model EJ, were sold by respondents to different and competing retailer-purchasers at price differences amounting to as much as 22.2% of the price to the least favored competing purchaser.

Respondents' electric clothes dryers, Model D-8-M, were sold by respondents to different and competing retailer-purchasers at price

differences amounting to as much as 19.4% of the price to the least favored competing purchaser.

PAR. 8. The effect of said discriminations in price by respondents in the sale of consumer products including electric appliances has been or may be substantially to lessen, injure, destroy, or prevent competition between respondents' retailer-purchasers paying such higher prices and their favored retailer competitors paying such lower prices.

PAR. 9. The discriminations in price as herein alleged are in violation of the provisions of sub-section (a) of Section 2 of the Clayton Act, as amended.

COUNT II

PAR. 10. Paragraphs 1 through 6 of Count I hereof are hereby set forth by reference and made a part of this Count as fully and with the same effect as if quoted herein verbatim.

PAR. 11. In the course and conduct of their business in commerce, respondents have paid or contracted for the payment of money, goods, or other things of value to or for the beneft of some of their customers as compensation or in consideration for services or facilities furnished or agreed to be furnished by or through such customers in connection with the handling, sale, or offering for sale of respondents' consumer products, including electric appliances, television and home radio receivers; and respondents have not made or contracted to make such payments, allowances, or considerations available on proportionally equal terms to all of its other customers competing in the sale and distribution of such products.

Respondents have executed, carried out, and put into effect discriminatory and disproportionate advertising practices in a variety of ways. The following are instances of such practices:

With respect to the advertisement by retailers of respondents' electric appliances during the year 1956, and subsequently, respondents had in effect a purported "Co-operative Advertising Procedure" with respect to the advertisement of respondents' "major appliances." Under said procedure respondents authorized payments to retailers for the advertisement of their electric appliances to the extent of 50% of the amounts approved by respondents for the advertisement of such products up to 1¼% of the suggested list price of such merchandise purchased by the retailer. Such authorizations included newspaper, television, and radio advertising, but not such charges as art work, type setting, writing service, layout, etc., in connection with newspaper advertisements. Respondents' said "Co-operative Advertising Procedure" contemplated the advertisement by

retailers of other products offered for sale and sold by respondents, including television and home radio receivers upon the basis of their pro rata share of the total cost of the advertisement.

Newspaper, radio, and television advertising placed by retail dealers is in some instances approved by respondents, and respondents' share of such advertising is computed, in certain instances, on the basis of national rates and, in other instances, upon local rates. This procedure, in many instances, results in disproportional payments by respondents for advertising between competing retail customers.

Respondents also pay advertising allowances to some of their retail customers based upon charges made by such customers for lineage or space per column inch in newspapers which are greater than, and have no relation to, actual rates or charges made by newspapers for the lineage or space used, while not making such payments available on proportionally equal terms to all other competing retail customers. Such payments by respondents in some instances substantially assist said favored retailers in defraying the expenses of their advertisement departments. In some instances the cost to respondents of advertising placed in newspapers is 75% or more of the total cost and is in excess of amounts authorized by respondents' "Cooperative Advertising Procedure" and accorded to other competing customers.

PAR. 12. The acts and practices as alleged in Paragraph Eleven herein are in violation of sub-section (d) of Section 2 of the aforesaid Clayton Act, as amended.

Mr. William H. Smith and *Mr. James R. Fruchterman* supporting the complaint.

Cravath, Swaine & Moore, of New York City, for respondents.

INITIAL DECISION BY JOHN B. POINDEXTER, HEARING EXAMINER

On May 14, 1958, the Federal Trade Commission issued a complaint charging Westinghouse Electric Corporation, a corporation (hereinafter referred to as WELCO) and Westinghouse Electric Supply Company, a corporation, (hereinafter referred to as WESCO) with having violated the provisions of Sub-sections (a) and (d) of Section 2 of the Clayton Act (15 U.S.C.A. Section 13), as amended by the Robinson-Patman Act.

After issuance and service of the complaint respondent WELCO, its counsel and counsel supporting the complaint entered into an agreement for a consent order. In said agreement it is recommended that the complaint be dismissed as to respondent WESCO. The agreement disposes of the matters complained about and the agree-

ment has been approved by the Director of the Bureau of Litigation.

The pertinent provisions of said agreement are as follows: Respondent WELCO 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, except insofar as such facts relate to respondent WESCO, which was liquidated as of March 31, 1958, pursuant to a plan of liquidation providing, among other things, for the transfer of its assets and properties to and the assumption of its debts and liabilities, if any, by respondent WELCO. 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 WELCO waives the requirement that the decision must contain a statement of findings of fact and conclusions of law; respondent WELCO 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 WELCO 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 WELCO 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 Westinghouse Electric Corporation is a corporation organized, existing, and doing business under and by virtue of the laws of the Commonwealth of Pennsylvania, with its principal office located at 401 Liberty Avenue, Pittsburgh, Pennsylvania.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding, and of respondent WELCO. The complaint states a cause of action against respondent WELCO under the Clayton Act, as amended by the Robinson-Patman Act.

ORDER

It is ordered, That Westinghouse Electric Corporation, a corporation, its officers, representatives, agents and employees, directly or through any corporate or other device, in connection with the sale of major home appliances, consisting of refrigerators, freezers, dehumidifiers, room air conditioners, ranges, water heaters, laundry equipment, dishwashers, food waste disposers, and accessories and renewal parts therefor, in commerce, as "commerce" is defined in the Clayton Act (U.S.C. Title 15, Section 13), as amended, cease and desist from:

(1) Discriminating, directly or indirectly, in the price of major home appliances of like grade and quality by selling major home appliances to any purchaser at net prices which are higher than the net prices charged to other purchasers competing in fact in the resale or distribution of such appliances.

(2) Making, or contracting to make, to or for the benefit of any customer, any payment of anything of value as compensation or in consideration for any advertising or other services or facilities furnished by or through such customer in connection with the handling, resale, or offering for resale of respondent's major home appliances unless such payment or consideration is affirmatively offered or otherwise made available on proportionally equal terms to all other customers competing in fact in the resale or distribution of such appliances.

It is further ordered, That the complaint herein, in so far as it relates to respondent Westinghouse Electric Supply Company be, and it hereby is dismissed.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 13th day of October, 1959, become the decision of the Commission; and, accordingly:

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

Decision

IN THE MATTER OF

BELTONE HEARING AID COMPANY ET AL.

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

Docket 7359. Complaint, Jan. 14, 1959—Decision, Oct. 15, 1959

Consent order requiring Chicago manufacturers of hearing aids to cease representing falsely in advertising that their "Hear-N-See" and "Slimette" hearing aid devices have no attached buttons, wires, or cords, were invisible, and were hidden in eyeglasses; that their "Invisible" hearing aid was completely hidden when worn and therefore was invisible, and was their own invention; and that their advertising booklet was offered as a valuable public service to the hard of hearing.

