Complaint

IN THE MATTER OF

DISCOUNT AUTO MART, INC., TRADING AS DON ALLEN MOTORS, ET AL.

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

Docket 7909. Complaint, June 3, 1960—Decision, Dec. 22, 1960

Consent order requiring Wash., D.C., used car dealers to cease advertising falsely that they sold used cars "For $1 Down", for "No Money Down", when purchasers were frequently required to contract for small loans to meet down payment requirements in addition to installment financing of the balance; that they offered bank rate financing; that low financing plans were offered to military personnel and government workers; that terms as low as $12.95 per month were available; that cars were guaranteed 100% as to parts and labor, when in fact they were mostly sold "as is", with no guarantee; and that they financed their used car sales, when they actually relied on others, including small loan companies, for financing.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Discount Auto Mart, Inc., a corporation trading as Don Allen Motors, and Sylvan Herman, individually and as an officer of said corporation, and Joseph Zola, individually, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Discount Auto Mart, Inc., is a corporation organized and existing under and by virtue of the laws of the District of Columbia. Its office and principal place of business is located at 1200 K Street, N.W., Washington, D.C. Said corporation trades under the name of Don Allen Motors.

Respondent Sylvan Herman is an officer of the respondent corporation. He formulates, directs and controls the acts and practices of the corporate respondent, as hereinafter set forth. His business address is the same as that of the corporate respondent.

Respondent Joseph Zola is the credit manager of the corporate respondent and he participates in the acts and practices of said respondent, as hereinafter set forth. His business address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of used automobiles in the District of Columbia. Their volume of business is substantial.

PAR. 3. In the course and conduct of their business, and for the purpose of inducing the sale of their used automobiles, respondents have made certain statements in newspapers published in the District of Columbia. Typical, but not all inclusive, of said statements are the following:

These Five Repossessions Will Go For $1 Down Today!
No Money Down on Approved Credit
Low Bank Rates
Special Low Financing for Military & Gov't Workers
Take Over With Payments 12.95 Per Month
Guaranteed 100% Parts-Labor For One Full Year At No Extra Cost to You

PAR. 4. Through the use of the aforesaid statements the respondents represent that:

(a) They sell used cars on credit with little or no down payments.

(b) They offer bank rate financing.

(c) Special low financing plans are offered to military personnel and government workers.

(d) Terms as low as $12.95 per months are available to purchasers.

(e) Cars are guaranteed 100% as to parts and labor for one full year at no extra cost.

PAR. 5. Said statements and representations are false, misleading and deceptive. In truth and in fact:

(a) Respondents do not sell cars without a down payment. When a minimum sum, such as one dollar, is accepted by the respondents in connection with a car order or bill of sale, it is not, in fact, a down payment but is received for the purpose of providing a consideration for a contract of purchase. Frequently, purchasers of respondents' used cars are required to contract for small loans, mostly with sources outside the District of Columbia, in order to meet respondents' down payment requirements, which are described as "pick-up payments," and in addition to installment financing of the balance. The represented low monthly payments do not include said small loan charges.

(b) Bank rate financing is not offered by the respondents with respect to sales of used cars.

(c) Respondents have no special low rate financing plans for the benefit of military personnel and government workers.

(d) Used cars have seldom, if ever, been sold on terms as low as $12.95 per month.

(e) Respondents, in most instances, sell their used cars "as is" and no guarantee or warranty is given. In fact a provision is incorporated in each car order and bill of sale to such effect. In those cases where a purported guarantee or warranty is made, it is limited in nature, which limitations are not fully disclosed and, an additional charge is made for its inclusion in the sale of a used car.

PAR. 6. In connection with the sale of their used cars, the respondents represent, and have represented, that the corporate respondent, Discount Auto Mart, Inc., finances such transactions, whereas, in fact, it relies on others, including small loan companies, for such financing.

PAR. 7. In the conduct of their business, at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of used automobiles.

PAR. 8. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of a substantial number of respondents' used automobiles by reason of said erroneous and mistaken belief. As a consequence thereof, substantial trade in commerce has been, and is being, unfairly diverted to respondents from their competitors and substantial injury has thereby been, and is being, done to competition in commerce.

PAR. 9. The aforesaid acts and practices of respondents, as herein alleged, were, and are, all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair and deceptive acts and practices and unfair methods of competition, in commerce, within the intent and meaning of the Federal Trade Commission Act.

Mr. Ames W. Williams and *Mr. Michael P. Hughes* for the Commission.

Mr. Murray Kivitz, of Washington, D.C., for respondents.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The complaint charges respondents, who are engaged in the advertising, offering for sale, sale and distribution of used automobiles in the District of Columbia, with the use of false, misleading and deceptive statements, representations and practices in connection with the advertising and sale of their used cars, in violation of the Federal Trade Commission Act.

After the issuance of the complaint, a deposition was taken which indicates that the deponent, individual respondent Joseph Zola, was not responsible for and did not participate in the formation and direction of corporation policy respecting the acts and practices set forth in the complaint. Thereafter the remaining respondents, their counsel, and counsel supporting the complaint entered into an agreement containing consent order to cease and desist, the deposition of respondent Joseph Zola being attached to and incorporated in said agreement, which was subsequently approved by the Director, Associate Director and Assistant Director of the Commission's Bureau of Litigation, and transmitted to the Hearing Examiner for consideration.

All parties to the agreement assent to the dismissal of the charges as to Joseph Zola, individually.

The agreement states that respondent Discount Auto Mart, Inc., trading as Don Allen Motors, is a corporation existing and doing business under and by virtue of the laws of the District of Columbia, with its office and principal place of business located at 1200 K Street, N.W., Washington, D.C., and that respondent Sylvan Herman is an officer of the respondent corporation and formulates, directs and controls the acts and practices of the corporate respondent, his business address being the same as that of 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 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 Hearing Examiner has determined that the aforesaid agreement containing the consent order to cease and desist provides for an appropriate disposition of this proceeding in the public interest, and such agreement is hereby accepted. Therefore,

It is ordered, That respondents Discount Auto Mart, Inc., a corporation, trading as Don Allen Motors or under any other name, and its officers, and Sylvan Herman, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of used automobiles 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. Used automobiles can be purchased with no money down or for a down payment in any amount not in accordance with the fact;

2. They offer or make available bank rate financing or misrepresenting in any manner the financing rates under which used automobiles are sold;

3. They offer special low financing for military or Government workers, or misrepresenting in any manner the nature of the financing offered to such persons;

4. Terms as low as $12.95 or any other amount per month or for any other period are available to purchasers, unless such is the fact;

5. Used automobiles are guaranteed, unless the nature and extent of the guarantee and the manner in which the guarantor will perform thereunder are clearly disclosed and if a charge is made for the guarantee, such fact and the amount of the service charge is clearly disclosed;

6. Used automobiles are guaranteed when, in fact, no guarantee is given to the purchaser;

7. Respondents finance the retail sales of used automobiles.

It is further ordered, That the complaint be, and it hereby is, dismissed as to respondent Joseph Zola.

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 22nd day of December, 1960, become the decision of the Commission; and, accordingly:

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

IN THE MATTER OF

SPAULDING INDUSTRIES, INC., ET AL.

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

Docket 7966. Complaint, June 22, 1960—Decision, Dec. 28, 1960

Consent order requiring Chicago manufacturers of plastic dinnerware to cease representing falsely that their sets were made solely of melamine when most of the pieces were made of other material, through use of the words "Melamine Copolymer" that melamine is a copolymer, and that their sets were "Advertised in Life"; to cease using the word "Guaranteed" in advertising when any guarantee was limited both as to time and extent and a service charge was made for adjustments; and to cease attaching or furnishing preticketing streamers and other printed material representing fictitious amounts as the usual retail prices.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Spaulding Industries, Inc., a corporation, and Harry Wohl, Gilbert B. Fern and Dorothy Pollenz, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Spaulding Industries, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 3520 North Spaulding Avenue, in the City of Chicago, State of Illinois.

Respondents Harry Wohl, Gilbert B. Fern and Dorothy Pollenz are officers of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of plastic dinnerware to retailers for resale to the public.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said product, when sold, to be shipped from their place of business in the State of Illinois to purchasers thereof located in various other States

of the United States, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said product in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Respondents, for the purpose of inducing the purchase of their product, have engaged in the practice of misrepresenting the material of which their product is made or composed, and using fictitious prices in connection therewith, by the following methods and means:

(1) Representing, or causing to be represented, directly or by implication:

(a) Through the use of the descriptive word "Melamine" that the plastic dinnerware sets sold by them are made solely of melamine. In truth and in fact, while said sets contain some pieces made of melamine, most of the pieces are made of material other than melamine.

(b) Through the use of the descriptive terms "Melamine Copolymer" and "Melamine—Copolymer", that melamine is a copolymer. In truth and in fact, melamine is not a copolymer.

(2) By attaching or furnishing, or causing to be attached or furnished, pre-ticketing streamers, letters, printed mailers, price sheets, advertising mats and other printed material to or with the plastic dinnerware sets upon which a certain amount is printed, that said amount is the usual and customary retail price of said plastic dinnerware sets. In truth and in fact, said amount is fictitious and in excess of the usual and regular retail price of said plastic dinnerware sets.

PAR. 5. By the aforesaid practices, respondents place in the hands of retailers means and instrumentalities by and through which they may mislead the public as to the quality and usual and customary retail price of said plastic dinnerware sets.

PAR. 6. In the course and conduct of their business, and for the purpose of inducing the sale of their plastic dinnerware sets, respondents have stated that their plastic dinnerware sets were "Advertised in Life," said statement being made in streamers, cartons, mailers and advertising mats which were distributed to retailers throughout the United States.

PAR. 7. Said statement was false, misleading and deceptive. In truth and in fact, respondents' said plastic dinnerware sets were never advertised in Life.

PAR. 8. Respondents used the word "Guaranteed" in the advertising of their said product, thereby representing that said product was guaranteed by them in every respect and likewise used the expression

"Guaranteed against Breaking, Cracking, Chipping and Boil Proof," thereby representing that their said product was fully guaranteed in the stated respects.

PAR. 9. Said statements and representations were false, misleading and deceptive. In truth and in fact, the guarantee provided was limited both as to time and extent. Moreover, a service charge was made for adjustments, which fact was not disclosed in respondents' advertisements.

PAR. 10. In the conduct of their business, at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of plastic dinnerware sets of the same general kind and nature as that sold by respondents.

PAR. 11. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of respondents' product by reason of said erroneous and mistaken belief.

As a consequence thereof, substantial trade in commerce has been, and is being, unfairly diverted to respondents from their competitors and substantial injury has thereby been, and is being, done to competition in commerce.

PAR. 12. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair and deceptive acts and practices and unfair methods of competition, in commerce, within the intent and meaning of the Federal Trade Commission Act.

Mr. Lars E. Janson supporting the complaint.

Rappaport, Clorfene & Rappaport by *Mr. Hamilton Clorfene* of Chicago, Ill., for respondents.

INITIAL DECISION BY JOHN B. POINDEXTER, HEARING EXAMINER

On June 22, 1960 the Federal Trade Commission issued a complaint charging that the above-named respondents had violated the provisions of the Federal Trade Commission Act. The complaint alleged that respondents for the purpose of inducing the purchase of their product had engaged in the practice of misrepresenting the material of which their product is made or composed, and using fictitious prices in connection therewith.

After issuance and service of the complaint the respondents, their attorney, and counsel supporting the complaint entered into an agreement for a consent order. The agreement has been approved by the Director, Associate 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 purpose 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, hereby accepts such agreement, makes the following jurisdictional findings, and issues the following order:

JURISDICTIONAL FINDINGS

1. Corporate respondent Spaulding Industries, Inc., is a corportation existing and doing business under and by virtue of the laws of the State of Illinois with its principal office and place of business located at 3520 North Spaulding Avenue, Chicago, Illinois.

2. Individual respondents Harry Wohl, Gilbert B. Fern and Dorothy Pollenz are officers of said corporation. They formulate, direct and control the practices of the corporate respondent. The address of all individual respondents is the same as that of the corporate respondent.

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

ORDER

It is ordered, That respondents Spaulding Industries, Inc., a corporation, and its officers, and Harry Wohl, Gilbert B. Fern and

Dorothy Pollenz, 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, and distribution in commerce, as "commerce" is defined by the Federal Trade Commission Act, of plastic dinnerware sets or any other merchandise, do forthwith cease and desist from:

1. Representing in any manner that certain amounts are the customary and usual retail prices of merchandise when such amounts are in excess of the prices at which such merchandise is usually and customarily sold at retail in the trade area in which the representation is made.

2. Putting any plan into operation whereby retailers or others may misrepresent the customary and usual retail prices of merchandise in the trade area in which the representation is made.

3. Representing in any manner that the plastic dinnerware sets sold by them are made solely of melamine; or are made solely of any other material, unless such is the fact.

4. Failing to clearly disclose in connection with plastic dinnerware sets containing pieces made of melamine and pieces made of materials other than melamine, the particular pieces and number thereof made of the respective materials.

5. Representing through the use of the word copolymer in conjunction with the word melamine, or in any other manner, that melamine is a copolymer.

6. Representing that the products sold by them are guaranteed, unless the nature and extent of the guarantee and the manner in which the guarantor will perform, are clearly disclosed.

7. Representing that the products sold by them are guaranteed, when a service charge is imposed, unless the amount thereof is clearly and conspicuously disclosed.

8. Representing in any manner that the plastic dinnerware sets manufactured and sold by them are advertised in any specific magazine, unless such is the case.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

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

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

Complaint

IN THE MATTER OF

GLADSTONE TEXTILE CORP., ET AL.

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

Docket 8049. Complaint, July 18, 1960—Decision, Dec. 28, 1960

Consent order requiring distributors of wool products in New York City to cease violating the Wool Products Labeling Act by selling pieces labeled as "30% Reprocessed Wool" that contained substantially less than 30% woolen fibers, and by failing to label wool products as required.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Gladstone Textile Corp., a corporation, Sanford M. Gladstone, individually and as an officer of said corporation, and Phillip Gladstone, individually and as an agent and buyer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Wool Products Labeling Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Gladstone Textile Corp. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York. Individual respondent Sanford M. Gladstone is president and treasurer of the corporate respondent, and individual respondent Phillip Gladstone is agent and buyer of the corporate respondent. Said individual respondents cooperate in formulating, directing and controlling the acts, practices and policies of the corporate respondent, including the acts and practices hereinafter referred to. All respondents have their office and principal place of business at 1225 Broadway, New York, New York.

PAR. 2. Subsequent to the effective date of the Wool Products Labeling Act of 1939 and more especially since July 10, 1959, respondents have introduced into commerce, sold, transported, distributed, delivered for shipment, and offered for sale in commerce, as "commerce" is defined in said Act, wool products as "wool products" are defined therein.

PAR. 3. Certain of said wool products were misbranded by the respondents within the intent and meaning of Section 4(a)(1) of

the Wool Products Labeling Act and the Rules and Regulations promulgated thereunder, in that they were falsely and deceptively labeled or tagged with respect to the character and amount of the constituent fibers contained therein.

Among such misbranded wool products were pieces labeled or tagged by respondents as "30% Reprocessed Wool," or words of similar import, whereas, in truth and in fact said products contained substantially less woolen fibers than that represented.

PAR. 4. Certain of said wool products were further misbranded by respondents in that they were not stamped, tagged or labeled as required under the provisions of Section 4(a)(2) of the Wool Products Labeling Act and the manner and form as prescribed by the Rules and Regulations promulgated under said Act.

PAR. 5. The respondents in the course and conduct of their business as aforesaid were and are in substantial competition in commerce with other corporations, firms and individuals likewise engaged in the sale of wool products, including piece goods or fabrics.

PAR. 6. The acts and practices of the respondents as set forth above were, and are, in violation of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, and constituted, and now constitute, unfair and deceptive acts and practices and unfair methods of competition in commerce, within the intent and meaning of the Federal Trade Commission Act.