Mr. Morton Nesmith and *Mr. Kent P. Kratz* for the Commission.
Crowell & Leibman, Mr. Robert E. Mason, Jr. of Counsel, of Chicago, Ill., for respondents.

INITIAL DECISION BY EVERETT F. HAYCRAFT, HEARING EXAMINER

On January 14, 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 and sale of hearing aids, which come within the classification of devices, as the term "device" is defined in the Federal Trade Commission Act. Among said devices are those designated as "Hear-N-See," "Slimette" and "Invisible." On August 17,1959, respondents Beltone Hearing Aid Company, a corporation, by its duly authorized officer, and Sam F. Posen, and Fannie Posen, individually and as officers of said corporation, and their attorney 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.

It is set out in the agreement that David H. Barnow is not an officer of the corporation and owns only a very small amount of its stock, and the said agreement contains a recommendation that the complaint be dismissed as to this individual respondent. These facts and additional facts disassociating David H. Barnow from the activities and affairs of the corporate respondent are set out in an affidavit executed by Sam F. Posen, President, Beltone Hearing Aid Company, which is attached to and made a part of the agreement. The term "respondents," as hereinafter used, does not include David H. Barnow.

Under the foregoing agreement, the respondents admit the jurisdictional facts alleged in the complaint. The parties agree, among other things, that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of this agreement, the complaint and the statement filed April 29, 1959 (signed April 28, 1959) by counsel supporting the complaint as ordered by the hearing examiner on April 14, 1959, and that the cease and desist order set forth in the agreement 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, 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, and that the complaint and the statement filed April 29, 1959, as ordered by the hearing examiner, may be used in construing the terms of the order.

This proceeding having now come on for final consideration by the hearing examiner on the complaint, the aforesaid agreement for consent order and the statement filed April 29, 1959, as ordered by the hearing examiner, and it appearing that said agreement provides for an appropriate disposition of this proceeding as to all parties, 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 the agreement, the hearing examiner makes the following jurisdictional findings and order:

1. Respondent Beltone Hearing Aid Company is a corporation, existing and doing business under and by virtue of the laws of the State of Illinois with its office and principal place of business located at 2900 West 36th Street, Chicago 32, Illinois.

Respondents Sam F. Posen and Fannie Posen are officers of corporate respondent. They are responsible for the formulation, direction and control of the acts and practices of 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 said respondents. 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 Beltone Hearing Aid Company, a corporation, and its officers, and Sam F. Posen and Fannie Posen, individually and as officers of said corporation, and respondents' agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of hearing aid devices, now known as "Hear-N-See," "Slimette," and "Invisible," or any other device of substantially the same construction or operation, whether sold under the same or any other model designation, do forthwith cease and desist from directly or indirectly:

A. Disseminating or causing to be disseminated any advertising by means of the United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of said products, which advertisement represents, directly or indirectly:

1. With respect to the "Hear-N-See" and "Slimette" hearing aids:

(a) That no buttons are attached to said hearing aids unless in close connection therewith and with equal prominence it is disclosed that an ear mold or plastic tip is inserted into the ear.

(b) That no wires or cords are attached to said hearing aids unless in close connection therewith and with equal prominence it is disclosed that a plastic tube runs from the device to the ear.

(c) That said hearing aids are invisible.

(d) That said hearing aids are completely hidden in eyeglasses.

2. With respect to the "Invisible" hearing aid:

(a) Through the use of said name or otherwise that said hearing aid is invisible when worn, provided, however, that this prohibition shall not be construed to prohibit respondents from representing that all hearing aid parts are concealed in the temple bars of a pair of eyeglasses when respondents can establish that such is the fact.

(b) That said hearing aid is a Beltone invention unless such is the fact.

3. That any booklet or other publication which consists in part of advertising of respondents' products is a public service booklet or publication unless in close connection therewith and with equal prominence it is disclosed that said booklet or publication also contains advertising.

B. Disseminating any advertisement by any means for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of respondents' products in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertise-

ment contains any of the representations prohibited in paragraph A herein.

It is further ordered, That the complaint be, and the same hereby is, dismissed as to respondent David H. Barnow.

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 15th day of October, 1959, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Beltone Hearing Aid Company, a corporation, and Sam F. Posen, and Fannie Posen, 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

TRANS-CONTINENTAL CLEARING HOUSE, INC., ET AL.

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

Docket 7146. Complaint, May 8, 1958—Decision, Oct. 20, 1959

Order requiring a Chicago concern to cease using deception to obtain advance fees for advertising real estate, including false claims that it had prospective buyers interested in the specific properties; that listed property would soon be sold through its efforts; that the property was underpriced and the asking price should be raised; that its sales representatives were bonded or insured; that it would finance or assist in financing purchase of the listed properties; that the listing fee was an advance on the selling commission and would be refunded if the property was not sold within a year; and that the property would be nationally advertised in newspapers, financial and business journals and periodicals, and radio and television broadcasts, and through associated real estate brokers.

Mr. John W. Brookfield, Jr., and *Mr. William A. Somers* for the Commission.

Mr. Sherman P. Appel, of Chicago, Ill., for respondents.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

1. The complaint in this matter charged the respondents with violation of the Federal Trade Commission Act in soliciting the list-

ing for sale and advertising of business properties. After the filing of respondents' answer, hearings were held at which evidence in support of the complaint was received, respondents electing to offer no evidence except certain documentary evidence offered during the course of their cross-examination of Government witnesses. Proposed findings and conclusions have been submitted (oral argument not having been requested), 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 Trans-Continental Clearing House, Inc., is a corporation organized and existing under the laws of the State of Illinois, with its office and principal place of business at 1260 North Dearborn Street, Chicago, Illinois. In addition to the use of its corporate name, the corporation has also traded under the names "National Commercial and Industrial Systems" and "American Commercial and Industrial Systems."

3. Respondent William G. Dudley is practically the sole owner of the business, being the owner of 99 percent of its capital stock. He is president of the corporation and formulates, directs and controls its policies and practices.

4. Respondent, William Bodemer, although owning less than 1% of the capital stock of the corporation, is a director and vice president of the corporation. He has testified that he is the "general manager" of the business and that he "sets up the procedure to carry out the policy of Trans-Continental Clearing House, Inc." He supervises the bookkeeping and advertising departments and is in charge of the operation whereby the firm communicates with various brokerage concerns. He also handles or supervises the handling of most of the customer correspondence, including that relating to refunds of advance fees, and is primarily responsible for screening customer applications obtained by the firm's salesmen. He has also participated in various unfair practices employed by the corporate respondent. In this connection, he collaborates with respondent Dudley in preparing contact advertising and in selecting the areas to which such material is to be sent. Such advertising contains the representation "Your Business Must Be Sold—Or We Defray All Costs," and is shown to be false and misleading since respondents require their customers to pay a listing fee which is rarely ever refunded if the business is not sold. Other literature prepared or disseminated under Bodemer's supervision contains deceptive representations as to the effectiveness of respondents' services in obtaining buyers for property listed with them.