Mr. Charles S. Cox supporting the complaint.

Kleeberg & Greenwald by *Mr. Bertram S. Bermar* of New York, N.Y., for respondents.

INITIAL DECISION BY WALTER K. BENNETT, HEARING EXAMINER

The complaint in this matter dated July 18, 1960 charges respondents with misbranding and failing to label wool products sold by them in commerce in violation of the Wool Products Labeling Act of 1939 and the Federal Trade Commission Act. An agreement has now been entered into by respondents and counsel supporting the complaint which provides, among other things, that respondents admit all of the jurisdictional allegations in the complaint; that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and agreement; that the inclusion of findings of fact and conclusions of law in the decision disposing of this matter is waived, together with any further procedural steps before the hearing examiner and the Commission; that the order hereinafter set forth may be entered in disposition of the proceeding, such order to have the same force and effect as if entered after a full hearing, respondents specifically

waiving any and all rights to challenge or contest the validity of such order; that the order may be altered, modified, or set aside in the manner provided for other orders of the Commission; that the complaint may be used in construing the terms of the order; and that the agreement is for settlement purposes only; does not constitute an admission by respondents that they have violated the law as alleged in the complaint and shall not become part of the official record of the proceeding unless and until it becomes a part of the decision of the Commission.

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

1. Respondent Gladstone Textile 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 1225 Broadway, New York, New York.

2. Individual respondent Sanford M. Gladstone is an officer of said corporation, and individual respondent Philip Gladstone (erroneously designated in the complaint as Phillip Gladstone), is an agent and buyer of said corporation. The address of the individual respondents is the same as that of the corporate respondent.

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

ORDER

It is ordered, That respondents Gladstone Textile Corp., a corporation, and its officers, and Sanford M. Gladstone, individually and as an officer of said corporation, and Philip Gladstone, individually and as agent and buyer 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 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 piece goods or fabrics containing woolen fibers 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.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

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

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

IN THE MATTER OF

SLUMBERLAND PRODUCTS CO., ET AL.

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

Docket 8051. Complaint, July 19, 1960—Decision, Dec. 28, 1960

Consent order requiring Waltham, Mass., manufacturers of beds and bedding to cease misrepresenting—in television broadcasts and cooperative advertising material furnished to dealers and otherwise—the price, grade, quality, composition, workmanship, orthopedic qualities, and other characteristics of their mattresses.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Slumberland Products Co., a corporation, and Arthur M. Warshaver, Sumner Tapper, Milton H. Warshaver and Leonard Warshaver, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Slumberland Products Co. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Massachusetts. Respondents Arthur M. Warshaver, Sumner Tapper, Milton H. Warshaver and Leonard Warshaver are individuals and are officers of corporate respondent. Said individuals formulate, direct and control the acts and practices of the corporate respondent. Respondents' address is 144 Moody Street, Waltham, Massachusetts.

PAR. 2. Respondents are now, and for some time last past have been, engaged in manufacturing, advertising, offering for sale, selling and distributing beds and beddings to retailers for resale to the public.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said products, when sold, to be shipped from their place of business in the state of Massachusetts to purchasers thereof located in the various other states of the United States, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business as aforesaid, respondents cause advertisements of their said products to be broadcast over various television stations in the New England area. Said broadcasts are heard and seen by listeners in states other than the states from which the broadcasts emanate.

Respondents also prepare and furnish to the retailers and dealers handling their products various advertising material for publication in newspapers and other periodicals. Respondents enter into various cooperative advertising and promotional plans with said retailers and dealers under which respondents pay varying proportions of the expense incurred by said retailers and dealers in disseminating newspaper and other kinds of advertising, and respondents grant to participating retailers and dealers other allowances and rebates.

All of the aforesaid advertising, as well as other kinds of advertising done by respondents, contain numerous representations respecting the price, grade, quality, composition, workmanship and other characteristics of said products.

PAR. 5. Typical and illustrative of certain of the representations contained in the aforesaid advertising material, but not all inclusive, are the following:

Slumberland's * * * Centa-Firm * * * mattress * * * Regularly Priced $59.50 * * * Now! * * * $39.95 each

Slumberland * * * New '59 Centa-Firm interspring mattresses and box springs. Sensational Introductory Sale Price $39.95 each * * * after this

introductory sale the price will be $59.50 * * * Buy now and save $$$ * * * This is a Limited Time Introductory Sale on this New Centa-Firm so Buy Now—Save $$.

First Time Ever—A GENUINE Slumberland Pedic INNERSPRING Mattress with BACKBRACING Support That Helps STOP BACKACHE Due To Sleeping On Too Soft A Mattress * * * First time ever at this special low sale price $39.90 * * * Never Before Perhaps Never Again An Offer Like This! * * * Here's the secret of the Pedic's backbracing support (cross section cut of body on mattress) This Genuine Slumberland PEDIC has not one but TWO Resilient Miracle pads built right into it. They refuse to sag and actually help the coils react instantly to your weight. * * * Would you believe it? A Genuine PEDIC Mattress priced so low! You've seen other brands for much, much more, but now Slumberland brings you one of the finest of all at an amazingly low price. Slumberland's exclusive BACKBRACING SUPPORT, firm for the sleep of health you need, comes from crush-proof, DOUBLE-CUSHIONED Rubberized Miracle Pads that just can't sag * * * plus HEAVY DUTY Electronically-Tempered steel coils. * * * Doctors say that too soft or too hard a mattress can result in back-ache problems * * * The happy medium is the "just right firmness" of the Pedic.

New '59 Centa-Firm innerspring mattresses * * * Slumberland and Only Slumberland Has It (cut away cross section view of mattress) Exclusive New Spring-O-Matic Controlled Triple Action Side Springs Automatically Adjust Your Weight and Body To Keep Mattress in Perfect Shape * * *

Typical and illustrative, but not restricted thereto, are the following representations made in respondents' television advertisements:

* * * a PEDIC mattress is SCIENTIFICALLY the best for healthful sleep. So act NOW * * * during this sale of * * * nationally-famous Slumberland PEDIC MATTRESS * * * NOT at the usual HIGH Price of others but, ONLY $39.90 * * * save on a genuine SLUMBERLAND Pedic Mattress * * * now on LIMITED SALE * * * only $39.90 * * *

PAR. 6. Through the use of the aforesaid statements and others similar thereto but not specifically set out herein the respondents represent, directly or indirectly:

1. That their centa-firm mattresses had a regular retail selling price of $59.50, that said centa-firm mattresses were being offered at the reduced price of $39.95 and that savings in the amount of the difference between the aforesaid higher and lower prices were afforded the purchaser.

2. That respondents' centa-firm mattresses were of a grade, quality, design and workmanship equal to mattresses then selling at retail for $59.50 in the same trade area in which said centa-firm mattresses were being offered for sale.

3. That respondents' Pedic mattresses were being offered for sale at a reduced price with consequent savings to the purchaser.

4. That the side clip spring device used in respondents' centa-firm mattresses constituted a different method of construction and was used only by respondents.

5. That the side clip spring device substantially adjusted and controlled the reaction of the other springs contained in the mattress to body weight.

6. That the pads contained in respondents' Pedic mattresses constitute a different method of construction, are crush-proof and sag-proof and impart to the springs a unique and instantaneous response to body weight.

7. Through the use of the word "Pedic" and the accompanying written and pictorial representations, that respondents' Pedic mattresses are specially built and scientifically and unusually designed and constructed to meet the specifications of orthopedic surgeons or physicians and are constructed and designed to meet the specifications for "firm-type" mattresses recommended or prescribed by orthopedic surgeons or physicians to relieve backache or other bodily infirmities.

8. That respondents' Pedic mattresses are of a like, grade, quality, design and workmanship as genuine higher priced orthopedic or "firm-type" mattresses and that purchasers thereof save the difference in the purchase price.

9. That respondents' Pedic mattresses are nationally sold.

10. That respondents' centa-firm mattresses and Pedic mattresses were being offered for sale at reduced prices for a limited time only.

PAR. 7. The aforesaid statements and representations hereinabove set forth as well as those not specifically set out herein are false, misleading and deceptive. In truth and in fact:

1. Respondents' centa-firm mattresses did not have a regular retail selling price of $59.50. Said centa-firm mattresses offered for sale and sold at $39.95 were not offered for sale and sold at a reduced price and savings were not afforded purchasers in an amount equal to the difference between said higher and lower amounts. The regular retail selling prices of respondents' centa-firm mattresses were and had been for a period of years $39.95. Respondents' 1959 centa-firm mattresses were not offered to purchasers as an introductory offer with substantial savings from the regular retail selling price of the said mattress. Respondents' 1959 centa-firm mattresses were substantially the same mattresses which had been offered in previous years to the public at retail for $39.95.

2. Respondents' centa-firm mattresses were not of a grade, quality, design and workmanship equal to that of mattresses selling at $59.50 in the same trade area. Mattresses traditionally sell at about $39.95,

$59.50 and $79.50. Respondents' said centa-firm mattresses do not meet the usually accepted standards and specifications for the higher priced mattresses.

3. Respondents' Pedic mattresses were not being offered for sale at a reduced price. Said Pedic mattresses were not equal to the usually accepted standards and specifications for higher priced mattresses.

4. The side-clip spring device used in respondents' centa-firm mattresses was not a different method of construction and has been used over a period of years by many other mattress manufacturers.

5. Said side clip spring device has very little effect on the manner in which the other springs in the mattress react to body weight.

6. The pads contained in respondents' Pedic mattresses do not constitute a different method of construction, are not crush-proof and sag-proof and do not impart to the springs a unique and instantaneous response to body weight. The pads used in respondents' said Pedic mattresses are ordinary latexed, sisal pads used by many mattress manufacturers to keep the springs from working through the ticking or the coverings placed over the springs.

7. Respondents' Pedic mattresses are not specially built and are not scientifically and unusually designed and constructed to meet the specifications of orthopedic surgeons or physicians and are not constructed and designed to meet the specifications for "firm-type" mattresses recommended or prescribed by orthopedic surgeons or physicians to relieve backache or other bodily infirmities. In quality, design and construction, respondents' Pedic mattresses are about the same as mattresses manufactured by others and retailing at around $39.95.

8. Respondents' Pedic mattresses are not of a like grade, quality, design and workmanship as genuine higher priced orthopedic or "firm-type" mattresses and purchasers do not save the difference in the purchase price thereof.

9. Respondents' Pedic mattresses are not nationally sold. The sale of respondents' mattresses is limited almost entirely to the New England states.

10. Respondents' 1959 centa-firm mattresses and its Pedic mattresses were not offered for a limited time or for a special introductory sale. Respondents' 1959 centa-firm and its Pedic mattress which it sold beginning in late 1959 and early 1960 were substantially the same mattresses and had substantially the same specifications and construction as its earlier mattresses which were built to sell at retail for about $39.95. Respondents actually promoted a build-up sale under the guise of a special introductory offer for its

1959 centa-firm mattress and then changed the name from "centa-firm" to "Pedic" while maintaining substantially the same specifications and construction.

PAR. 8. In the conduct of their business, at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of beds and bedding of the same general kind and nature as that sold by respondents.

PAR. 9. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of respondents' product by reason of said erroneous and mistaken belief. As a consequence thereof, substantial trade in commerce has been, and is being, unfairly diverted to respondents from their competitors and substantial injury has thereby been, and is being, done to competition in commerce.

PAR. 10. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair and deceptive acts and practices and unfair methods of competition, in commerce, within the intent and meaning of the Federal Trade Commission Act.

Mr. Terral A. Jordan for the Commission.

Sutherland, Asbill & Brennan, by *Mr. Mac Asbill* and *Mr. Charles L. Saunders*, of Washington, D.C., for respondents.

INITIAL DECISION BY WALTER R. JOHNSON, HEARING EXAMINER

In the complaint dated July 19, 1960, the respondents are charged with violating the provisions of the Federal Trade Commission Act.

On October 20, 1960, 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 Slumberland Products Co. is a corporation existing and doing business under and by virtue of the laws of the State of Massachusetts. Respondents Arthur M. Warshaver, Sumner Tapper, Milton H. Warshaver and Leonard Warshaver are individuals and are officers of said corporate respondent. Said individuals formulate, direct and control the acts and practices of the corporate respondent. Respondents' office and principal place of business is located at 144 Moody Street, in the City of Waltham, State of Massachusetts.

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 Slumberland Products Co., a corporation, and its officers, and Arthur M. Warshaver, Sumner Tapper, Milton H. Warshaver and Leonard Warshaver, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of beds and bedding or any other articles of merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or indirectly:

(a) That any amounts are the regular retail selling prices of said products in a given trade area when such amounts are in excess of the prices at which said products are, or in the recent regular course of business have been, customarily or usually sold in said trade area by a substantial number of those retailers offering said products for sale.

(b) That any amounts at which said products are offered for sale and sold at retail are reduced prices or afford savings to purchasers at retail from the usual and customary selling prices of said products

unless said amounts are in fact a reduction from the prices at which said merchandise is or has been usually and customarily offered for sale and sold at retail in the recent regular course of business by a substantial number of those retailers offering said products for sale in the trade area in which the representations are made.

(c) That respondents' said products are of a like grade, quality, design and workmanship as higher priced merchandise offered for sale or sold by other persons, firms or corporations in the same trade area in which the representations are made or that purchasers save the difference in cost between respondents' said products and said higher priced products unless respondents' said products are in fact of a like grade, quality, design and workmanship in all material respects as said higher priced merchandise and said higher priced merchandise is generally available for purchase at the stated comparative price in the trade area or areas where the representation is made and if not so available that fact is clearly disclosed.

(d) That the side-clip spring devices used in respondents' "Centa-Firm" mattress or substantially similar devices used in any of the respondents' products constitute a different method of construction from that previously used in the mattress industry or are used exclusively by respondents or cause the other springs in the mattresses to respond to body weight in a manner different from their actual reaction.

(e) That the pads used in respondents' "Pedic" mattress or substantially similar materials used in any of respondents' said products constitute a different method of construction from that previously used in the mattress industry or are crush-proof or sag-proof or cause the springs in the mattresses to respond to body weight in a manner different from their actual reaction.

(f) That said products are specially built or scientifically or unusually designed and constructed to meet the specifications of orthopedic surgeons or physicians or are "firm type" mattresses recommended or prescribed by orthopedic surgeons or physicians to relieve backache or other bodily infirmities unless such is the fact.

(g) That their "Pedic" mattress is nationally sold; or that any other of their products is nationally sold, unless such is the fact.

(h) That said products are offered for sale at reduced prices for a limited time, unless such is the fact.

2. Furnishing or otherwise placing in the hands of retailers or dealers in said products the means and instrumentalities by and through which they may mislead or deceive the public in the manner or as to the things hereinabove inhibited.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

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

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

IN THE MATTER OF

FIRTH CARPET COMPANY

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

Docket 7947. Complaint, June 15, 1960—Decision, Dec. 29, 1960

Consent order requiring a New York City manufacturer to cease representing falsely in advertising and on labels that its rugs, domestically made of domestic materials, were imported from Scotland or Ireland or Algiers, were woven by a special "Tuft-woven process"—actually its own registered trademark—and were sheared by hand.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Firth Carpet Company, a corporation, hereinafter referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Firth Carpet Company, 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 295 Fifth Avenue in the City of New York, State of New York.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the manufacture, offering for sale, sale, and distribution of rugs and carpets. Respondent manufactures said rugs and carpets at plants located in Auburn, New York, Firthcliffe, New York,

Newburg, New York, Burnsville, North Carolina, Laurens, South Carolina, and Mayaguez, Puerto Rico.

PAR. 3. In the course and conduct of its business, respondent now causes, and for some time last past has caused, its products, when sold, to be shipped from its places of business to purchasers thereof located in various other states of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of its business, and for the purpose of inducing the sale of its rugs and carpets, respondent has made certain statements in advertisements in magazines of national circulation, in other publications, and on its labels, concerning, among other things, the method or methods used in producing its products, and the point of origin of those products or the origin of the material used therein, of which the following are typical:

(a) Made on the fabulous Firth Tuftwoven® principle * * *
(b) Tuftwoven® with 100% Prime Virgin Wool Pile
(c) A luxurious looped pile texture Tuftwoven® of prime quality yarns.
(d) All Wool "Hand Sheared Textures".
(e) "Hand Sheared textures" by Firth. [picturization of a hand grasping shears]
(f) Highland Shepherd Homespun
(g) Conomara Tweed
(h) Algiers.

PAR. 5. Respondent, through the use of the aforesaid statements appearing in the advertisements and labels set out and quoted under the lettered subparagraphs above, represented that:

(a), (b), (c) "Tuftwoven" is a special process used by respondent in the manufacture of rugs and carpets.

(d), (e) Said rugs and carpets are sheared by hand.

(f) The rug or carpet having such a designation, or the material used therein, originated in Scotland.

(g) The rug or carpet having such a designation, or the material used therein originated in the County Conomara, Ireland.

(h) The rug or carpet having such a designation, or the material used therein, originated in Algiers.

PAR. 6. The aforesaid statements are false, misleading and deceptive. In truth and in fact:

(a), (b), (c) "Tuftwoven" is a trademark registered by the respondent to designate the company of manufacture. It does not designate a special process of manufacture.

(d), (e) The rugs and carpets which bear the legend "hand sheared texture" are not hand sheared but are machine made.

(f) Rugs and carpets designated "Highland Shepherd Homespun" were not imported from or made from material imported from Scotland. Said rugs and carpets were domestically made, using domestic materials.

(g) Rugs and carpets designated "Conomara Tweed" were not imported from or made from material imported from County Conomara, Ireland. Said rugs and carpets were domestically made, using domestic materials.

(h) Rugs and carpets designated "Algiers" were not imported from or made from materials imported from Algiers. Said rugs or carpets were domestically made, using domestic materials.

PAR. 7. In the conduct of its business, respondent was, and is, in substantial competition, in commerce, with corporations, firms and individuals in the sale of rugs and carpets of the same general kind and nature as those sold by respondent.

PAR. 8. The use by respondent of the aforesaid false, misleading and deceptive statements and representations has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneaus and mistaken belief that said statements and representations were, and are, true and into the purchase of substantial quantities of respondent's products by reason of said erroneous belief. As a consequence thereof, trade in commerce has been unfairly diverted to respondent from its competitors and injury has thereby been done to competition in commerce.

PAR. 9. The aforesaid acts and practices of respondent, as herein alleged, were, and are, all to the prejudice and injury of the public and of respondent's competitors and constituted, and now constitute, unfair and deceptive acts and practices and unfair methods of competition, in commerce, within the intent and meaning of the Federal Trade Commission Act.

Mr. Robert G. Cutler supporting the complaint.

Mr. A. Marvin Braverman, of Washington, D.C., for respondent.

INITIAL DECISION BY JOHN B. POINDEXTER, HEARING EXAMINER

On June 15, 1960 the Federal Trade Commission issued a complaint charging that the above-named respondent had violated the provisions of the Federal Trade Commission Act. The complaint alleged that respondent had in the course and conduct of its business, and for the purpose of inducing the sale of its rugs and carpets, made certain statements concerning, among other things, the method

or methods used in producing its products and the point of origin of those products or the origin of the material used therein.

After issuance and service of the complaint the respondent, its attorney, 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 it has violated the law as alleged in the complaint.

The undersigned hearing examiner, having considered the agreement and proposed order, hereby accepts such agreement, makes the following jurisdictional findings, and issues the following order:

JURISDICTIONAL FINDINGS

1. Respondent Firth Carpet Comany is a corporation existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 295 Fifth Avenue, New York, New York.

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

ORDER

It is ordered, That respondent Firth Carpet Company, a corporation, its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution in commerce, as "commerce"

is defined in the Federal Trade Commission Act, of rugs, carpets or other products, do forthwith cease and desist from:

1. Using the word "Tuftwoven" in connection with the word process, method, or any other such word, term or expression to denote a process or method of manufacture.

2. Using any other word, term or expression in connection with the word process, method, or any other such word, term or expression to denote a process or method of manufacture, when such word, term or expression is not, in fact, a process or method of manufacture.

3. Representing, directly or by implication, that any of its rugs or carpets made by machine are hand made, in whole or in part.

4. Using the words "Highland Shepherd Homespun," "Conomara Tweed" or "Algiers," or any other distinctively foreign name in advertising or in labeling to designate or describe the aforesaid products which are not in fact made in a foreign country or using any other word or term in advertising or in labeling as descriptive of the aforesaid products which represents, directly or indirectly, that said products are made in a country other than the one in which they in fact are made, without clearly and conspicuously revealing the actual country of origin of such products.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 29th day of December 1960, become the decision of the Commission; and, accordingly:

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

IN THE MATTER OF

UNITED STATES RETAIL CREDIT ASSOCIATION, INCORPORATED, ET AL.

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

Docket 7488. Complaint, May 14, 1959—Decision, Dec. 30, 1960

Order requiring Mentor, Ohio, operators of a collection service for business and professional men, to cease representing falsely that their business was an association or a credit reporting agency, by use of the words "associa-

tion" or "credit association" in their corporate name or otherwise; that their Mentor, Ohio, office was a "National Headquarters" and that they had branch offices; that they had been in business for 30 years; that they had their own professional collectors throughout the United States; that they made investigations through banks, employers, and others; and that they issued credit reports to their clients.

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

Mr. Charles S. Cox for the Commission.

Mr. Wayne R. Milburn, of Painesville, Ohio, for respondents.

Findings as to the Facts, Conclusions and Order

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on May 14, 1959, issued and subsequently served its complaint in this proceeding upon the respondents, charging them with engaging in unfair and deceptive acts and practices and unfair methods of competition in commerce in violation of said Act. Hearings were held before a hearing examiner of the Commission and testimony and other evidence in support of and in opposition to the allegations of the complaint were received into the record. In the initial decision filed on June 30, 1960, the hearing examiner found that certain of the complaint's allegations were sustained by the evidence and that others were not so supported.

The Commission having considered the appeal filed by counsel supporting the complaint from the initial decision and having determined that said appeal should be granted and that the initial decision should be vacated and set aside, the Commission further finds that this proceeding is in the public interest and now makes this its findings as to the facts, conclusions drawn therefrom, and order, the same to be in lieu of those contained in the initial decision.

Findings as to the Facts

Paragraph 1. The respondent United States Retail Credit Association, Incorporated, is a corporation organized and doing business under the laws of the State of Ohio with its office and principal place of business located at 1423 Mentor Avenue, Mentor, Ohio.

Par. 2. The officers of the corporate respondent include respondents George M. Hyde, President, and William C. Childs, Secretary-Treasurer, the latter being erroneously designated in the complaint as William C. Chiles. Respondents Edward W. Elliot and Margaret W. Anthony, although officers of the corporate respondent at one time, are no longer officers thereof and were not so serving at the time of issuance of the complaint. Respondent George M. Hyde has exercised prime responsibility in formulating and directing the acts, policies and practices of the corporate respondent. Respondent

William C. Childs, as a general officer of the corporation and as its Director of Sales, participated and cooperated in performing the acts and practices hereinafter found. As used hereafter, the term respondents accordingly refers to respondents United States Retail Credit Association, Incorporated, George M. Hyde and William C. Childs.

PAR. 3. The respondents are engaged in the advertising and sale of a service to business and professional men whereby respondents furnish various printed forms and notices to be used by such subscribing purchasers for collecting delinquent accounts owing to them and keeping outstanding accounts from becoming delinquent, and whereby respondents operate a collection agency for collecting claims and accounts forwarded by the subscribers as authorized by their agreements. Respondents' customers are secured through solicitors employed on a commission basis and who call on business and professional men in various parts of the United States. Those purchasing respondents' service sign an "Official Membership Application and Agreement." Upon acceptance, the corporate respondent then mails to the purchaser a portfolio of printed matter or forms called a "credit secretary." This consists of a metal membership emblem, a supply of stickers or shields, a booklet containing "Official Delinquency Notices and Association Forwarding Data," a supply of sheets for listing of accounts or claims subsequently forwarded to respondents for collection, and a booklet of "Official Good Will Budget Plan Notes."

PAR. 4. The metal membership emblem, intended for display in the store or office of the subscriber, states that the establishment's unpaid accounts are forwarded to the United States Retail Credit Association and counsels patrons to "Protect Your Credit Rating—Pay Accounts Promptly When Due." The top of the emblem depicts what is apparently an American eagle with outspread wings above the legend "Member of United States Retail Credit Association." The stickers are of red paper approximately 1½″ x 1¼″ in size and in the shape of a shield, and are imprinted in white lettering with the words "Member—Past Due Accounts sent to the United States Retail Credit Association for Collection." They are intended to be pasted on the face of monthly statements mailed by the subscriber to credit customers. If the debtor ignores such warnings and continues to default, the creditor mails an "Official Delinquency Notice" which states that unless prompt payment is made his account will be forwarded to the Association for collection. In short, the forms are intended to assist the subscriber in effecting its own collections prior to calling on the corporate respondent for help.

PAR. 5. Under the membership agreement, the creditor is entitled to forward a specified number of accounts to the corporate respondent for collection, the number varying with the amount of the enrollment fee paid. The term of enrollment is one year. The corporate respondent has had approximately eleven different fees, ranging from $40.00 to $720.00. Thus, a business concern paying an enrollment fee of $40.00 has been entitled to forward a total of 35 accounts to the corporate respondent for collection during the year, whereas the maximum fee permits the creditor to forward 700 accounts. The corporate respondent is not entitled to any fee for the collection of an account until it has collected and remitted to the subscriber an amount equal to his subscription payment. Thereafter, on any amounts collected by the corporate respondent in excess of such fee, the corporate respondent is entitled to retain 15% as a collection fee which also is its maximum percentage.

PAR. 6. In the operation of its business, the corporate respondent transmits letters, contracts, forms, checks and various commercial documents through the United States mails from its place of business in the State of Ohio to solicitors and customers in various parts of the United States. The corporate respondent also transmits through the United States mails letters, forms and various commercial documents to the debtors of its customers located in various states of the United States and receives letters, checks, money orders and other documents from debtors of its subscribers located in various states of the United States. Accordingly, the corporate respondent is engaged in extensive commercial intercourse in commerce, as "commerce" is defined in the Federal Trade Commission Act. In the conduct of its business, the corporate respondent is and has been in substantial competition with other corporations, firms, and individuals engaged in the business of furnishing services for collecting claims and accounts, including collection agencies.

PAR. 7. In the course and conduct of their business, the respondents use and feature the corporate name United States Retail Credit Association, Incorporated, as well as the name United States Retail Credit Association. The respondents further refer to their subscribers as "Members of United States Retail Credit Association." Through use of the aforesaid names and statement, the respondents represent, directly and by implication, that the corporate respondent is a retail credit association, that is, an organization of retail credit men banded together for educational or social purposes and for promoting the mutual benefit of members. Such representation by respondents is false, misleading and deceptive. The corporate respondent is not a retail credit association or in any manner engaged

in carrying on such an association for members. The respondents essentially engage in the sale of a service comprising forms for use by customers in collecting their credit accounts and in furnishing collection services to such subscribers as forward their delinquent accounts for collection, respondents' collection activities being limited to contacting debtors by mail.

In the sales promotion literature and also in forms and stationery used in sales presentations and in dealing with debtors from whom respondents endeavor to collect accounts for their customers, the respondents identify their business as a "nationwide association of business and professional men dedicated to the preservation and maintenance of sound credit practices." Through use of such statement, the respondents represent and imply that their business is an association composed of business and professional men banded together for the compilation, maintenance and dissemination of retail credit information for and to their members, and that such organization is nationwide in scope, operation and coverage. The aforesaid statement and representations by respondents are false, misleading and deceptive. Respondents are not and do not operate an association of business or professional men of any kind or for any purpose.

PAR. 8. In the course and conduct of their business and for the purpose of inducing individuals, firms and corporations to enter into contracts with them, respondents have made many other statements respecting the nature, extent, size of their business, the period of time in which it has been in operation, and services afforded. Such statements have appeared in printed matter used in dealing with prospective customers or with debtors and include the following:

National Headquarters—U.S.R.C.A. Building Mentor, Ohio.

Backed by the power of 30 years progress.

Professional collectors throughout the United States.

Investigations made through banks, employers, etc.

Our Service reaches into Every State, County, City, and Village in the entire United States of America.

Free Credit Reports—There shall be no charge to Member for credit information extracted from Association files, nor any limit on number of such credit reports Member may request.

PAR. 9. Through use of the aforesaid statements, respondents have represented and now represent, directly and by implication, that they have branch offices in various sections of the United States; that corporate respondent has been in the collection business for thirty years; that respondents have their own professional collectors throughout the United States; that they make investigations through banks, employers and others; and that they issue credit reports to their clients.

PAR. 10. The aforesaid statements and representations by the respondents are false, misleading and deceptive. The respondents do not operate branch offices and their sole place of business is in Mentor, Ohio. The corporate respondent was organized in 1956 and, therefore, has been in business for approximately four years. Nor does the respondent corporation have professional collectors throughout the United States. It does not use such collectors and all collection activities are conducted from its office in Mentor, Ohio, and limited to contacting debtors through the mails. Respondents do not make investigations through banks, employers or others, nor do they issue credit reports.

PAR. 11. The use by the respondents of the aforesaid false and misleading statements and representations has had, and now has, the capacity and tendency to mislead members of the public, including business concerns and debtors, into the erroneous and mistaken beliefs that said statements and representations are true. As a result thereof, substantial trade has been, and is being, unfairly diverted to respondents from their competitors.

CONCLUSIONS

The aforesaid acts and practices of respondents United States Retail Credit Association, Incorporated, George M. Hyde and William C. Childs are to the prejudice and injury of the public and to respondents' competitors and constitute unfair and deceptive acts and practices and unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

The Commission is of the opinion that the complaint's charges of law violation insofar as they relate to respondents Edward W. Elliot and Margaret W. Anthony are not sustained by the evidence.

ORDER

It is ordered, That respondent United States Retail Credit Association, Incorporated, a corporation, and its officers, respondents William C. Childs, and George M. Hyde, individually and as officers of said corporate respondent, and said respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale and sale of any service or printed matter for use in the collection of claims or accounts, the solicitation of accounts or contracts therefor, and the collection of accounts in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the words "association" or "credit association", or any other term of similar import or meaning in the corporate name or in any other manner to designate, describe or refer to the respondents' business, or otherwise representing, directly or by implication, that respondents' business is an association or a credit reporting agency.

2. Representing, directly or by implication, that respondents have branch offices.

3. Representing, directly or by implication, that any of the respondents have been in any kind of business in excess of the actual time in which such respondent or respondents have been so engaged.

4. Representing, directly or by implication, that respondents have professional collectors throughout the United States or at any place where they do not have such representatives.

5. Representing, directly or by implication, that respondents make investigations through banks, employers or others or that their efforts at investigating, when made, exceed that of routine inquiries by correspondence.

6. Representing, directly or by implication, that the service rendered by respondents reaches into states of the United States or any area not actually reached.

7. Representing, directly or by implication, that respondents furnish credit reports or that their files contain any credit information other than that relating to debtors whose accounts have been submitted to respondents for collection.

It is further ordered, That the allegations of the complaint be, and the same hereby are, dismissed as to respondents Edward W. Elliot and Margaret W. Anthony.

It is further ordered, That the respondents named in the order to cease and desist 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.

OPINION OF THE COMMISSION

By ANDERSON, *Commissioner*:

The complaint in this proceeding charged that the respondents have engaged in unfair and deceptive acts and practices in commerce by misrepresenting the nature of their business and the benefits afforded by their collection and other services. In the initial decision, the hearing examiner found that certain of the charges were sustained by the evidence, but that others were not so supported. Counsel supporting the complaint has filed appeal from various of the latter dismissal rulings.