5. Respondents are engaged in the business of soliciting the listing for sale and advertising of business properties. The businesses involved are usually small, including bakeries, grocery stores, restaurants, garages, shoe repair shops, etc. In conducting their business respondents send many pieces of advertising and promotional literature to prospective purchasers of their services who reside in states of the United States other than Illinois, such material usually being sent through the United States mails. Signed contracts and checks covering payments for respondents' services are constantly being received by respondents from such purchasers, or from respondents' representatives who have obtained such written instruments from purchasers. Respondents are thus engaged in extensive commercial intercourse in commerce, as "commerce" is defined in the Federal Trade Commission Act.

6. Upon receipt by respondents from a prospect of the return postal card supplied by respondents, one of their traveling solicitors or salesmen calls upon the prospect and undertakes to sell him respondents' services. If the solicitor is successful he collects from the customer or subscriber a substantial amount of money as a listing fee or service fee. The solicitors are supplied by respondents with identification cards, contract forms, and various pieces of promotional literature, and are also supplied with written authorization to cash checks given the solicitor by the subscriber. Upon obtaining a check, the solicitor usually proceeds immediately to the subscriber's bank and cashes the check, remitting the proceeds to respondents. The amount of the listing fee is always substantial, ranging from possibly $150.00 or $200.00 to $1,000.00 or even more, depending largely upon the amount agreed upon by the subscriber and the solicitor as the "asking" price for the property. Along with the issuance of the check, the subscriber signs a form of printed contract.

7. There is uncontradicted testimony from some 25 witnesses residing in various places in three states that in obtaining contracts and checks from them respondents' solicitors have made one or more of the following representations: (1) that respondents had available prospective buyers who were interested in the purchase of their specific property; (2) that their property would be sold within a short period of time as a result of respondents' efforts; (3) that the property was under-priced and that the asking price should be raised; (4) that respondents' sales representatives were bonded or insured; (5) that respondents would finance or assist in financing the purchase of the property; (6) that the listing fee or amount paid upon the signing of the contract was merely an advance on respondents' selling commission and would be refunded if the property

was not sold within a year; (7) that property listed with respondents would be nationally advertised in newspapers, in nationally known financial and business journals and periodicals, including the Wall Street Journal, Business Week, Newsweek and Barrons, by radio and television broadcasts and through real estate brokers associated with respondents.

8. These representations were false and misleading. While respondents maintain card indexes and files indicating parties who may be interested in purchasing certain types of businesses, respondents do not have available prospective purchasers for any specific property. Properties listed with respondents are seldom sold within a short period of time or at all; actually it is only in very rare instances that sales are made as a result of respondents' efforts.

9. Usually the property of the subscriber was not underpriced. This representation usually was made not in good faith but in order to provide a basis or excuse for increasing the amount of the listing fee to be paid by the subscriber. None of respondents' sales representatives are bonded or insured. Respondents have no facilities whatever for financing or assisting in financing the purchase of properties. Only in very rare instances have listing fees been refunded by respondents.

10. The newspaper advertising of listed property furnished by respondents consists of a four or five line insertion in a metropolitan newspaper and classified advertising in the customer's locality. The latter type of advertising cannot be considered national in scope nor can the placement of an advertisement in a metropolitan newspaper which, although distributed throughout the country, is not read generally outside of the area in which it was published. Respondents have placed advertising of property listed with them in only two of the well known financial and business journals and periodicals. A typical advertisement by respondents in such a publication consists of a grouping of some thirty to sixty listings together on a single page. In fact, not all customers receive even this limited form of advertising. Respondents have done no radio or television advertising whatsoever. Although respondents disseminate bulletins describing listed properties to several hundred brokers, these brokers are connected with respondents only to the extent that they have indicated that they would be willing to receive without cost the information set forth in the bulletins. They are not affiliated or associated with respondents and are not part of respondents' organization.

11. Respondents' principal defense is that there was always a written agreement or contract entered into between respondents and

the subscriber, that this contract governed the relationship between the parties, and that many of the witnesses testified that they understood that this would be the case. This defense is rejected. The present proceeding is not a civil action at law on the contract, but is a proceeding in the public interest directed at misrepresentations made for the purpose of inducing prospects to execute the contract and make the cash payment. No provisions in the contract can operate to justify or excuse the misrepresentation and deception here present.

12. The use by respondents of the representations herein found to be false and misleading has the tendency and capacity to mislead and deceive a substantial portion of the public into entering into contracts with respondents and paying over to respondents substantial sums of money. Respondents' acts and practices are therefore to the prejudice of the public and constitute unfair and deceptive acts and practices in commerce within the meaning of the Federal Trade Commission Act. The proceeding is in the public interest.

ORDER

It is ordered, That respondent, Trans-Continental Clearing House, Inc., a corporation, and its officers, and respondents, William G. Dudley and William Bodemer, individually and as officers of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the solicitation of the listing for sale and advertising of business properties or other properties, 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 respondents have available prospective buyers who are interested in the purchase of specific properties;

2. That property listed with respondents will be sold as a result of their efforts;

3. That property sought to be listed is underpriced or that the asking price should be raised, unless such is the fact;

4. That respondents' sales representatives are bonded or insured;

5. That respondents will finance or assist in financing the purchase of listed property;

6. That the listing fee or any other amount paid by the property owner will be refunded, unless refunds are in fact made by respondents in strict accordance with such representation;

7. That property listed with respondents will be nationally advertised in newspapers, financial or business publications, by radio or

television broadcasts, through real estate brokers associated with respondents, or by any other means.

OPINION OF THE COMMISSION

By TAIT, *Commissioner:*

This matter is before the Commission on the appeal of counsel supporting the complaint from the hearing examiner's initial decision in which he dismissed the complaint as to one of the officers of the corporate respondent in his individual capacity and dismissed one of the allegations of the complaint as to all of the respondents.

Respondents are charged with violation of Section 5 of the Federal Trade Commission Act in soliciting the listing for sale and advertising of business properties. The complaint is directed against Trans-Continental Clearing House, Inc., a corporation, and William G. Dudley and William Bodemer, individually and as officers of the corporation. The order to cease and desist contained in the initial decision runs against the corporation and against William G. Dudley in both his official and individual capacities, but dismisses the complaint as to William Bodemer as an individual. The hearing examiner found, in this connection, that Bodemer, while vice president of the corporation, owns only 1% of its capital stock, is active in the operation of the corporation only insofar as administrative detail is concerned and has little or nothing to do with the formulation and control of the corporation's policies and practices. He concluded, therefore, that Bodemer had been improperly joined in the proceeding in his individual capacity.