The respondent, United States Retail Credit Association, Incorporated, is an Ohio corporation, the capital stock of which is held by respondent George M. Hyde and his wife. The term respondents when used hereafter designates and refers to the respondent corporation and respondents George M. Hyde and William C. Childs, who are two of its officers. Respondents advertise and sell a business service to stores and offices consisting of a portfolio of printed forms and notices to be used by the subscriber in helping to keep accounts owed to him on a current basis and for collecting those already delinquent. As part of its service agreement, the respondent corporation also undertakes to assist the customers in collecting claims and accounts forwarded for that purpose, respondents' collection activities being limited to contracting the debtors by mail.

The printed matter supplied to customers include a metal membership emblem identifying the store or office where displayed as a "Member of United States Retail Credit Association" and cautioning the clientele that unpaid accounts are forwarded for collection to the Association. Other material for use by the stores includes red shields for display on billings with warnings to like effect and "official" delinquency notices to be sent to debtors which inform that the creditor is "obligated" to forward his account to the Association unless payment arrangements are immediately made. Respondents' schedule of fees for subscribers has ranged from $40.00 up to $720.00, depending on the number or value of the accounts which the customer is entitled to submit for collection, namely, 35 for the minimum priced enrollment and 700 for the highest.

The complaint contains two categories of charges challenging respondents' use of the word "association" as deceptive for describing their business. One alleges that, through use of the names United States Retail Credit Association, Incorporated, and United States Retail Credit Association, and by designating their customers as members, respondents represent directly and by implication that the corporate respondent is a retail credit association and engaged in carrying on that type of business for members, whereas it is not such an enterprise. In sales literature and also in forms and stationery used in dealing with sales representatives and with debtors when collecting customers' accounts, respondents identify their business as a "nationwide association of business and professional men dedicated to the preservation and maintenance of sound credit practices"; and the complaint alleges that such statement deceptively represents the corporate respondent's business to be an association of business and professional men banded together for the compila-

tion and dissemination of retail credit information for members and as national in scope and coverage.

The evidence received includes the testimony of the secretaries or managers of three credit agencies doing business in the Cleveland, Ohio, area. They expressed views respecting the meanings engendered by certain terms used in designating credit associations and kindred agencies including that for "retail credit association." The principal business of their respective organizations has been the collection of information relating to the credit responsibility of individuals and businesses and reporting such data to their subscribers or members and other agencies. Some also collect delinquent accounts. Those witnesses testified in essence that the words retail credit association signified an organization of retail credit men for educational and social purposes and promoting the mutual benefit of the members.

According to the record, several such associations exist in the national field. One example, The National Retail Credit Association, is a non-profit and member-owned organization composed of approximately 50,000 credit executives and credit granters who are linked together for the mutual benefit of members and the improvement of consumer credit conditions. Another, the Associated Credit Bureaus of America, Inc., is a non-profit, voluntary credit association of credit reporting concerns and collecting services. The witness, who was an official of the Cleveland Association of Creidt Management, stated that his non-profit organization provided credit services over an area in northern Ohio and was affiliated with the National Association of Credit Men which had headquarters in New York City. The emblem furnished by this organization to members reads "Member National Association of Credit Men." The similarity of the corporate respondent's display emblem to that emblem is obvious and requires no further comment.

The respondent corporation is essentially engaged in the sale of forms for customers' use in collecting their accounts and in assisting subscribers in collecting those which they fail to collect. Not only does the evidence establish that the respondents' use of both the term United States Retail Credit Association and its corporate name reasonably represents and implies to customers and debtors that their enterprise is an association of credit men, but the record further supports conclusions that the sales literature, forms and collection material used have been tailored to accentuate and confirm such deceptive impressions of a cooperative membership organization national in scope. Thus, in the reporting forms furnished for use by solicitors in forwarding sales contracts to the corporation, respondents' service is referred to as the "Association's Member-

ship Credit and Collection Plan" and the salesman affirms that he has presented the plan to each "Applicant strictly in accordance with the Association's Official Rules and Regulations."

The contract signed by subscribers is in like vein and designated "Official Membership Application and Agreement"; and the sales promotional literature prominently features a provision of such agreement whereby the member grants the Association the right to discount and take title to notes forwarded for collection by paying the creditor 70% of face value. The enrollment agreements contain an express limitation respecting the aggregate value of notes to be so discounted "in any one year", which maximum varies with cost of enrollement selected. The prospectus and printed sales presentation provided for use by salesmen further stress a theme of mutality and cooperation respecting this feature, as follows:

> You will note that there is a limit, governed by type of Group Membership, on the money value of Notes which may be discounted. This is for Members Protection. It means that no favored Member can monopolize the Fund. The "Revolving Fund" concept is new. It is used prudently and usually in connection with accounts not more than 90 days old. This, too, is for Member's protection. * * *
>
> * * * * * * * *
>
> * * * since the use of this Fund is for *all* the Members, care must be taken in the exercising of the Discount option * * *. This is obviously necessary, Mr. Jones, because, for example, you certainly wouldn't want the Association to discount a Budget Plan Note for another Member where the Note involved was of very dubious value and that as a result of not being able to collect this Note, the Fund would be depleted and not fully available for use by Members. [Underscoring as in original.]

The prospectus also includes a testimonal letter expressing a member physician's appreciation for prompt discounting of an account and lauding this aspect of the "membership plan." Respondent Hyde testified that the doctor was his physician. He further conceded that accounts have been discounted for "very few" customers, stated that those usually received for collection were in a deplorable condition, and placed the number discounted since inception of the business as less than 25.

Another promotional item, namely, a mailer used by respondents and solicitors for initially establishing contact with prospective subscribers includes the following statement:

> Free credit reports are furnished Member from Association files. No limit as to frequency or number that Member may require.

The above-mentioned prospectus includes a "Confidential Report", by the corporation's "Credit Report and Service Division" containing information as to a purported subject's family status and employment and recommending him as a "fair" credit risk because of

having met scheduled payments on accounts previously forwarded respondents for collection. Mr. Hyde testified, however, that the company had never furnished a credit report to any subscriber. Hence, the respondents' assumption in their advertising of this recognized vestment of cooperative or association credit endeavor similarly has no foundation in fact.

The hearing examiner clearly erred in failing to find that the complaint's charges that the respondents have falsely represented their enterprise to be an association, a retail credit association and a membership credit reporting agency through use of the corporate name and otherwise in their advertising have sound support in the record. Respondents' designations of their business as a retail credit association and as an association are false in their entirety. We think too that an absolute prohibition against respondents' future use of those terms to designate their business is required in the public interest.

The hearing examiner also erred in finding that the record did not support the complaint's additional charges that respondents' enrollment agreements falsely represent and imply that credit reports are furnished their clients. The particular statement in the agreement against which this charge is directed reads as follows:

> Free Credit Reports—There shall be no charge to Member for credit information extracted from Association files, nor any limit on number of such credit reports Member may request.

As noted previously, an advertising folder used by respondents has unqualifiedly represented that such reports are furnished from their files, and the prospectus for display to prospective enrollees has featured a purported sample report, whereas respondents have never provided such reports. Respondents' use in such circumstances of the above-quoted statement clearly has been attended by capacity and tendency to deceive.

The remaining issue presented under the appeal relates to respondents' use in promotional matter and forms of the statement "National Headquarters—U.S.R.C.A. Building, Mentor, Ohio" for identifying the corporate respondent. In this connection, the complaint charged that respondents thereby have falsely represented and implied that their organization has branch offices in various sections of the United States. The Mentor office is the only place of business operated by respondents. That address is additionally referred to as the "home office" and as "executive headquarters." Moreover, similarly deceptive suggestions of branch places of business inhere in a companion false statement used in respondents' advertising and collection forms which represents their service as

reaching into every city and village in the entire United States. The initial decision's dismissal of this charge was, therefore, erroneous.

The appeal of counsel supporting the complaint is granted and the initial decision is vacated and set aside. The Commission's accompanying findings as to the facts, conclusions and order provide for disposition of the foregoing charges in conformity with the views expressed above.

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INTERLOCUTORY ORDERS, ETC.

ERIE SAND AND GRAVEL COMPANY

Docket 6670. Order, July 8, 1960

Order denying, for lack of jurisdiction, respondent's petition for rehearing after filing petition to review Commission order in the Court of Appeals.

Erie Sand and Gravel Company, respondent in this proceeding, by petition filed June 8, 1960, having requested a hearing before the Commission for the stated purpose of working out a mutually agreeable plan for compliance with the Commission's order of October 26, 1959, wherein the respondent was ordered to divest itself of certain assets acquired from Kelly Island Limestone and Transportation Company; and

It appearing that the respondent's ultimate objective is to obtain a modification by the Commission of its order of October 26, 1959, the contention being that this is necessary because the respondent has found it impossible to comply with the terms of the order as originally drafted; and

It further appearing that the respondent, on December 28, 1959, filed in the United States Court of Appeals for the Third Circuit a petition to review and set aside the aforesaid order of the Commission and that the Commission, on February 5, 1960, filed in said court the record in the case; and

The Commission being of the opinion that it has no present jurisdiction to entertain the proceedings necessary to determine the merits of the respondent's position:

It is ordered, That the petition for a hearing be, and it hereby is, denied.

ADAMS DAIRY COMPANY; ADAMS DAIRY, INC.; and THE KROGER COMPANY

Docket 7596

ADAMS DAIRY COMPANY; ADAMS DAIRY, INC.; and SAFEWAY STORES, INC.

Docket 7597

ADAMS DAIRY COMPANY; ADAMS DAIRY, INC.; and THE GREAT ATLANTIC & PACIFIC TEA COMPANY, INC.

Docket 7598

Order, July 28, 1960

Interlocutory order denying appeal from hearing examiner's denial of motions to quash subpoenas duces tecum as requiring irrelevant material in conspiracy case.

On May 2, 1960, the hearing examiner filed his order denying the motions filed by certain of the respondents in the above proceedings to quash the subpoenas duces tecum theretofore issued and served upon them. Respondents, Adams Dairy Company and Adams Dairy, Inc., have appealed from such rulings.

The complaints in these proceedings allege that the respondents named have effectuated and maintained a conspiracy, combination, agreement and understanding in the sale and distribution of dairy products in restraint of trade. The complaints further charge that the respondents for many years past have performed and pursued the policies, acts and practices there enumerated, including fixing of prices and price differentials and coercing of competitors to maintain such prices and differentials, pursuant to and in furtherance of such alleged conspiracy and understanding.

In their appeal, respondents contend that the subpoenas duces tecum require production of irrelevant material and that they are unduly broad and burdensome and unreasonable in scope. Respondents' contentions of irrelevancy are based on the premise that the complaints primarily charge a conspiracy to fix and maintain prices, that any concerted pricing activities proved to have been engaged in pursuant thereto would be deemed unlawful *per se*, and that it follows that information relating to the effects of the respondents' practices on competitors is irrelevant and unnecessary to disposition of the proceedings. The charges of the complaints, however, include additional allegations of territorial price reductions and sales below cost in favor of the respondent food chains. The relevancy of evidence bearing on the competitive effects of practices in that respect is, therefore, obvious and requires no further comment. Furthermore, the circumstance that unlawful combinations may be proved without an evidentiary showing of each step in their development or fruition does not dispense with the necessity for adequate development of facts relating to their formation and maintenance. The information requested in the subpoenas, including that relating to the trade practices of the appealing parties respondent in dealing with customers other than the grocery chain respondents and in dealing with their suppliers, accordingly appears fully relevant to the issues raised by the pleadings.

Counsel supporting the complaints concede that Adams Dairy Company has supplied the Commission with photostatic copies of a number of documents which are within the categories of material

requested in the subpoenas; and they have further conceded that copies of other documents relating to the dairy industry, including commercial activities of the respondents, have been received from other sources. Respondents contend that the subpoenas are unreasonably broad because they do not expressly exclude those documents from the purview of the information requested. As a corollary argument, they urge that failure to duly exclude those matters renders the subpoenas defective under § 3.17 of the Commission's Rules which prescribes that material being requested be specified as exactly as possible.

Counsel supporting the complaints have disclaimed any desire that respondents' returns duplicate those documents. In his order the hearing examiner in effect expressed like views but he also ruled that considerations of authenticity, and other considerations including due regard to the nature of the charges, justified the specifications' comprehensive form. The appealing respondents appear fully informed as to identity of the documents which they have furnished to counsel. Counsel supporting the complaints state that another of the respondents, not a party to this appeal, supplied a list of documents theretofore furnished by it to representatives of a congressional investigational committee, and that counsel marked such list as to documents in their possession for its information. An offer to join in a like orderely determination with the respondents bringing this appeal is implicit in the brief of counsel supporting the complaints. In these circumstances, it would be improper to conclude that the failure to exclude such material as is already in the Commission's possession renders the subpoenas unreasonable or invalid under § 3.17 of the Commission's Rules.

The additional arguments advanced in support of respondents' contentions that the subpoenas are unreasonable and unduly burdensome also have been considered and are likewise rejected. While the scope of the specifications is comprehensive and the requested information relates to activities of the companies extending back in instances for substantial periods of time, such specifications are within the purview of the alleged acts and practices constituting the violations charged. The Commission is of the view that the evidentiary material called for is relevant to the issues and that its production is necessary in the interest of decisions in these proceedings duly based upon the facts.

ORDER

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

KENTON LEATHER PRODUCTS, INC., ET AL.

Docket 7812. Order and Opinion, Aug. 15, 1960

Interlocutory order upholding hearing examiner's denial, as premature, of motion for return of certain physical property required as evidence, before disposition of case.

By the COMMISSION:

Respondents have taken an interlocutory appeal from the hearing examiner's order filed June 16, 1960, denying their motion for the return of certain physical property and data.

The material sought is described in respondents' statement of facts as follows:

This property and data were in the form of a book prepared by respondents. The book demonstrates the comparability, in various respects, of Kenton's wallets and those of its competitors selling at higher prices. It contains physical specimens of plastic wings, jet bars, leather of various types, tabs, fasteners, lining and partition materials, together with letters from Kenton's suppliers attesting to the comparability of the component parts.

Respondents allege that they submitted this material voluntarily and conditionally to the Bureau of Consultation with the understanding that it would be returned by that Bureau. It appears that the Bureau of Consultation subsequently forwarded the material to the Bureau of Investigation and that thereafter it went to the Bureau of Litigation where it is held at the present time. Counsel supporting the complaint has filed a notice of an intention to use this material as evidence in this proceeding.

Respondents assert that the effect of the alleged withholding of this material is to impede their trial preparations, and they claim that such withholding will affect the outcome of the case.

It appears that the material here sought was submitted to the Commission for such use as might be necessary relative to the pertinent inquiry and that thereafter it was to be returned to the respondents. There is still a need for the material. Counsel supporting the complaint has indicated an intention to use it as evidence in the instant proceeding. Accordingly, it is clear that the material is being retained under lawful and proper circumstances. Moreover, counsel supporting the complaint states that respondents have been advised that the property and data they seek will be available to them for inspection and copying. Thus, they will not be at any disadvantage in their preparation for trial. In the circumstances, their request for the return of the property and data prior to the disposition of this case is premature. Their appeal will be denied.

ORDER DENYING APPEAL

The respondents having filed an interluctory appeal from the hearing examiner's order of June 16, 1960, denying their motion for the return of certain physical property and data; and

The Commission, for the reasons set forth in the accompanying opinion, having determined that the appeal should be denied:

It is ordered, That the interlocutory appeal of the respondents be, and it hereby is, denied.

DIAMOND CRYSTAL SALT CO.

Docket 7323. Order, Aug. 19, 1960

Order approving plan for compliance with divestiture order of Feb. 4, 1960.