We are of the opinion that the finding upon which the hearing examiner based the dismissal of the complaint as to Bodemer greatly minimizes the importance of the functions performed by this individual. Bodemer's own testimony, as well as that of the respondent Dudley, clearly reveals that Bodemer's duties are not restricted to the handling of administrative details such as supervising office personnel and ordering supplies, as found by the hearing examiner. Bodemer testified that he is the "general manager" and that he "sets up the procedure to carry out the policy of Trans-Continental Clearing House, Inc." He supervises the bookkeeping and advertising departments and is in charge of the operation whereby the firm communicates with various brokerage concerns. Of greater importance, however, he collaborates with respondent Dudley in preparing contact advertising used by the firm and in selecting the areas to which such material is to be sent. Such advertising contains the representation "Your Business Must Be Sold—Or We Defray All Costs," and is

shown to be false and misleading since respondents require their customers to pay a listing fee which is rarely ever refunded if the business is not sold. He also handles or supervises the handling of most of the customer correspondence, including that relating to refunds of advance fees, and is primarily responsible for screening customer applications obtained by the firm's salesmen.

In *Federal Trade Commission* v. *Standard Education Society*, 302 U.S. 112, the Supreme Court held that officers, directors or stockholders of a corporation may be included in a Commission order to cease and desist when necessary for such order to be fully effective in preventing the unfair practice found to exist. Subsequent to that decision, the courts have repeatedly held that an officer of a corporation who is responsible for initiating unfair trade practices or who participates in the use of such practices may properly be included in the order in his individual capacity. *International Art Co.* v. *Federal Trade Commission*, 109 F. 2d 393; *Sebrone Co.* v. *Federal Trade Commission*, 135 F. 2d 676; *Parke, Austin & Lipscomb, Inc.* v. *Federal Trade Commission*, 142 F. 2d 437; *Steelco Stainless Steel, Inc.* v. *Federal Trade Commission*, 187 F. 2d 693; *Consumer Sales Corp.* v. *Federal Trade Commission*, 198 F. 2d 404. We think the evidence presented in this matter amply supports the finding that Bodemer, while acting in a supervisory capacity, participated in various operations and activities directly connected with certain of the unfair acts and practices utilized by the corporate respondent. It is our opinion that to this extent Bodemer is individually responsible for the corporate violations and should, therefore, be included in the order to cease and desist in his individual capacity.

The second exception to the initial decision relates to the dismissal of the charge that respondents falsely represented that property listed with them would be nationally advertised in newspapers, in nationally known financial and business journals and periodicals, by radio and television broadcasts, and through real estate brokers associated with respondents. The hearing examiner held that this allegation had not been sustained by the evidence.

The advertising material disseminated to property owners by respondents contains numerous representations to the effect that a business may be sold more readily by advertising on a nationwide scale than by promotional activities confined to the area in which the business is located. In this connection, they advise prospective customers in a booklet entitled "How To Successfully Sell A Business" that "surveys show the majority of businesses that change hands are sold to persons who come from cities and towns outside the locality

where the business is situated"; that "experience proves that the national 'marketplace' or 'clearing house' is the surest way to sell"; and that "local efforts fail to reach the majority of potential right buyers." Respondents' salesmen emphasize the advantages of listing property with a firm that will advertise nationally in newspapers, in well known financial and business publications, by radio and television and through affiliated brokerage concerns.

In view of these representations, the prospective customer may reasonably expect to receive extensive and effective national advertising through the various media specified by respondents. The record discloses, however, that the only advertising generally furnished by respondents is a four or five line insertion in a metropolitan newspaper, classified advertising in the customer's own locality, and a description of the property in a bulletin sent to independent brokers who had indicated a desire to receive such information. Respondents have also inserted some advertisements of the classified type in the Wall Street Journal and the New York Journal of Commerce, but they do not provide this service for all of their customers.

The advertising furnished by respondents cannot be considered national in scope despite the fact that listed property may be advertised in a publication, such as a metropolitan newspaper, which is distributed throughout the country, but which is not read generally outside of the area in which it is published. Moreover, respondents have not advertised listed property by radio or television, as indicated, and, except for occasional advertisements placed in two of the well known financial and business journals, have not advertised nationally in such publications. A typical advertisement by respondents in such a publication consists of a grouping of some thirty to sixty listings together on a single page. As a further matter of fact, it is apparent that all customers do not receive even this limited form of advertising. The brokers to whom bulletins are sent are not associated or affiliated with respondents and are not connected with them in any way except as recipients of the information contained in respondents' bulletin. It is our opinion, therefore, that the evidence sustains the aforementioned charge and that the hearing examiner's ruling to the contrary was in error.

The appeal of counsel supporting the complaint is granted and the initial decision will be modified to conform with this opinion.

FINAL ORDER

Counsel in support of the complaint having filed an appeal from the initial decision of the hearing examiner, and the matter having

been heard on briefs, no oral argument having been requested; and the Commission having rendered its decision granting the appeal and directing modification of the initial decision:

It is ordered, That paragraph 4 of the initial decision be modified to read as follows:

4. Respondent, William Bodemer, although owning less than 1% of the capital stock of the corporation, is a director and vice president of the corporation. He has testified that he is the "general manager" of the business and that he "sets up the procedure to carry out the policy of Trans-Continental Clearing House, Inc." He supervises the bookkeeping and advertising departments and is in charge of the operation whereby the firm communicates with various brokerage concerns. He also handles or supervises the handling of most of the customer correspondence, including that relating to refunds of advance fees, and is primarily responsible for screening customer applications obtained by the firm's salesmen. He has also participated in various unfair practices employed by the corporate respondent. In this connection, he collaborates with respondent Dudley in preparing contact advertising and in selecting the areas to which such material is to be sent. Such advertising contains the representation "Your Business Must Be Sold—Or We Defray All Costs," and is shown to be false and misleading since respondents require their customers to pay a listing fee which is rarly ever refunded if the business is not sold. Other literature prepared or disseminated under Bodemer's supervision contains deceptive representations as to the effectiveness of respondents' services in obtaining buyers for property listed with them.

It is further ordered, That paragraph 7 of the initial decision be modified by adding thereto the following:

(7) that property listed with respondents would be nationally advertised in newspapers, in nationally known financial and business journals and periodicals, including the Wall Street Journal, Business Week, Newsweek and Barrons, by radio and television broadcasts and through real estate brokers associated with respondents.

It is further ordered, That paragraph 11 of the initial decision be stricken.