Whereas, the Commission issued an order on February 4, 1960, to divest and to cease and desist against Diamond Crystal Salt Co. and in paragraph 1 ordered respondent to divest itself absolutely, in good faith of all right, title and interest, real and personal, in certain property located in the Seneca Lake region in the State of New York, which respondent acquired from the Jefferson Island Salt Company when it acquired the stock, business and assets of the Jefferson Island Salt Company; and

Whereas, said order required Diamond Crystal Salt Co. to submit within sixty (60) days from February 18, 1960, the date of service of the order, in writing, for the consideration and approval of the Commission its plan for compliance with paragraph 1 of said order and its related provisions respecting divestiture, including the date within which compliance can be effected, the time for filing of report of compliance with the order to divest to be thereafter fixed by order of the Commission, jurisdiction being retained for that purpose; and

Whereas, Diamond Crystal Salt Co., by its statement dated April 19, 1960, as supplemented by its statement dated May 23, 1960, has submitted a plan for complying with the divestiture provisions of said order, including the date within which it is believed that compliance can be effected;

Now, therefore, upon consideration therof,

It is ordered, That the plan of compliance of respondent Diamond Crystal Salt Co., with paragraph 1 of the order to divest and to cease and desist issued on February 4, 1960, with related provisions respecting divestiture, contained in its statement dated April 19, 1960, as supplemented by its statement dated May 23, 1960, be and it is hereby approved.

It is further ordered, That the respondent Diamond Crystal Salt Co. shall within thirty (30) days from the date of service of this

order submit a report in writing, setting forth in detail the manner and form in which it has complied with said plan of compliance.

P. LORILLARD COMPANY, INC.

Docket 4922. Order, Aug. 25, 1960

Order dismissing petition to modify desist order in view of voluntary agreement of all cigarette manufacturers to discontinue the type of advertising claims prohibited.

The Commission, by order issued July 15, 1959, having reopened this proceeding and referred the case to a hearing examiner for the purpose of receiving such evidence as may be offered in support of and in opposition to the respondent's petition to modify the order to cease and desist theretofore entered herein; and

The respondent having subsequently determined that further proceedings on its petition might be unwarranted in the light of the intervening voluntary agreement on the part of all cigarette manufacturing companies, including the respondent, to discontinue the type of advertising claims prohibited by the order to cease and desist, and having now requested that further consideration of its petition be deferred until July 1, 1961, or until such other reasonable time as may be appropriate; and

The Commission having considered the matter and having concluded that nothing would be accomplished by a deferment of the proceedings which would not be accomplished by a dismissal of the petition without prejudice to the right of the respondent to renew it if and when future circumstances so warrant, and that the latter course is desirable in the interest of orderly procedure; and, accordingly:

It is ordered, That the respondent's motion to defer further consideration of its petition to modify the outstanding order to cease and desist herein be, and it hereby is, denied.

It is further ordered, That the aforesaid petition to modify the order to cease and desist be, and it hereby is, dismissed, without prejudice, however, to the respondent's right to renew said petition if and when the respondent feels that future circumstances so warrant.

FLUIDLESS CONTACT LENSES, INC., ET AL.

Docket 7026. Order and Opinion, Sept. 9, 1960

Order denying motion for modification of desist order, statutory showing of change in conditions of fact or of law not having been made.

OPINION OF THE COMMISSION

By the COMMISSION:

This matter has come on for hearing upon respondents' motion requesting the Commission to modify or construe paragraph (j) of the order to cease and desist entered in disposition of this proceeding on September 24, 1958. Counsel supporting the complaint has filed an answer in opposition thereto. A similar motion was filed by respondents on February 18, 1960, and was denied by Commission order issued March 17, 1960.

The initial decision, which became the decision of the Commission, was based upon an agreement containing a consent order to cease and desist. Paragraph (j) of the order agreed to by respondents prohibits them from representing that their contact lenses are revolutionary or are a new type of corneal lenses.

Under Section 5 of the Federal Trade Commission Act, any order of the Commission which has become final may be reopened and altered, modified or set aside, in whole or in part, whenever in the opinion of the Commission conditions of fact or of law have so changed as to require such action, or if the public interest shall so require. We have given careful consideration to respondents' present motion and their brief in support thereof and, in our opinion, the required statutory showing has not been made.

Respondents' brief acknowledges that the lenses they now sell, known as the "Hornstein lens," have been sold to the public and used for a period of at least five years. The claim that such lenses are a revolutionary or new type of contact lenses would be subject to the same objection now as when used by respondents to refer to the corneal contact lenses they previously sold. In this connection, however, the Commission notes that paragraph (j) of the order to cease and desist does not prohibit a truthful representation that improvements have been made in any lenses now sold by respondents as compared with any lenses previously sold, nor are respondents barred from a truthful description of their lenses or of the nature and extent of improvements therein.

Respondents have made a request for oral argument, but it appears that the briefs are entirely adequate to fully advise the Commission as to the matters in issue and that no useful purpose would be served thereby.

Respondents' motion for modification of the order and their request for oral argument are denied.

ORDER

This matter having come on to be heard by the Commission upon a motion, filed by respondents on July 22, 1960, requesting modifica-

tion of the order to cease and desist contained in the initial decision, as adopted by the Commission on September 24, 1958, and requesting oral argument, and upon answer in opposition to the motion filed by counsel supporting the complaint; and

It appearing that the allegations of said motion are essentially the same as the allegations in a similar motion filed by respondents on February 18, 1960, which motion was denied by the Commission by order issued March 17, 1960; and

It further appearing that the allegations of the present motion provide no additional grounds to support a conclusion that conditions of fact or of law may have so changed since the issuance of the order to cease and desist as to require its modification or that the public interest may now require it:

It is ordered, That the motion for modification of the order to cease and desist and the request for oral argument of respondents be, and they hereby are, denied.

H. P. HOOD & SONS, INC.

Docket 7709. Order, Sept. 9, 1960

Interlocutory order upholding hearing examiner's denial in part of motion to quash subpoena duces tecum as calling for information beyond scope of complaint.

This matter having come on to be heard by the Commission upon respondent's interlocutory appeal from the hearing examiner's order denying in part respondent's motion to quash or limit a subpoena *duces tecum* theretofore served on respondent, and upon the answer of counsel supporting the complaint in opposition to the appeal; and

It appearing that the contentions made by respondent in support of said appeal are that certain products, namely, frozen dairy products, concerning which information is requested by said subpoena, are not within the scope of the complaint since the Commission did not intend to include such products in this proceeding and since the issues raised by the complaint, if the complaint is construed to include frozen dairy products, would be the same as those litigated in Docket No. 6425 involving the same respondent, and that the subpoena was improperly issued under § 3.17 of the Commission's Rules of Practice; and

The Commission having determined that the scope of this proceeding is sufficiently broad to cover frozen dairy products and that the issues raised by the complaint in this proceeding with respect to frozen dairy products are not the same as those litigated in Docket No. 6425 even though the charges in both cases may relate to the same transactions; and

The Commission having further determined that the subpoena was properly issued in that it is reasonable in scope, the documents called for are relevant to the issues and compliance with the requests would not be unduly burdensome on respondent:

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

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

Commissioner Kern not participating.

J. WEINGARTEN, INC.

Docket 7714. Order and Opinion, Sept. 9, 1960

Interlocutory order denying appeal from hearing examiner's denial of motion to quash and limit subpoena duces tecum.

OPINION OF THE COMMISSION

By the COMMISSION:

This is an interlocutory appeal by the respondent from the hearing examiner's denial of its motion to quash or limit a subpoena *duces tecum*.

The complaint charges respondent with violating Section 5 of the Federal Trade Commission Act by knowingly inducing or receiving from some of its suppliers special advertising allowances which were not made available on proportionally equal terms to respondent's competitors and by failing to use all of such allowances in the advertising of suppliers' products. Respondent has appealed from the hearing examiner's order of May 13, 1960, denying its motion to quash or limit a subpoena served upon it on April 6, 1960. The contentions made on this appeal are that the scope of the subpoena is broader than the issues raised by the complaint; that the subpoena lacks the clarity, definiteness and certainty required for validity; and that the Commission's Rules of Practice do not provide for the use of a subpoena *duces tecum* to require a corporation to produce records after complaint has been issued.

With respect to the first contention, respondent asserts that the issues raised by the complaint relate solely to alleged practices engaged in by respondent in connection with its anniversary and Texas and Louisiana Products sales. It argues, therefore, that the subpoena is invalid insofar as it requires the production of documents relating to respondent's activities with respect to other sales. The contested specifications of the subpoena include requests for data concerning transactions other than those connected with respondent's anniversary and Texas and Louisiana Products sales. In view of this fact and since the scope of a Commission's investigation may

be narrowed by the issuance of a complaint, the sole question presented on this part of the appeal is whether the complaint limits the issues to the aforementioned sales or promotions by respondent. We think it does not.

That part of the complaint charging respondent with knowing inducement or receipt of discriminatory allowances does not mention the Texas and Louisiana Products sales; and although reference is made to one of respondent's anniversary sales in Paragraph Six of the complaint, such sale is mentioned only as an example of the type of violation charged. The wording of this charge clearly does not limit the issues to transactions in connection with any particular sales by respondent.

Respondent's argument that the complaint is not susceptible of such broad construction (although it inconsistently admits elsewhere in its brief that it may be so construed) is based primarily on the wording of the following allegation in the second charge (Paragraph Ten):

> The amounts of money solicited and received by the respondent from each of its suppliers were paid by such suppliers for advertising to be done by respondent in promoting each such supplier's products during respondent's anniversary sales and Texas Products and Louisiana Products sales in the year 1958 and the years prior thereto.

The second sentence of this paragraph reads as follows:

> However, it has been the regular and continuous practice of respondent not to use the entire amounts of money received from its suppliers to advertise such suppliers' products during such sales but to divert substantial amounts of such payments to its own use."

We do not construe this language as limiting the scope of the proceeding to the particular sales mentioned, but are of the opinion that the second sentence quoted above broadens the charge to include practices in connection with sales other than those specifically named. The appeal on this point is, therefore, denied.

Respondent's second argument is that the documents sought by the subpoena are not adequately described. This same contention was rejected by the hearing examiner and we find nothing in respondent's brief to indicate that the ruling on this point should be reversed. It is our opinion from an examination of the subpoena that the documents requested thereby are specified with sufficient definiteness to be readily identified by respondent.

Respondent's final contention that a corporation may not be subpoenaed as a "witness" to produce records is rejected on the authority of *McGarry et al.* v. *Securities & Exchange Commission*, 147 F. 2d 389 (1945).

An appropriate order will be entered.

ORDER

Respondent, J. Weingarten, Inc., having filed an interlocutory appeal from the hearing examiner's order of May 13, 1960, denying said respondent's motion to quash and limit a subpoena *duces tecum* served upon it April 6, 1960; and

The Commission, for the reasons stated in the accompanying opinion, having concluded that the ruling appealed from was correct;

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

J. WEINGARTEN, INC.

Docket 7714. Order and Opinion, Sept. 9, 1960

Interlocutory order denying appeal from hearing examiner's refusal to dismiss complaint, holding a live poultry dealer not withdrawn from Commission jurisdiction by Packers and Stockyards Act, and upholding Commission authority to prohibit under Sec. 5 "knowingly inducing or receiving from suppliers special advertising allowances not made available on proportionally equal terms to respondent's competitors."

OPINION OF THE COMMISSION

By the COMMISSION:

This is an interluctory appeal by the respondent from the hearing examiner's denial of its motions to dismiss the complaint.

The complaint charges respondent with violating Section 5 of the Federal Trade Commission Act by knowingly inducing or receiving from some of its suppliers special advertising allowances which were not made available on proportionally equal terms to respondent's competitors and by failing to use all of such allowances in the advertising of the suppliers' products. Prior to the taking of evidence, respondent moved the hearing examiner to dismiss the complaint for want of jurisdiction on the ground that it is a live poultry dealer and, therefore, subject to the exclusive jurisdiction of the Secretary of Agriculture under the Packers and Stockyards Act, as amended by Public Law 85-909, 85th Cong., H.R. 9020, and on the ground that "the complaint is brought under an improper statute, namely, Section 5 of the Federal Trade Commission Act, whereas the complaint purports to allege a claimed violation of the Robinson-Patman Act." The hearing examiner denied these motions and respondent has now filed an appeal from this denial.

It is not necessary to determine for the purpose of this appeal whether respondent is a live poultry dealer as that term is defined in 7 U.S.C.A. § 218(b). We will decide only the question of whether the alleged unfair trade practices of respondent, as a live poultry dealer, are subject to regulation only under the Packers and Stockyards Act and not under the Federal Trade Commission Act.

Respondent's argument that the Commission is without jurisdiction in this matter is based on the wording of subsection (b) of Section 406 of the Packers and Stockyards Act, as amended by Public Law 85-909. This subsection, however, pertains only to the jurisdiction of the Commission over matters involving meat, meat food products, livestock products in unmanufactured form and poultry products which are made subject to the power or jurisdiction of the Secretary of Agriculture by the Packers and Stockyards Act. The complaint charges respondent with unfair practices in transactions involving products other than those covered by the aforementioned subsection. Consequently, insofar as such transactions are concerned, the subsection relied upon by respondent has no application.

Section 5(a)(6) of the Federal Trade Commission Act was amended by Public Law 85-909 to read as follows:

(6) The Commission is hereby empowered and directed to prevent persons, partnerships, or corporations, except banks, common carriers subject to the Act to regulate commerce, air carriers, and foreign air carriers subject to the Civil Aeronautics Act of 1938, and persons, partnerships, or corporations insofar as they are subject to the Packers and Stockyards Act, 1921, as amended, except as provided in section 406(b) of said Act, from using unfair methods of competition in commerce and unfair or deceptive acts or practices in commerce.

Respondent overlooks completely the significance of the words "except * * * insofar as they are subject to the Packers and Stockyards Act, 1921, as amended."

The substantive provisions of the Packers and Stockyards Act, as amended by Public Law 85-909, applicable to packers and live poultry dealers or handlers regulate such persons "with respect to live stock, meat, meat food products, livestock products in unmanufactured form, poultry, or poultry products." Thus, a packer or live poultry dealer or handler is subject to the Packers and Stockyards Act only with respect to transactions involving such commodities. It is only this portion of the business of such persons that is withdrawn from the Commission's jurisdiction by the above-quoted clause in Section 5(a)(6) of the Federal Trade Commission Act. As to transactions involving all other commodities, a packer or live poultry dealer or handler is subject to the jurisdiction of the Federal Trade Commission. *Renaire Corporation (Pennsylvania) et al.*, Docket 6555, February 12, 1959. Respondent's appeal on this point is denied.

The second point urged in respondent's appeal is that the practices alleged in the complaint do not constitute violations of Section 5 of the Federal Trade Commission Act. The complaint alleges in effect

that respondent violated Section 5 by knowingly inducing or receiving from its suppliers special payments of allowances which were not made available on proportionally equal terms to respondent's competitors and by inducing and receiving such special payments or allowances and not expending the entire amount thereof in actual advertising of the supplier's products but diverting to its own use substantial amounts of such money. Respondent's argument seems to be that since the practices challenged in the complaint are analogous to those specifically proscribed by Section 2 of the Clayton Act, as amended, they are actionable only under that section and not under Section 5 of the Federal Trade Commission Act.

We have recently rejected a similar argument in a proceeding involving virtually the same issue. *The Grand Union Company*, Docket 6973, August 12, 1960. As we stated in that case, Congress has conferred upon the Commission the authority under Section 5 of the Federal Trade Commission Act to prohibit practices adversely affecting competition in violation of the policy of the antitrust laws, including the amended Clayton Act, although the practices may not be specifically prohibited by the language of such laws or have been previously adjudged to be illegal by the courts. We held, therefore, that in the absence of any evidence of Congressional intent to exempt from proscription practices coming within the periphery of Section 2 of the Clayton Act, as amended, although not within its letter, such practices may be deemed to be unfair under Section 5 of the Federal Trade Commission Act.

The respondent's appeal will be denied and an appropriate order will be entered.

Commissioner Tait dissents for the reasons given in his dissenting opinion filed in *The Grand Union Company*, Docket 6973, August 12, 1960.

ORDER

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

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

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

Commissioner Tait dissenting.

CRANE CO.

Docket 7833. Order, Sept. 9, 1960

Interlocutory order upholding denial of motion for severance and separate trial of portion of complaint alleging illegal acquisition of stock in Briggs Manufacturing Company, one of five acquisitions concerned, the Commission holding that cumulative effect of all was at issue.

ORDER

This matter having been heard by the Commission upon respondent's interlocutory appeal from the hearing examiner's order denying respondent's motion for severance and separate trial of that portion of the complaint which charges that the acquisition of stock in the Briggs Manufacturing Company by respondent violates Section 7 of the Clayton Act; and

It appearing that respondent's objective is to try the legality of its acquisition of stock in the Briggs Manufacturing Company before the other issues raised by the complaint in order to preserve the assets and protect the customers of that company and protect respondent's investment therein, the contention being that severance will not prejudice consideration of the remaining issues raised by the complaint and that separate trial of the aforesaid charge will avoid certain penalizing aspects of the acquisition not intended by Section 7 beofre a violation has been established; and

It further appearing that the complaint herein refers to four acquisitions by respondent in addition to that of the stock of Briggs Manufacturing Company and alleges that the effect of said acquisitions, collectively as well as individually, may be substantially to lessen competition or to tend to create a monopoly in the line of commerce involved within the meaning of Section 7 of the Clayton Act; and

The Commission being of the opinion that since the complaint places in issue the cumulative effect of all the acquisitions named therein, severance of said complaint so as to permit separate trial of one such acquisition under Section 7 of the Clayton Act should not be permitted:

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

J. B. HIRSCH CO., INC., ET AL.

Docket 7852. Order, Sept. 9, 1960

Order denying joint appeal from hearing examiner's rejection of consent agreement and remanding case for further proceedings concerning inadequate paragraphs of order.

This matter having come on to be heard by the Commission upon the joint appeal of respondents and counsel supporting the complaint from the hearing examiner's order, filed June 9, 1960, rejecting an agreement containing a consent order to cease and desist; and

The Commission having considered the agreement and being of the opinion that paragraph 2 of the proposed order is not adequate

in that it permits the use of French words, terms and depictions in connection with lamps composed in part of figurines made in the United States from moulds originating in France without a clear and conspicuous disclosure of this fact; and

The Commission being of the further opinion that paragraph 1(c) of said order probably does not correctly reflect the intention of the parties in that it prohibits respondents from representing that figurines are moulded in moulds made in France when such is a fact:

It is ordered, That the joint appeal of respondents and counsel supporting the complaint be, and it hereby is, denied.

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

JOSEPH A. KAPLAN & SONS, INC.

Docket 7813. Order and Opinion, Oct. 28, 1960

Interlocutory order upholding hearing examiner's denial of respondent's application to take oral depositions of its major competitors, to elicit their trade secrets in preparation for cross-examination.

OPINION OF THE COMMISSION

By KERN, *Commissioner:*

The complaint charging violations of subsections (a), (d) and (e) of Section 2 of the amended Clayton Act issued March 10, 1960. On June 6, 1960, prior to the commencement of hearings, respondent filed application with the hearing examiner to take the oral depositions of nine companies described in the application as major competitors of respondent. On August 11, 1960, the hearing examiner denied the application, holding that the ends of justice would be best served thereby. This matter is before the Commission on interluctory appeal by respondent from the hearing examiner's order.

Respondent's application to the hearing examiner requests only an order to take "oral depositions," while its argument before the hearing examiner and brief on appeal to us treat extensively of the need to examine the deponents' records and documents. Thus, it appears that respondent has in mind a two-step discovery procedure consisting of, first, taking oral depositions pursuant to subpoenas *ad testificandum*, followed by the issuance of subpoenas *duces tecum*. Respondent does not say that it wants to take the depositions for the usual reason of preserving testimony, but frankly states in its brief that the purpose is "* * * in the nature of discovery * * *" and we have so considered it.

Respondent contends that Section 12 of the Administrative Procedure Act "commands" that discovery procedures be extended to it. The portion of Section 12 relied on reads:

> Except as otherwise required by law, all requirements or privileges relating to evidence or procedure shall apply equally to agencies and persons.

Respondent then argues that the Commission has extensive investigative powers conferred by Section 9 of the Federal Trade Commission Act and that these powers must "* * * by legislative mandate, 'apply equally' to respondent."

In compliance with the quoted portion of the Administrative Procedure Act, both respondent and counsel supporting the complaint are afforded identical treatment during the course of hearings before the hearing examiner and this Commission. Both have equal subpoena rights to procure the attendance of witnesses or the production of documents. The proper exercise of the subpoena power is left to the sound discretion of the hearing examiner who has "* * * the duty to conduct fair and impartial hearings * * *." § 3.15(c), Rules of Practice. Thus, unless respondent can show an abuse of discretion or unfairness on the part of the hearing examiner, its appeal must fail.

There can be no doubt that the Commission's broad subpoena power includes the issuance of subpoenas requiring individuals or corporations not parties to a proceeding to testify or produce their books and records even though trade secrets may be revealed thereby. *Federal Trade Commission* v. *Tuttle*, 244 F. 2d 605 (2d Cir. 1957). But certainly the Commission should be most circumspect in the use of its power and avoid at all costs the unnecessary disclosure of trade secrets. To this end, lacking a clear showing of necessity we have, with court approval, consistently denied respondents' requests for unlimited access to the business secrets of their competitors. *E. B. Muller & Co.* v. *Federal Trade Commission*, 142 F. 2d 511, 520 (6th Cir. 1944); In the Matter of *Standard Motor Products, Inc.*, 50 F.T.C. 624 (1954).

That the information sought by respondent from its competitors is in the nature of trade secrets is beyond question. Respondent pleads the information is "* * * necessary to enable it adequately to prepare for cross-examination of adverse witnesses and to obtain and present affirmative evidence by way of defense. (Resp. Br. p. 1.) Thus, it would necessarily include total dollar volume sales figures bearing on the question of injury and customer lists and prices bearing on the question of meeting competition. This information is "sensitive" in nature and should be protected insofar as consistent with the public interest.

We are not persuaded that preparation for cross-examination is, in this instance, an adequate reason for permitting discovery. Obviously the scope of the cross-examination must be related to and limited by the direct examination. At this posture of the proceeding, the subject matter of the direct testimony is at most a matter of conjecture. It is not now possible to determine what information is essential to a fair cross-examination. In conformity with this point of view we have recently upheld a hearing examiner's denial of a respondent's request for subpoena *duces tecum* to elicit information claimed needed to prepare for cross-examination. In the Matter of *American News Company et al.*, Docket 7396, Interlocutory Opinion, July 22, 1959.

Likewise, respondent's professed need of the information to prepare its affirmative defense is equally unclear at this juncture. The record contains no evidence of discriminatory prices or services for respondent to "justify." Until the identity of respondent's "favored" customers and the time and manner in which they were favored have been established on the record, the permissible scope of respondent's requested probe into its competitors' affairs cannot be determined.

Under the Commission's method of procedure the respondent will not be prejudiced by the denial of its request. At the close of the case in chief, it may make application to the hearing examiner for such subpoenas as it deems necessary to its defense. At that time the hearing examiner having heard the evidence supporting the complaint will be better able to determine the permissible scope of the requested subpoenas and will, of course, cause those to issue which in his judgment are reasonable and proper.

We believe that to grant respondent's request would only serve to complicate the administrative process rather than to achieve the desideratum of simplifying it. Therefore, we conclude that the hearing examiner's denial of respondent's application was not erroneous or unfair in any respect and an appropriate order denying respondent's appeal will issue.

The Commission is of the further opinion that oral argument on the appeal is unnecessary.

ORDER

This matter having been considered by the Commission upon the respondent's appeal from the hearing examiner's order denying respondent's application to take oral depositions; and

The Commission, for the reasons stated in the accompanying opinion, having concluded that said appeal should be denied and being of the further opinion that respondent's request for oral argument on the appeal is unnecessary:

It is ordered, That the said appeal be, and it hereby is, denied, and that the request for oral argument or said appeal be, and it hereby is, denied.

NU ARC COMPANY, INC.

Docket 7848. Order and Opinion, Oct. 28, 1960

Interlocutory order upholding hearing examiner's denial of motion to dismiss complaint charging violation of Sec. 2(d), Clayton Act, for lack of public interest and abandonment.

OPINION OF THE COMMISSION

By KERN, *Commissioner:*

This matter is before the Commission upon respondent's interlocutory appeal from the hearing examiner's order of September 16, 1960, denying respondent's motion to dismiss the complaint, the answer of counsel supporting the complaint in opposition thereto, and respondent's reply.

The complaint, which issued on March 28, 1960, charges respondent with violating Section 2(d) of the Clayton Act, as amended by the Robinson-Patman Act. On September 2, 1960, prior to any hearings in this matter, respondent filed its motion requesting that the complaint be dismissed. Respondent forwarded this motion to the Secretary by an accompanying letter wherein it acknowledged that such motions are normally referred to the hearing examiner but requested, since the motion asked the Commission to reconsider its decision in causing the complaint to issue, that said motion be presented to the Commission. At a hearing held on September 6, 1960, respondent requested a continuance until disposition of its motion, which request was denied by the hearing examiner. On September 12, 1960, respondent filed a supplement to its motion to dismiss, again accompanied by a letter to the Secretary asking that the motion be submitted to the Commission. Thereafter, on September 16, 1960, the hearing examiner entered an order denying respondent's request for dismissal of the complaint, from which this appeal is taken.

The hearing examiner ruled, in his order, that the reasons specified in respondent's motion are not an appropriate basis upon which he could dismiss the complaint. We agree with this ruling, and respondent's interlocutory appeal must, therefore, be denied.

Two of the grounds assigned in support of the motion are lack of public interest and abandonment. As we have stated, this complaint charges a violation of one of the sections of the Clayton Act. In enacting that statute, Congress decided that there is public interest in prohibiting the specific practices covered by the various

sections. *Webb-Crawford Company* v. *Federal Trade Commission*, 109 F. 2d 268 (5th Cir. 1940). In view thereof, respondent's argument in this respect is not persuasive. As to abandonment, respondent's statement that it discontinued the payments cited in the complaint after the issuance thereof provides no assurance that the practice has been surely stopped with no likelihood of resumption so as to warrant dismissal of the complaint.

Respondent also contends, in effect, that it should not be put to the expense of the trial of this case since the pending action against the purchaser, Foster Type and Equipment Company, Inc., Docket 7698, charging it with knowingly inducing a discriminatory advertising allowance in violation of Section 5 of the Federal Trade Commission Act, will determine whether respondent can continue to place and pay for the advertisements in question. There are considerations involved in the proceeding against the buyer which are not present in this case. Therefore, the final decision in that proceeding will not necessarily constitute a determination of the legality of respondent's practices. Whether or not respondent has violated the law and the nature of the order to cease and desist, if any, which should be entered against it can be determined only after development of all the facts in an appropriate record.

Accordingly, respondent's motion requesting that the complaint be dismissed must be denied.

ORDER

This matter having come on to be heard upon the interlocutory appeal of respondent from the hearing examiner's order of September 16, 1960, denying respondent's motion to dismiss the complaint; and

It appearing that the basis for the hearing examiner's order was that the reasons specified in respondent's motion are not an appropriate basis upon which he could dismiss the complaint; and

It further appearing that the respondent has made no showing that the hearing examiner was in error in so ruling; and

The Commission, however, having considered respondent's motion to dismiss the complaint and having determined for the reasons stated in the accompanying opinion that said motion should be denied:

It is ordered, That the respondent's appeal from the hearing examiner's order of September 16, 1960, be, and it hereby is, denied.

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

PURE OIL COMPANY

Docket 6640. Order, Nov. 8, 1960

Interlocutory order vacating hearing examiner's denial of appellants' motions to quash respondent's subpoenas served upon them and remanding case.

ORDER

Sears, Roebuck and Co. and Ingram Oil & Refining Company having filed separate appeals from rulings of the hearing examiner denying their motions to quash certain subpenas *duces tecum* theretofore served upon them at the request of the respondent, which subpenas call for records showing information about each company's operations in the sale of gasoline in Jefferson County, Alabama, similar information about its gasoline operations all over the country, and other information about its business generally, not limited to gasoline, all for the period 1954–1957, inclusive; and

It appearing that the motions to quash were based on contentions, apparently unanswered by counsel for the respondent, that compliance with the subpenas will impose upon these non-party witnesses excessive burdens of expense and labor and will, without justification, expose their legitimate business secrets to competitors; and

It further appearing that the hearing examiner denied the motions to quash principally, if not exclusively, on the ground that the subpenaed documents are generally relevant to the respondent's defense in this proceeding, with no indication as to what consideration, if any, was given to the aforesaid objections; and

The Commission being of the opinion that in the circumstances the hearing examiner should reconsider the motions to quash and make new rulings thereon following an exercise of his sound discretion in an effort to balance the equities of the witnesses' property rights and the respondent's right to obtain all the evidence reasonably proper for the presentation of a full defense; and, accordingly:

It is ordered, That the hearing examiner's rulings denying the appellants' motions to quash be, and they hereby are, vacated and set aside.

It is further ordered, That the matter be, an it hereby is, remanded to the hearing examiner with instructions to determine whether there are practicable alternative means available to the respondent to establish the ultimate facts it wishes to prove by the subpenaed documents, and if not, to take appropriate steps, not inconsistent with the public interest, to minimize the burdens of expense and labor allegedly required of the corporate witnesses by the subpenas,

to protect such witnesses against the unnecessary disclosure of private business information and, where such disclosure is necessary, to impose suitable conditions of confidentiality.

S. KLEIN DEPARTMENT STORES, INC.

Docket 7891. Order and Opinion, Nov. 18, 1960

Interlocutory order correcting hearing examiner's construction of charge of complaint and upholding denial of motion for dismissal.

OPINION OF THE COMMISSION

By KERN, *Commissioner:*

Prior to filing of answer to the complaint or any hearings for the reception of evidence, the respondent filed a motion requesting that the complaint join in contending that the hearing examiner erred examiner denied such motion and respondent has filed interlocutory appeal.

According to the complaint, the respondent is a New York corporation having its main office in New York City and operates four department stores for the sale of merchandise to the public in competition with others; and the complaint charges that the respondent has engaged in false and deceptive advertising in violation of the Federal Trade Commission Act. Paragraph three, the particular charge of the complaint which the respondent contends fails to allege facts sufficient to sustain the jurisdiction of the Commission, reads as follows:

In the course and conduct of its business respondent has been and is engaged in disseminating and in causing to be disseminated in newspapers of interstate circulation, and in radio and television broadcasts of interstate transmission, advertisements designed and intended to induce sales of its merchandise and that of its concessionaires. The amount expended by respondent upon such advertising is approximately one million dollars per year.

Section 5(a)(1) of the Federal Trade Commission Act declares unlawful unfair methods of competition in commerce and unfair or deceptive acts or practices in commerce, and Section 5(a)(6) empowers and directs the Commission to prevent their use. Section 4 [1] of the Act defines commerce as meaning "commerce among the several States * * *." Counsel for respondent and counsel supporting the complaint be dismissed for lack of jurisdiction. The hearing in concluding that paragraph three implicitly included a charge that the challenged advertising was disseminated to induce inter-

[1] "'Commerce' means commerce among the several States or with foreign nations, or in any Territory of the United States or in the District of Columbia, or between any such Territory and another, or between any such Territory and any State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation."

state sales. We agree with counsel. The correct construction of that charge is that interstate disseminations of advertisements for inducing purchases of merchandise constitute "methods of competition in commerce" and "acts or practices in commerce" within the purview or coverage of Section 5(a)(1) of the Federal Trade Commission Act. The jurisdiction alleged thus rests solely on the interstate disseminations alleged.