It is further ordered, That the following be inserted after paragraph 9 as paragraph 10 and that paragraph 10 be renumbered 11:

10. The newspaper advertising of listed property furnished by respondents consists of a four or five line insertion in a metropolitan newspaper and classified advertising in the customer's locality. The latter type of advertising cannot be considered national in scope nor can the placement of an advertisement in a metropolitan newspaper

which, although distributed throughout the country, is not read generally outside of the area in which it was published. Respondents have placed advertising of property listed with them in only two of the well known financial and business journals and periodicals. A typical advertisement by respondents in such a publication consists of a grouping of some thirty to sixty listings together on a single page. In fact, not all customers receive even this limited form of advertising. Respondents have done no radio or television advertising whatsoever. Although respondents disseminate bulletins describing listed properties to several hundred brokers, these brokers are connected with respondents only to the extent that they have indicated that they would be willing to receive without cost the information set forth in the bulletins. They are not affiliated or associated with respondents and are not part of respondents' organization.

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

It is ordered, That respondent, Trans-Continental Clearing House, Inc., a corporation, and its officers, and respondents, William G. Dudley and William Bodemer, individually and as officers of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the solicitation of the listing for sale and advertising of business properties or other properties, 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 respondents have available prospective buyers who are interested in the purchase of specific properties;

2. That property listed with respondents will be sold as a result of their efforts;

3. That property sought to be listed is underpriced or that the asking price should be raised, unless such is the fact;

4. That respondents' sales representatives are bonded or insured;

5. That respondents will finance or assist in financing the purchase of listed property;

6. That the listing fee or any other amount paid by the property owner will be refunded, unless refunds are in fact made by respondents in strict accordance with such representation;

7. That property listed with respondents will be nationally advertised in newspapers, financial or business publications, by radio or television broadcasts, through real estate brokers associated with respondents, or by any other means.

It is further ordered, That the hearing examiner's initial decision,

as modified, be, and it hereby is, adopted as the decision of the Commission.

It is further ordered, That respondents, Trans-Continental Clearing House, Inc., William G. Dudley and William Bodemer, shall, within sixty (60) days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist contained herein.

IN THE MATTER OF

FINEST WOOL BATTING CORP. ET AL.

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

Docket 7128. Complaint, Apr. 22, 1958—Decision, Oct. 21, 1959

Order requiring a Brooklyn, N.Y., manufacturer to cease violating the Wool Products Labeling Act by labeling as "100% reprocessed wool" and "80% reused wool, 20% other fibers," wool battings which, respectively, contained substantial quantities of non-woolen fibers, and less than 80% reused wool; and failing to comply in other respects with the provisions of the Act.

Mr. Kent P. Kratz for the Commission.

Mr. Alex Akerman, Jr., for *Shipley, Akerman & Pickett*, of Washington, D.C., for respondents.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

This proceeding is brought pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, hereinafter for brevity referred to as the Wool Act. The complaint alleges, in substance, violation of the provisions of the said Acts and the Rules and Regulations of the Commission promulgated under the Wool Act. The charges, in substance, are (1) misbranding under §4(a)(1) of the Wool Act and the Commission's corresponding Rules and Regulations, in that respondents' wool products were falsely labeled or tagged with respect to the character and amount of the constituent fibers contained therein; and (2) misbranding in violation of §4(a)(2) of the Wool Act and the Commission's corresponding Rules and Regulations, in that respondents' wool products were not stamped, tagged, or labeled as required. The amended answer denies the alleged violations as charged in the complaint.

The case has been submitted for decision upon stipulated facts upon which the hearing examiner has found that the respondents have violated the law in the particulars alleged in the complaint.

The history of the litigation is brief. Complaint was filed April 22, 1958, and duly served upon respondents who filed answer thereto on June 16, 1958. The parties filed a "Stipulation of Fact" dated October 17, 1958, which was rejected by the hearing examiner on January 30, 1959, for reasons fully set forth in the order, but basically because the "Stipulation of Fact" included opposing legal contentions and conclusions of the parties, including the issue of constitutionality of the Wool Act. The Commission in a number of decisions has precluded the consideration of the constitutionality of any legislation it is charged with administering. See *The Blanton Company*, Docket No. 6197, Opinion of Commission dated December 26, 1956, and *Ben Cohen, etc.*, Docket No. 6501, Opinion of the Commission dated August 23, 1957. In such cases the Commissiion held, however, that it had authority to determine whether the statute under consideration was properly interpreted and applied.

After the rejection of such "Stipulation of Fact," respondents, pursuant to authority granted, filed an amended answer on February 25, 1959, sharpening the issues for decision, and on June 8, 1959, the parties submitted a new "Stipulation of Fact" which was accepted by the examiner, on June 9, 1959, as a stipulation of all of the facts in the proceeding and a waiver of the presentation of any evidence by the parties. On July 1, 1959, the parties submitted their proposed conclusions of law and orders together with supporting briefs.

The said "Stipulation of Fact," dated May 18, 1959, and submitted June 8, 1959, constitutes the findings of fact to be made herein and is, therefore, now set forth in full. Inferences of fact fairly and reasonably arising therefrom are subsequently set forth in connection with these findings and as a part thereof.

The parties have specifically stipulated the following facts:

1. Respondent Finest Wool Batting Corp. is a corporation organized and existing under and by virtue of the laws of the State of New York with its place of business located at 395 Van Sinderen Avenue, Brooklyn, New York. Respondent Sid L. August is president and respondent Joseph Shlonkowitz is secretary-treasurer of said corporation. These individuals formulate, direct, and control the policies, acts, and practices of said corporation. Their address is the same as that of the corporate respondent.

2. Subsequent to the effective date of the Wool Products Labeling Act of 1939 and more especially since January 1, 1956, respondents

have manufactured and sold wool batting which is a wool product as "wool product" is defined therein. All of respondents' customers are located in the State of New York. Respondents do not make sales outside of that state. Their gross sales amount to about $60,000 to $100,000 each year.

3. There are approximately 30 wool batting manufacturers in the United States. There are, however, several hundred customers of these manufacturers, who purchase and use wool batting in the manufacture of other products, such as quilted interlining, which in turn are sold to manufacturers of jackets and coats, and to others requiring such products.

4. During the latter part of 1956 and early 1957, a Federal Trade Commission investigator obtained representative samples of wool batting sold by respondents to two different customers. For the purposes of this stipulation, these samples will be designated samples A, B, C, and D.

Sample A was taken from stock sold by Finest Wool Batting Corp., the respondent corporation, to Marvel Quilting Co., 3621 13th Avenue, Brooklyn, New York, by invoice No. 5244, dated November 8, 1956. Said stock had been labeled and invoiced by Finest as 100% reprocessed wool. This sample was tested by the Better Fabrics Testing Bureau of New York, a qualified wool tester, who in this instance, and all others mentioned below, performed a proper, complete and accurate test which showed that sample A contained only 86.6% wool and 13.4% other fibers.