Conclusions that the statute's coverage so extends have sound basis in law and public policy. The Act's specified targets are unfair or deceptive activities which are in commerce. It is well established that commerce among the states is not confined to transportation, but comprehends all commercial intercourse between different states and all component parts of such intercourse. Interstate communications for commercial purposes constitute commerce within the meaning of the Constitution. See *Associated Press* v. *N.L.R.B.*, 301 U.S. 103, 128 (1937).

The respondent's contentions that the charges of the complaint are not adequately related to interstate commerce are accordingly rejected. This aspect of the appeal is denied; and inasmuch as the briefs by counsel suffice for informed decision on the merits of the appeal, the respondent's request for oral argument in support of its appeal also is denied.

ORDER

This matter having come on to be heard upon the interlocutory appeal of the respondent from the hearing examiner's order denying its motion to dismiss the complaint; and

The Commission having determined, for reasons stated in the accompanying opinion, that the complaint adequately charges that the respondent has engaged in unfair methods of competition and unfair or deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act:

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

STIPULATIONS

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

9306. **Quilted Interlinings—Noncompliance with Wool Labeling Act.**—Martin Oltsik and Jack Goldfarb, co-partners trading as Marvel Quilting Company with principal place of business in Brooklyn, N.Y., agreed that in connection with the introduction, or manufacture for introduction, into commerce, or the sale, transportation, or distribution in commerce of quilted interlining, or any other wool product within the meaning of the Wool Products Labeling Act, they and each of them will forthwith cease and desist from:

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

(2) Failing to 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. (5723785, July 13, 1960.)

9307. **Braided Rugs—Wool and Rayon Content.**—J. J. Corrado, Inc., a New York corporation with principal place of business in New York, N.Y., and Joseph J. Corrado and Elaine Corrado, its officers, agreed that in connection with the offer and sale in commerce of rugs or of any other textile product, they, and each of them, will forthwith cease and desist from:

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

(2) Labeling, advertising or otherwise offering for sale or selling products composed in whole or in part of rayon or acetate without clearly disclosing such rayon and acetate content.

It was understood that nothing therein shall be construed as relieving the parties of the necessity of complying with the requirements of the Textile Fiber Products Identification Act and the Rules and Regulations issued thereunder. (5923166, July 13, 1960.)

9308. **Braided Rugs—Wool and Rayon Content.**—Associated Rug Mills of Georgia, a Georgia corporation with principal place of business in Athens, Ga., and Herman B. Upchurch, Wylene Chafin and Nicholas D. Jones, its officers, agreed that in connection with the offer and sale in commerce of rugs or of any other textile product, they, and each of them, will forthwith cease and desist from:

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

(2) Labeling, advertising or otherwise offering for sale or selling products composed in whole or in part of rayon or acetate without clearly disclosing such rayon and acetate content.

It was understood that nothing therein shall be construed as relieving the parties of the necessity of complying with the requirements of the Textile Fiber Products Identification Act and the Rules and Regulations issued thereunder. (5923166, July 13, 1960.)

9309. **Bicycles—Pricing, Foreign Origin of Parts.**—Arnold, Schwinn & Company, an Illinois corporation with principal place of business in Chicago, Ill., agreed that in connection with the offer and sale of bicycles in commerce, it will forthwith cease and desist from:

(1) Using a price figure in conjunction with an illustration of a certain model of bicycle or other product, when the stated price is lower than the actual price of the illustrated model, or otherwise representing, directly or by implication, that a product can be had for a price lower than the actual price;

(2) Representing, directly or by implication, that a bicycle or other product containing a substantial part or parts of foreign origin is "Made in America" or is made or manufactured in the United States, unless the product is in fact manufactured in the United States and the country of origin of the imported part or parts is clearly and conspicuously disclosed. (5293525, July 13, 1960.)

9310. **Real Estate Home Study Course—Corporate and Institute Status, Prices.**—Henry R. Brandt, an individual trading as Gordon-Howard Institute with principal place of business in Kansas City, Mo., agreed that in connection with the offer and sale of a home study course in real estate or any other product in commerce, he will forthwith cease and desist from:

(1) Using the word "Institute" as a part of any corporate or trade name or in any other manner, or using any word of similar import or meaning in connection with his business;

(2) Representing, through use of such words as "enrollment" and "tuition," or by any other means, that the business is an organization or institution of higher learning, or is other than a commercial enterprise operated for profit;

(3) Representing, through use of the title "President" in correspondence and other advertising, that this enterprise is a corporation or chartered organization and not merely a trade name under which an individual is trading;

(4) Representing that an advertised price is a reduction or saving from the advertiser's former price unless the represented reduction or saving is from the advertiser's usual and customary price of the article in the recent, regular course of business, or otherwise representing prices or savings in any manner not in accordance with the facts;

(5) Representing that an offer is special or for a limited time only when it is customarily and regularly made in the regular course of business. (5923687, July 13, 1960.)

9311. **Rose Bushes—Prices, Supply, Guarantees.**—James L. Dyess and Ralph Dyess, co-partners trading as Davie Rose Company with principal place of business in Tyler, Tex., agreed that in connection with the offer and sale of rose bushes or any other nursery product in commerce, they and each of them will forthwith cease and desist from representing, directly or by implication that:

(1) Nursery products are guaranteed unless the nature and extent of the guarantee and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed;

(2) Rose bushes or other nursery products are specially selected for purchasers;

(3) An advertised price is a reduction or saving from the advertiser's former price unless the represented reduction or saving is from the advertiser's usual and customary price of the article in the recent,

regular course of his business, or otherwise representing prices or savings in any manner not in accordance with the facts;

(4) The supply of a nursery product is limited, when such is not the fact. (6023283, July 13, 1960.)

9312. **Lumber Products—"Mahogany."**—Wheaton Lumber Company, Inc., a Maryland corporation with principal offices in Wheaton, Md., and Vernon R. King, an officer thereof, agreed that in connection with the offer and sale of lumber products in commerce, they and each of them will forthwith cease and desist from:

(1) Using the word "Mahogany" as the name or designation of woods other than genuine mahogany (the genus Swietenia of the Meliaceae family of trees): provided, however, that nothing herein shall be construed as preventing the use of the name "Philippine Mahogany" as the name or designation of the Philippine woods Tanguile, Red Lauan, White Lauan, Tiaong, Almon, Mayapis and Bagtikan, or the use of the name "African Mahogany" as the name or designation of the African wood of the genus Khaya;

(2) Representing in any manner the kind or nature of woods not in accordance with the facts. (6023711, July 13, 1960.)

9313. **Fur Products—Noncompliance with Labeling Act.**—Don Osborn, an individual doing business as Osborn of London Fur Company with principal place of business in Cleveland, Ohio, agreed that in connection with the sale, advertising, offering for sale, transportation, or distribution of any fur product made in whole or in part of fur which has been shipped and received in commerce or the introduction into commerce, or the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce of fur or any fur product, as the terms "fur," "fur product" and "commerce" are defined in the Fur Products Labeling Act, he will forthwith cease and desist from:

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

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

(3) Failing to set forth on invoices the item number or mark assigned to the fur product for purpose of identification. (6023760, July 13, 1960.)

9314. **Dog Food—"Meat", etc., Content.**—General Mills, Inc., a Delaware corporation with principal offices in Minneapolis, Minn., agreed to forthwith cease and desist from disseminating or causing to be disseminated any advertisement for the product now designated "Surechamp Dog Food," or any other product of substantially the same

composition or possessing substantially the same properties, whether sold under that name or any other name, which:

(1) Uses the terms "meaty," "meat," "fish" or "liver," or any other terms of similar import or meaning, to designate or describe meat meal, fish meal or liver meal; or

(2) Represents in any manner that such product contains meat, fish, liver or other ingredients, when such is not a fact. (5421255, Aug. 2, 1960.)

9315. **Combs—"Rubber" Composition.**—J. Tanenbaum & Sons, Inc., a New York corporation with principal place of business in New York, N.Y., and Jacob Tanenbaum, Irwin Tanenbaum, and Julius Tanenbaum, its officers, agreed that in connection with the offer and sale of combs in commerce, they, and each of them, will forthwith cease and desist from representing, directly or by implication:

By any advertisement, packaging, labeling, branding, stamping, or other marking or indication that such combs are "rubber," "hard rubber," "resin rubber," or "rubber resin" or representing in any manner or by any means that such combs are made of rubber or hard rubber unless they are in fact made of vulcanized hard rubber. (6023718, Aug. 2, 1960.)

9316. **Water Softening Equipment—Operational Effectiveness, Savings, Guarantees.**—Softy, Inc., an Illinois corporation with principal place of business in Franklin Park, Ill., agreed that in connection with the offer and sale of its water softening equipment in commerce, it will forthwith cease and desist from representing, directly or by implication:

(1) That there is no work connected with the operation or maintenance of the applicance;

(2) That the appliance requires no maintenance;

(3) That no chemicals are used in the operation of the appliance;

(4) That no regeneration is involved in the operation of the appliance, or representing the operation or process involved in any way not in accordance with the facts;

(5) That there are no expenses in the operation of the appliance or otherwise representing the expenses involved in operation of the appliance not in accordance with the facts;

(6) That use of the appliance will result in savings of $150 a year or otherwise representing savings in any manner not in accordance with the facts;

(7) That the appliance 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. (5823697, Aug. 4, 1960.)

9317. **Model Auto Kits—Foreign Origin of Parts.**—Strombeck-Becker Manufacturing Company, an Illinois corporation with principal place

of business in Moline, Ill., and Fred Strombeck and David Torsell, its officers, agreed that in connection with the offer and sale of model auto kits or other products in commerce, they, and each of them, will forthwith cease and desist from:

(1) Offering for sale or selling model auto kits or other products containing motors made in Japan without clearly disclosing the country of origin of the motors used in the product;

(2) Offering for sale or selling any product, any substantial part of which was made in Japan, or in any other foreign country, without clearly disclosing the foreign origin of such part. (6023358, Aug. 11, 1960.)

9318. **Aluminum Storm Doors, etc.—Dealer as Manufacturer.**—Illmo Builders Supply Company, formerly doing business as Youngstown Manufacturing Corporation, a Missouri corporation with principal place of business in St. Louis, Mo., and Sam L. Yourtee and Lee Brock, officers thereof, agreed that in connection with the offer and sale of aluminum doors, windows, awnings and other merchandise in commerce, they, and each of them, will forthwith cease and desist from representing, directly or by implication:

Through the use of the word "Manufacturing", or any other word of similar import or meaning, as a part of a trade or corporate name, or by any other means, that the company manufactures any merchandise sold by it, unless and until it owns, operates or absolutely controls the manufacturing plant wherein such merchandise is manufactured. (5923372, Aug. 11, 1960.)

9319. **Electric Storage Batteries—Guarantees.**—The Pure Oil Company, an Ohio corporation with principal place of business in Chicago, Ill., agreed that in connection with the offer and sale of its batteries in commerce, it will forthwith cease and desist from representing, directly or by implication, that a battery is guaranteed unless the nature and extent of the guarantee and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed. (6023781, Aug. 18, 1960.)

9320. **Cleaning Fluid—Fire-resistant Properties.**—Carbona Products Company, a New Jersey Corporation with principal place of business in Long Island City, N.Y., agreed that in connection with the offer and sale of Carbona cleaning fluid, or any other product of substantially the same composition or possessing substantially the same properties, it will forthwith cease and desist from:

Using the word "fireproof" as descriptive of such product or from making any representations as to the fire-resistant properties of said product which are not in accordance with the facts. (6023355, Aug. 18, 1960.)

9321. **"Pi Peer Slim-R Health Belt"—Health-inducing Qualities, Guarantees.**—Piper Brace Sales Corporation, a Missouri corporation with

principal place of business in Kansas City, Mo.; Henry G. Nelkin and Nedwyn R. Nelkin, officers thereof; and Eugene Goldstein, a stockholder, agreed to forthwith cease and desist from disseminating or causing to be disseminated any advertisement for the product now designated Pi Peer Slim-R Health Belt or any other product of substantially the same construction, whether sold under that name or any other name, which represents directly or by implication:

(1) That the product is not a girdle or corset;

(2) That the product will remedy or cure backache, back pain, back strain or any other symptom, ailment or condition;

(3) That the product will relieve backache or back pain unless expressly limited to the temporary relief of minor aches or pains of the back due to strain;

(4) That the product provides a massaging action, stimulates circulation, reduces tension or eases strain on the heart or system;

(5) That the product gives correct support, holds internal organs in proper position or relieves cramping of internal organs;

(6) That the product has any slimming effect on the wearer other than to cause a slimmer appearance while being worn;

(7) That the wearing of the product will reduce the weight of the body or any of its parts;

(8) Through use of "Health" as a part of the designation thereof, or in any other manner, that the product will prevent, cure, correct or have a mitigating effect on diseases, disorders or abnormalities of the body, will keep a person healthy or will have any significant beneficial effect on the general health of the wearer.

(9) That the product is guaranteed unless the nature and extent of the guarantee and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed. (5923732, Aug. 18, 1960.)

9322. **Wallets—Composition.**—Terry Leather Goods, Inc., a New York corporation with principal place of business in New York City, and Charles Meyers, Murray Meyers and Stanley Queller, officers thereof, agreed that in connection with the offer and sale of wallets or other merchandise in commerce, they, and each of them, will forthwith cease and desist from representing, directly of by implication, that wallets or other merchandise made in whole or in part of substance other than leather, are made of leather. (6023014, Aug. 18, 1960.)

9323. **"Rinse Away" Dandruff Treatment—Disparagement.**—Lobco, Inc., an Illinois corporation with principal offices in Chicago, Ill., and Leonard H. Lavin, Bernice E. Lavin and Robert L. Haag, its officers, agreed to forthwith cease and desist from disseminating or causing to be disseminated any advertisement for the product now designated "Rinse Away," or any other product of substantially the same com-

position or possessing substantially the same properties, whether sold under that name or any other name, which:

Represents directly or by implication that there is no shampoo preparation which will effectively treat the condition of dandruff, or makes any representation concerning competitive products which is not in accordance with the facts. (6023327, Aug. 24, 1960.)

9324. **Fur Products—Noncompliance with Labeling Act.**—Mendel Scott, an individual trading as Scott Furs with principal place of business in Cleveland, Ohio, agreed that in connection with the sale, advertising, offering for sale, transportation or distribution of any fur product made in whole or in part of fur which has been shipped and received in commerce, or the introduction into commerce, or the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce of fur or any fur product, as the terms "fur," "fur product" and "commerce" are defined in the Fur Products Labeling Act, he will forthwith cease and desist from:

(1) Failing to affix labels to fur products showing in words and figures plainly legible all of the information required to be disclosed by each of the subsections of Section 4(2) of the Fur Products Labeling Act;

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

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

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

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

(6) Using on invoices the name of an animal other than that producing the fur.

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

(8) Failing to set forth on invoices the item number or mark assigned to the fur product for purposes of identification. (6023803, Sept. 7, 1960.)

9325. **Combs—"Rubber" Composition.**—Corona Hair Net Corporation, a New York corporation with principal place of business in New York, N.Y., agreed that in connection with the offer and sale of combs in commerce, it will forthwith cease and desist from representing, directly or by implication:

That such combs are a "Special Hard Rubber Compound," "rubber," "hard rubber," "resin rubber," "rubber resin" or representing in any manner or by any means that such combs are made of rubber or hard rubber unless they are in fact made of vulcanized hard rubber. (6024089, Sept. 7, 1960.)