Sample B was taken from stock sold by Finest to Marvel by Finest invoice No. 5273, dated December 6, 1956. Said stock had been labeled and invoiced by Finest as 70% reprocessed wool, 30% manmade fibers. This sample was tested, also by the Better Fabrics Testing Bureau, and found, according to said test, to contain only 51.5% wool, 9.6% Acetate, and 38.9% other fibers.

5. The wool batting from which samples A and B were taken was subsequently used by Marvel Quilting Co. for making quilted interlining which was sold to Murray Olewitz, 1200 Broadway, New York; but shipped by Marvel directly to Sol Hartnig & Son, Bridgeport, Connecticut; and to Billy Boy Co., 1140 Broadway, New York, New York, but shipped by Marvel directly to Kinston, Alabama.

6. Sample C was taken from stock sold by Finest Wool Batting Corp., to Ace Quilting Co., 4 Church Avenue, Brooklyn, New York, by invoice No. 5268, dated December 3, 1956. Said stock had been labeled and invoiced by Finest as 80% reused wool and 20% other fibers. This sample was also tested by the Better Fabrics Testing

Bureau, and found, according to said test, to contain only 38.9% wool, 24.1% Acetate, and 37% other fibers.

Sample D was taken from stock sold by Finest Wool Batting Corp. to Ace Quilting Co., by invoice No. 5279 dated December 11, 1956. Said stock had been labeled and invoiced by Finest as 100% reprocessed wool. This sample was also tested by the Better Fabrics Testing Bureau, and found, according to said test, to contain only 82.5% wool, 2.4% Acetate, and 15.1% other fibers.

7. The wool batting from which samples C and D were taken was subsequently made by the Ace Quilting Co., into quilted interlining, which was sold to Arthur Seiden Corp., 601 Grand Avenue, Brooklyn, New York, and to J. M. S. Manufacturing Co., One Bond Street, New York, both of which are jacket manufacturers. On these sales Ace's invoices showed the same wool content as did Finest's invoices, namely, 80% reused wool and 100% reprocessed wool.

The quilted interlining mentioned above and sold to Seiden Corp. was used by it as interlining for certain jackets it had manufactured which were later sold to Belk Stores, Charlotte, North Carolina.

The quilted interlining mentioned above and sold to J. M. S. Manufacturing Co. was used by it as interlining for certain jackets it had manufactured which were later sold to customers in St. Louis, Missouri; Paterson, New Jersey; Reading, Pennsylvania; Philadelphia, Pennsylvania; Baltimore, Maryland; Cleveland, Ohio; Springfield, Ohio; New Haven, Connecticut; and Pittsburgh, Pennsylvania.

During 1956 and 1957, Ace Quilting Co. sold its quilted interlining to customers located both inside and outside the State of New York. During the same period, Ace purchased all of its wool batting exclusively from respondent Finest Wool Batting Corp.

8. In addition to the above, and at about the same time, this Federal Trade Commission investigator, in examining fiber content tags on respondents' wool batting which was ready for sale and shipment at their place of business, and also on respondents' wool batting which had been sold and shipped to the Marvel Quilting Co., Ace Quilting Co. and other customers of respondents, discovered that the fiber content of respondents' batting was set forth in abbreviated form. These tags were placed on the batting in question by respondents.

9. Ace and Marvel use the wool batting which they purchase from respondents primarily in the manufacture of quilted interlining, which is used in the manufacture, among other things, of coats and jackets. A substantial proportion of such coats and jackets find their way into interstate commerce.

The primary contention of respondents is that they did not introduce or manufacture for introduction into commerce wool products which violated the Wool Act. A subordinate issue raised by respondents is that in no event should a cease and desist order issue against the individual respondents in their individual capacities as distinguished from their official capacities. This argument as made upon the doctrine enunciated by the Commission in *Kay Jewelry Stores, Inc.*, Docket No. 6445, wherein it was held that, except for the admission in the answer that the individual respondents were officers and directors of respondent corporations and formulated, directed, and controlled the policies, acts and practices of such corporate respondents, the record was devoid of any other evidence or showing of circumstances suporting individual liability. The case at bar is quite distinguishable inasmuch as the "Stipulation of Fact," hereinabove quoted in full, not only states that the individuals formulate, direct and control the policies, etc., of respondent corporation but also repeatedly states that it is the "respondents" who have performed the acts which are involved herein, such as "respondents have manufactured and sold," "sold by respondents," "respondents have knowledge," "Respondents also have knowledge," and "Respondents know." In any construction of the stipulation the individual respondents herein are not in any way divorced from the acts of the corporation. Since the findings on the merits are against all respondents, the order issued herein also incorporates the individual respondents both in their individual and official capacities.

The material issue in the case for decision herein, therefore, is whether the local sales admittedly made by respondents of misbranded wool products brings them within the provisions of the Wool Act. Respondents contend that before they can be found to have "manufactured for introduction into commerce" or "manufactured or delivered for shipment * * * in commerce" there must be established either that respondents had an intent to so manufacture or ship in commerce or at the very least they had positive preknowledge that the goods in question so manufactured and misbranded by them were in fact to be shipped in commerce. It is their contention that the general knowledge of respondents as to practices in the wool industry, which the stipulation concedes respondents had, is not sufficient to establish the specific intent or knowledge above referred to. It is stated in the stipulation specifically that respondents do not know to what use their batting is put by their customers.

Counsel supporting the complaint contends (1) that the language of the Wool Act, "manufactured for introduction into commerce"

is clear and unambiguous; (2) that there is no distinction in the Act between manufacturers who actually sell wool in commerce and those who are several steps removed from the actual transmission of the product in commerce; and (3) that in any event the stipulated facts warrant a finding that respondents had reasonable expectations and belief that their wool batting "would move in, or affect, interstate commerce"; but that since the wool batting in question herein actually moved in commerce it is immaterial whether such knowledge or hope ever existed on the part of respondents.

Any reasonable construction of the Wool Act upon the face of that Act itself, without resort to extraneous aids to contsruction, indicates that it was the intent of Congress that the wool industry should be treated as an entirety and that the individual component parts thereof, such as the manufacturers in the course of the production of the ultimate product which reached the consumer, would not be held as separable and distinct industries in and of themselves to escape liability under the Act. It is clear that if the original manufacturer who initially injected shoddy woolen goods into the stream of interstate commerce could escape liability by claiming that he only sold intrastate and did not know or had no interest in where the product went from there in the further processes of manufacture and distribution, that the Act would be entirely unenforceable except as against those whom the Commission could establish actually transmitted the goods across state lines. The same thing is true with respect to specific knowledge of the ultimate disposition of the goods being required of the original or intermediate manufacturer of woolen products. There is no expression in the Wool Act that knowledge or intent are prerequisites to a finding of guilt on the part of one who violates any provision of the Act. In cases under the Federal Trade Commission Act, it has been universally held many times that the Act being in the public interest it was unnecessary to show an intent to defraud or any other mental condition on the part of the respondents. Certainly the Wool Act, which adopts the Federal Trade Commission Act procedures by its terms, did not intend that the Commission was required to prove a specific knowledge or intent on the part of any wool manufacturer before he could be held to have violated any provision of the Act. This is particularly true since the criminal penalty provided by Section 10 of the Act expressly requires that one must "wilfully" violate the Act in order to be guilty, and in §5 of the Act the removal or mutilation of any stamp, tag, or label is not an unfair method of competition or an unfair or deceptive act or practice unless the one who does so commits the act "with intent to violate

the provisions of this Act." The present proceeding is not a criminal proceeding or a removal or mutilation of any stamp, tag, or label.

Section 3 of the Wool Act sets forth a number of specific acts which are unlawful and which constitute unfair methods of competition and unfair or deceptive acts and practices in commerce. These are (1) "the introduction * * * into commerce," or (2) "the manufacture for introduction into commerce," or (3) "the sale * * * in commerce," (4) "transportation in commerce," or (5) "distribution, in commerce" of any wool product which is misbranded. The Commission is not obliged to prove all of these acts to establish the commission of one. In the case at bar the stipulation forecloses any finding that respondents actually sold, transported, or distributed their goods in interstate commerce, but it is clear that they did manufacture for introduction into commerce the woolen goods in question herein. Section 3 further provides that "any person who shall manufacture * * * any wool product which is misbranded" is guiity of an unfair method of competition, etc. The Section further sets forth express exceptions to which it shall not apply: (a) common or contract carriers in the ordinary course of their business, and (b) manufacture for export from the United States. There is no exception for one manufacturing for initial sale or delivery intrastate.

Section 5 of the Wool Act requires "any person manufacturing for introduction * * * into commerce a wool product shall affix thereto the stamp, tag, label," etc., setting forth the information required under §4 which prescribes when a wool product shall be considered to be misbranded. Section 6(b) of the Act provides that "every manufacturer of wool products shall maintain proper records showing the fiber content as required by this Act of all wool products made by him, and shall preserve such records for at least three years." Section 7 of the Act provides a condemnation proceeding against "any wool products * * * if the Commission has reasonable cause to believe such wool products are being manufactured * * * in commerce in violation of the provisions of this Act * * *." Section 9 relates to guaranties and relieves from liability those who require a guarantee in good faith "of the person residing in the United States by whom the wool product guaranteed was manufactured * * * that said wool product is not misbranded under the provisions of this Act." Reference to the requirement of wilfulness in criminal prosecutions as provided by Section 10 has already been made herein.

The Wool Act liberally construed in its entirety according to the plain language thereof clearly shows that Congress did not intend that anyone in the chain of events leading from the initial manufacture to the ultimate consumer should escape liability for his violations of the Act. Every statute must be interpreted in the light of reason and common understanding to reach the results which were intended by the legislature. See *Rathbone* v. *U.S.*, 355 U.S. 107, rehearing denied 355 U.S. 925. To consider the manufacture of wool batting by respondents and their intrastate sale thereof as separate transactions entirely independent of and disconnected from the entire stream of commerce into which such batting must necessarily flow and be an inseparable part in the ordinary course of business from initial manufacturer to the ultimate consumer is a technical hair-splitting which this examiner cannot accept either as true in fact or as good law. In *Standard Oil Co.* v. *F.T.C.* (C.A. 7, 1949), 173 F. 2d 210, 214, affirmed 340 U.S. 231 (and recently reapproved by the Seventh Circuit in *Holland Furnace Co.* v. *F.T.C.*, Order of June 16, 1959, Case No. 12,451), the Court said:

> We decline, as the Supreme Court did in *Stafford* v. *Wallace* [258 U.S. 495] * * *, p. 519, "* * * to defeat this purpose in respect of such a stream and take it out of complete national regulation by a nice and technical inquiry into the noninterstate character of some of its necessary incidents and facilities when considered alone and without reference to their association with the movement of which they were an essential but subordinate part." After all, as Justice Holmes said in *Swift and Company* v. *United States*, 196 U.S. 375, 398, 25 S. Ct. 276, 49 L. Ed. 518, "* * * commerce among the states is not a technical legal conception, but a practical one, drawn from the course of business." The modern concept of commerce is one which gives full sweep to the commerce clause of the Constitution within the limits of the implementing statute, *a liberal view of the congressional purpose as expressed in the statute, and a realistic view of what business is doing as it moves across state lines to accomplish its purpose.* * * * [Emphasis added.]

The Court said in *F.T.C.* v. *Mandel Brothers, Inc.*, May 4, 1959, 359 U.S. 385:

> * * * The Title of the Act which, though not limiting the plain meaning of the text, is nonetheless a useful aid in resolving an ambiguity (see *Maguire* v. *Commissioner*, 313 U.S. 1, 9) * * *

The title of the Wool Products Labeling Act is "AN ACT to protect producers, manufacturers, distributors, and consumers from the unrevealed presence of substitutes and mixtures in spun, woven, knitted, felted, or otherwise manufactured wool products, and for other purposes." This is very similar to the title to the Fur Products Labeling Act which was under consideration in the *Mandel* case. This title was referred to in the several Committee Reports and

at various places throughout the Congressional debates which preceded the adoption of the Wool Act. While counsel supporting the complaint has quoted some of the legislative history relating to this Act, in view of the conclusions hereinbefore reached that the Act itself is clear, this initial decision will not be burdened by an extensive consideration of the matters discussed by the proponents of the bill in the Congressional Committee Reports and subsequent debates. Suffice it to say, in brief, that the Members of Congress repeatedly stated that the regulatory processes governing the wool industry should begin with the manufacturer and that his labels should tell the truth as to what the fabric contained in order that the ultimate consumer might be fully protected.

While respondents contend that they are not under the terms of the Wool Act because they have not manufactured wool products for introduction into commerce or introduced the same into commerce, there are stipulated facts from which quite a contrary inference may be drawn. A number of illustrations of sales made by respondents to different customers are set forth in paragraphs 4 to 7, inclusive, of the stipulation hereinabove quoted. In each of these situations the stock sold by respondents had been labeled by them and invoiced as well under a designation of fiber content which was false. It must be inferred that this labelling and invoicing was done pursuant to the provisions of the Wool Act. Therefore, the respondents have taken advantage of the Wool Act to obtain business. Without labels on their original wool products, it must be inferred that they could not sell one cent's worth of their product to any manufacturer who expected to use it in commerce. These respondents cannot take advantage of the Wool Act to build a substantial business with gross sales amounting to about $60,000 to $100,000 each year from the sale of wool batting and then deny that the Act applies to them. It would be a wholly incongruous interpretation of the Wool Act to construe it so that it might be made a definite instrument of fraud upon other manufacturers and the public by ruling that false labels could be used to obtain business but that respondents, after receiving the benefits of the Act, were in no manner subject to its liabilities. In this connection the respondents' position reminds the examiner of the leading case of *Scott* v. *Shepherd*, W.Bl. 892, 96 Reprint 525, 3 Wils. 403, 95 Reprint 1124, the famous "squib" case which is a basic case in the law of negligence. In that case the defendant threw a lighted squib into a crowd of people, one after another of whom, in self-defense, threw the squib away from him until it finally struck the plaintiff in his face and exploded, causing him to lose an eye. The defendant con-

tended that he never intended that the explosive should ever be handled by the particular victim of it. Nevertheless it was held and is a basic rule of law today that the defendant was liable for the plaintiff's injury because it was the natural and probable effect that anyone who was struck by the squib would pass it on from himself, and its ultimate explosion at the end of the line must have been reasonably anticipated by the one who threw it. In the case at bar respondents say they do not know who ultimately got their shoddy products and since they did not know who was going to get them they are not liable because they only placed them in local intrastate commerce in the first place. To state the proposition is to answer it. The respondents can raise no such defense. In the very nature of the wool business in America today, every wool manufacturer must know that it is the natural and probable consequence of his selling his product that it will flow into the stream of interstate commerce and eventually be purchased by some consumer far away in another state, who can rely only upon the protection afforded by the Wool Act and compliance therewith by the several manufacturers involved in the making of the ultimate wool product which he receives. As counsel supporting the complaint aptly urges, the wool batting of respondents in question here was manufactured for introduction into commerce because it was actually later introduced into commerce. The Act does not require a finding that any such specific intent or knowledge existed on the part of the original manufacturer, or for that matter on the part of any manufacturer in the line of production of a garment made of wool fabric. The fact of the actual transmittal of the product in interstate commerce, as admitted in the stipulation herein, establishes the fact of its having been manufactured for such purpose in the legal contemplation of the Wool Act. To require proof of specific knowledge on the part of any respondent as to the course of his product would take in the stream of interstate commerce, would render ineffectual, if not practically impossible, any enforcement of the Wool Act insofar as the Commission's cease and desist orders are concerned. That is all that we have before us in this case.

Counsel supporting the complaint urges that while the precise meaning of the words "manufacture for introduction into commerce" as used in the Wool Act has not been defined, either by the Commission or by the courts, a similar provision "production of goods for commerce" in the Fair Labor Standards Act, 29 U.S.C.A. §§201–211, has received judicial construction in a number of cases, which hold, in substance, that it is sufficient that from the circumstances of production the trier of facts may reasonably infer that the producer

has grounds to anticipate that his products will move in interstate commerce. Like counsel supporting the complaint, however, I believe it is unnecessary to resort to such interpretation of the Act.

All proposals of the parties which have not been incorporated in this initial decision are rejected.

From the evidentiary facts stipulated and fairly inferred therefrom, the hearing examiner finds that the ultimate undisputed facts in this case are as follows: Respondents are engaged in the manufacture of wool batting for introduction into commerce; that said wool batting was misbranded in the several particulars charged when it was sold by respondents to other manufacturers; that respondents' wool batting in more finished commodities moved in interstate commerce from New York State into many States of the Union.

From all of the foregoing facts, the hearing examiner has reached the following conclusions of law:

1. Respondents have misbranded wool products within the intent and meaning of §4(a)(1) of the Wool Products Labeling Act of 1939 and the Rules and Regulations of the Commission promulgated thereunder; respondents further have misbranded their wool products in that they were not stamped, tagged or labeled as required under the provisions of §4(a)(2) of the Wool Products Labeling Act of 1939 and the provisions of the Commission's Rules and Regulations promulgated thereunder.

2. The acts and practices of respondents hereinabove found to violate the Wool Products Labeling Act of 1939 and the provisions of the Commission's Rules and Regulations promulgated thereunder are all to the prejudice and injury of the public and constitute unfair and deceptive acts or practices in commerce within the intent and meaning of the Federal Trade Commission Act. It is not charged in the complaint that they constitute unfair methods of competition in commerce.

3. The Federal Trade Commission has jurisdiction over all of the respondents' acts and practices which have been hereinabove found to be violative of the Wool Products Labeling Act of 1939 and the Federal Trade Commission Act.

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

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

It is ordered, That respondent, Finest Wool Batting Corp., a corporation, and its officers, and Sid L. August and Joseph Shlonkowitz, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any cor-

porate 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 wool batting or other "wool products," as such products are defined in and subject to the Wool Products Labeling Act of 1939, which products contain, purport to contain, or in any way are represented as containing "wool," "reprocessed wool," or "reused wool," do forthwith cease and desist from misbranding such products by:

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

2. Failing to 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.

FINAL ORDER

By its order of September 3, 1959, the Commission extended until further order the date on which the initial decision of the hearing examiner herein would become the decision of the Commission; and

The Commission having concluded that said initial decision should be modified in certain respects as hereinafter indicated:

It is ordered, in view of the Commission's decision in the matter of *United Felt Company, et al.*, Docket No. 7132, entered this day, that there be deleted from page 11 of the initial decision contained in the official public record of the instant case the following language:

"* * * Respondents urge that the hearing examiner's decision in *United Felt Co., et al.*, Docket No. 7132, is persuasive authority in this case for a dismissal. This examiner is not prepared to pass on the merits of that decision but from the stated facts therein it has no application to the case at bar. As the examiner there held:

'* * * (T)here is no evidence that the battings ever found their way into commerce at all, that is, that they were used in the quilting of fabrics which moved in commerce. * * *' "

It is further ordered, That the order contained in the initial decision be, and it hereby is, modified to read as follows:

"*It is ordered*, That respondent, Finest Wool Batting Corp., a corporation, and its officers, and Sid L. August and Joseph Shlonkowitz, individually and as officers of said corporation, and respond-

ents' 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 wool batting or other 'wool products,' as such products are defined in and subject to the Wool Products Labeling Act of 1939, which products contain, purport to contain, or in any way are represented as containing 'wool,' 'reprocessed wool,' or 'reused wool,' do forthwith cease and desist from misbranding such products by:

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

2. Failing to 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 the initial decision as so modified be, and it hereby is, adopted as the decision of the Commission.

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

IN THE MATTER OF

UNITED FELT COMPANY, ET AL.

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

Docket 7132. Complaint, Apr. 29, 1958—Decision, Oct. 21, 1959

Order requiring a Chicago manufacturer to cease violating the Wool Products Labeling Act by labeling as "70% reprocessed wool, 30% man-made fibers" and as "95% reprocessed wool, 5% other fibers," rolled battings which in each instance contained substantially less wool and more non-woolen fibers than was thus indicated; and by failing to comply in other respects with the labeling provisions of the Act.

Before *Mr. William L. Pack*, hearing examiner.

Mr. William A. Somers for the Commission.

Mr. Hymen S. Gratch, of Chicago, Ill., for respondents.