9326. **Photographic Equipment—Guarantees, Advertising Medium.**—Victor Israel and Albert Tomin, co-partners trading as Herbert George Company with principal place of business in Chicago, Ill., agreed that in connection with the offer and sale of cameras or other products in commerce, they and each of them will forthwith cease and desist from representing, directly or by implication that:

(1) A camera or other article 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;

(2) An article has been advertised in "Life" magazine or any other medium, when such is not a fact. (5923423, Sept. 8, 1960.)

9327. **Collection Questionnaires—Obtaining Information by Subterfuge.**—Louis L. Rakita and Pearl Rakita, copartners trading as Rait Associates with principal place of business in New York, N.Y., agreed that in connection with obtaining information concerning delinquent debtors and collecting past due accounts in commerce, they, and each of them, will forthwith cease and desist from:

(1) Representing, through use of deceptive trade names or in any other manner, that their business is other than that of a private collection agency engaged in collecting past due accounts;

(2) Using, or placing in the hands of others for use, any forms, letters, questionnaires or other material which does not clearly reveal that the purpose for which information is requested is that of obtaining information concerning delinquent debtors. (6023179, Sept. 15, 1960.)

9328. **Rebuilt Automotive Parts—Nondisclosure of Used Nature.**—Parts Exchange Company of San Francisco, a California corporation with principal offices in San Francisco, Calif.; Parts Exchange Company of Los Angeles, a California corporation with principal offices in Los Angeles, Calif.; Parts Exchange Company of Seattle, a Washington corporation with principal offices in Seattle, Wash.; Parts Exchange Company of Portland, an Oregon corporation with principal offices in Portland, Oreg., and Robert F. Campbell and Martius D. King, officers of each of the said corporations, agreed that in connection with the offer and sale of rebuilt automotive parts in commerce, they, and each of them, will forthwith cease and desist from:

Offering for sale, selling or delivering to others for sale or resale to the public any product containing parts which have been previously used without a clear and conspicuous disclosure of such prior use made on the product with sufficient permanency to remain thereon after

installation, as well as in advertising and on the container in which the product is packed. (6023676, Sept. 22, 1960.)

9329. **Rebuilt Automotive Parts—Nondisclosure of Used Nature.**—United Automotive Products, Inc., an Oregon corporation with principal offices in Portland, Oreg., and D. H. Logan, J. A. Gay and A. F. McGarr, its officers, agreed that in connection with the offer and sale of rebuilt automotive parts in commerce, they, and each of them, will forthwith cease and desist from:

Offering for sale, selling or delivering to others for sale or resale to the public any product containing parts which have been previously used without a clear and conspicuous disclosure of such prior use made on the product with sufficient permanency to remain thereon after installation, as well as in advertising and on the container in which the product is packed. (6023677, Sept. 22, 1960.)

9330. **Rebuilt Automotive Parts—Nondisclosure of Used Nature.**—Maremont Automotive Products, Inc., an Illinois corporation with principal offices in Chicago, Ill., agreed that in connection with the offer and sale of rebuilt automotive parts in commerce, it will forthwith cease and desist, directly or through any corporate or other device, from:

Offering for sale, selling or delivering to others for sale or resale to the public any product containing parts which have been previously used without a clear and conspicuous disclosure of such prior use made on the product with sufficient permanency to remain thereon after installation, as well as in advertising and on the container in which the product is packed. (6023678, Sept. 22, 1960.)

9331. **Rebuilt Automotive Parts—Nondisclosure of Used Nature.**—Unit Parts Company, Inc., an Oklahoma corporation with principal offices in Oklahoma City, Okla., and Irene Boulton, John W. Boulton and Lutisha Boulton, its officers, agreed that in connection with the offer and sale of rebuilt automotive parts in commerce, they, and each of them, will forthwith cease and desist from:

Offering for sale, selling or delivering to others for sale or resale to the public any product containing parts which have been previously used without a clear and conspicuous disclosure of such prior use made on the product with sufficient permanency to remain thereon after installation, as well as in advertising and on the container in which the product is packed. (6023680, Sept. 22, 1960.)

9332. **Rebuilt Automotive Parts—Nondisclosure of Used Nature.**—Micro Products, Inc., a Texas corporation with principal place of business in Dallas, Tex., and H. D. Whitley, Joseph M. Beals and George R. Berger, its officers, agreed that in connection with the offer and sale of rebuilt automotive parts in commerce, they, and each of them, will forthwith cease and desist from:

Offering for sale, selling or delivering to others for sale or resale to the public any product containing parts which have been previously

used without a clear and conspicuous disclosure of such prior use made on the product with sufficient permanency to remain thereon after installation, as well as in advertising and on the container in which the product is packed. (6023681, Sept. 22, 1960.)

9333. **Rebuilt Automotive Parts—Nondisclosure of Used Nature.**—American Clutch Products, Inc., a Texas corporation with principal offices in Dallas, Tex., and William T. Dungan, Arthur L. Nickerson and Jesse L. LaFon, its officers, agreed that in connection with the offer and sale of rebuilt automotive parts in commerce, they, and each of them, will forthwith cease and desist from:

Offering for sale, selling or delivering to others for sale or resale to the public any product containing parts which have been previously used without a clear and conspicuous disclosure of such prior use made on the product with sufficient permanency to remain thereon after installation, as well as in advertising and on the container in which the product is packed. (6023682, Sept. 22, 1960.)

9334. **Rebuilt Automotive Parts—Nondisclosure of Used Nature.**—Auto Parts Exchange Company, Inc., a California corporation with principal place of business in Industry, Calif., and Edward Kipling, Lois Ada Kipling and Bernard J. Hulshof, its officers, agreed that in connection with the offer and sale of rebuilt automotive parts in commerce, they, and each of them, will forthwith cease and desist from:

Offering for sale, selling or delivering to others for sale or resale to the public any product containing parts which have been previously used without a clear and conspicuous disclosure of such prior use made on the product with sufficient permanency to remain thereon after installation, as well as in advertising and on the container in which the product is packed. (6023686, Sept. 22, 1960.)

9335. **Rebuilt Automotive Parts—Nondisclosure of Used Nature.**—ABCO Manufacturing Company, a Georgia corporation trading as Automotive Brake & Clutch with principal place of business in Atlanta, Ga., and Frank Lawton, Lena L. Lane and Hugh R. Smith, its officers, agreed that in connection with the offer and sale of rebuilt automotive parts in commerce, they, and each of them, will forthwith cease and desist from:

Offering for sale, selling or delivering to others for sale or resale to the public any product containing parts which have been previously used without a clear and conspicuous disclosure of such prior use made on the product with sufficient permanency to remain thereon after installation, as well as in advertising and on the container in which the product is packed. (6023690, Sept. 22, 1960.)

9336. **Rebuilt Automotive Parts—Nondisclosure of Used Nature.**—Neil Parts Rebuilders, Inc., a South Carolina corporation with principal offices in Columbia, S.C., and Gerald L. Palmer and David S. Whitworth, its officers, agreed that in connection with the offer and

sale of rebuilt automotive parts in commerce, they, and each of them, will forthwith cease and desist from:

Offering for sale, selling or delivering to others for sale or resale to the public any product containing parts which have been previously used without a clear and conspicuous disclosure of such prior use made on the product with sufficient permanency to remain thereon after installation, as well as in advertising and on the container in which the product is packed. (6023692, Sept. 22, 1960.)

9337. **Rebuilt Automotive Parts—Nondisclosure of Used Nature.**—Automotive Warehousing Co., Inc., a Georgia corporation doing business as Friction Materials & Parts Co. and as Friction Materials Co. with principal offices in Atlanta, Ga., and Alfred J. Sims, Charles D. Heidler, Richard G. Munn, James M. Phillips and Isaac J. Phillips, its officers, agreed that in connection with the offer and sale of rebuilt automotive parts in commerce, they, and each of them, will forthwith cease and desist from:

Offering for sale, selling or delivering to others for sale or resale to the public any product containing parts which have been previously used without a clear and conspicuous disclosure of such prior use made on the product with sufficient permanency to remain thereon after installation, as well as in advertising and on the container in which the product is packed. (6023693, Sept. 22, 1960.)

9338. **Rebuilt Automotive Parts—Nondisclosure of Used Nature.**—Ford Motor Company, a Delaware corporation with principal place of business in Dearborn, Mich., agreed that in connection with the offer and sale of rebuilt automotive parts in commerce, it will forthwith cease and desist from:

Offering for sale, selling or delivering to others for sale or resale to the public any product containing parts which have been previously used without a clear and conspicuous disclosure of such prior use made on the product with sufficient permanency to remain thereon after installation, as well as in advertising and on the container in which the product is packed. (6023698, Sept. 22, 1960.)

9339. **Rebuilt Automotive Parts—Nondisclosure of Used Nature.**—Wholesaler's Clutch Service Co., Inc., a Missouri corporation with principal offices in St. Louis, Mo., and Carl E. Klein, Albert J. Kreutzer and Robert C. Kreutzer, its officers, agreed that in connection with the offer and sale of rebuilt automotive parts in commerce, they, and each of them, will forthwith cease and desist from:

Offering for sale, selling or delivering to others for sale or resale to the public any product containing parts which have been previously used without a clear and conspicuous disclosure of such prior use made on the product with sufficient permanency to remain thereon after installation, as well as in advertising and on the container in which the product is packed. (6023699, Sept. 22, 1960.)

9340. **Woolen Fabrics—Fiber Content.**—Oscar Zinn International Textiles, Ltd., a New York corporation with principal place of business in New York, N.Y., and Oscar Zinn, an officer thereof, agreed that in connection with the introduction, or manufacture for introduction, into commerce, or the sale, transportation or distribution in commerce of woolen fabrics, or any other wool product within the meaning of the Wool Products Labeling Act, they and each of them will forthwith cease and desist from:

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

(2) Failing to affix labels to wool products showing each element of information required to be disclosed by Section 4(a)(2) of the Wool Products Labeling Act of 1939;

and further agreed that in connection with the offer and sale of woolen fabrics, or any other product in commerce, as "commerce" is defined in the Federal Trade Commission Act, they and each of them will forthwith cease and desist from misrepresenting the percentages or amounts of the constitutent fibers of which their products are composed, in sales invoices, shipping memoranda or in any other manner. (6023033, Sept, 27, 1960.)

9341. **Auto Mufflers—Guarantees.**—Mufflers by Rayco, Inc., a New Jersey corporation with principal place of business in Paterson, N.J., agreed that in connection with the offer and sale of auto mufflers or other products in commerce, it will forthwith cease and desist from representing, directly or by implication, that a product is guaranteed unless the nature and extent of the guarantee and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed. (6023270, Sept. 27, 1960.

9342. **Corvair Automobiles—Gasoline Mileage.**—General Motors Corporation, a Delaware corporation with general office and principal place of business in Detroit, Mich., agreed that in connection with the offer and sale of the Corvair or any other automobile of similar construction in commerce, it will forthwith cease and desist from representing that:

(1) Such automobile averaged 27.03 miles per gallon of regular gasoline in the Mobilgas Economy Run, or that the results of the Pure Oil Economy Trials proved that such automobile will deliver 25% to 40% more miles per gallon than a conventional automobile, or otherwise representing the results of tests in any manner not in accordance with the facts;

(2) Such automobile will deliver 33 miles per gallon of gasoline under normal driving conditions, or representing the gasoline mileage of such automobile in any manner not in accordance with the facts. (6023813, Sept. 29, 1960.)

9343. **Paint and Varnish Removers—Comparative Merits, Effectiveness.**—Jasco Chemical Corp., a California corporation with principal place of business in Mountain View, Calif., and Jay S. Conley, an officer thereof, agreed that in connection with the offer and sale in commerce of paint and varnish removers, designated Jasco Paint Remover, or any other products of substantially the same composition or possessing substantially the same properties, they, and each of them, will forthwith cease and desist from representing that such products:

(1) Have "triple strength" or otherwise representing that such products are stronger or more efficient than competitive products, when such is not the fact;

(2) Remove paint, varnish or lacquer without limitation in seconds, or otherwise representing the speed of action of such products in any manner not in accordance with the facts. (5923410, Oct. 18, 1960.)

9344. **"Alaska Life" Booklet—Business and Homestead Opportunities and Conditions.**—Edwin A. Kraft, an individual doing business as Edwin A. Kraft Advertising Agency and Alaska Life Publishing Company with principal place of business in Los Angeles, Calif., agreed that in connection with the offer and sale in commerce of the booklet designated "Alaska Life," or any similar publication, he will forthwith cease and desist from representing:

(1) That the booklet provides information about business opportunities and possible job openings in Alaska which cannot be obtained from any other source, or from otherwise representing the information therein contained except in accordance with the facts;

(2) Through use of the word "free," or by any other means, that opportunities are available to procure homesteads in Alaska without the payment of money, or from otherwise representing the opportunities and conditions existing in Alaska except in accordance with the facts. (6123031, Oct. 18, 1960.)

9345. **Men's Clothing—Fictitious Pricing.**—Raleigh Haberdasher, Inc., a Maryland corporation with principal place of business in Washington, D.C., agreed that in connection with the offer and sale of men's clothing in commerce, it will forthwith cease and desist from representing, directly or by implication:

That an advertised price is a reduction or saving from its former price unless the represented reduction or saving is from its usual and customary price of the article in the recent, regular course of its business, or otherwise representing prices or savings in any manner not in accordance with the facts. (6023771, Nov. 8, 1960.)

9346. **Woolen Fabrics—Mispresenting Fiber Content.**—Colonial Woolen Mills, Inc., an Ohio corporation with principal place of business in Cleveland, Ohio, and Norman S. Glauber, Sr., Norman S. Glauber, Jr., and Leonard Wolfberg, its officers, agreed that in connection with

the introduction, or manufacture for introduction, into commerce, or the sale, transportation or distribution in commerce of woolen fabrics, or any other wool product within the meaning of the Wool Products Labeling Act, they and each of them will forthwith cease and desist from:

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

(2) Failing to affix labels to wool products showing each element of information required to be disclosed by Section 4(a)(2) of the Wool Products Labeling Act of 1939;

and further agreed that in connection with the offer and sale of woolen fabrics, or any other product in commerce, as "commerce" is defined in the Federal Trade Commission Act, they and each of them will forthwith cease and desist from misrepresenting the percentages or amounts of the constituent fibers of which their products are composed, in sales invoices, shipping memoranda or in any other manner. (6023023, Oct. 18, 1960.)

9347. **Toys—Dealer as Manufacturer, Foreign Branch and Origin.**—Albin Enterprises, Inc., a California corporation with principal place of business in Burbank, Calif., doing business as Jack Built Toy Manufacturing Co., agreed that in connection with the offer and sale of toys, or other products in commerce, it will forthwith cease and desist from:

1. Representing, through use of the trade name Jack Built Toy Manufacturing Co., or by any other means or in any other manner, that it manufactures any product which is not manufactured in a factory owned, operated or controlled by it; provided, however, that this shall not preclude the use of such trade name in connection with a product not manufactured by it when that fact is clearly disclosed and it does, in fact, manufacture other toy products;

2. Representing, through use of the phrase Overseas Division, that the company has a foreign branch or subsidiary which it owns, operates or controls, or representing in any manner or by any means, the size or extent of the business not in accordance with the facts;

3. Offering for sale or selling toys or other products made in Japan, or in any other foreign country, without clearly disclosing the country of origin thereof. (5923734, Oct. 11, 1960.)

9348. **Photograph Reproductions — Earnings.**—International Home Products, Inc., a California corporation with principal place of business in Beverly Hills, Calif., and Peter C. Goldsmith, an officer thereof, agreed that in connection with the offer and sale of photograph reproductions designated Foto Murals, or any similar product, in commerce, they, and each of them, will forthwith cease and desist from:

Representing that the earnings or profits which may be derived from the sale of such products are any amount in excess of that customarily

earned by sellers thereof, or otherwise representing the earnings which may be realized from selling such products in any manner not in accordance with the facts. (6023197, Oct. 27, 1960.)

9349. **"Immune Milk"—Effectiveness.**—William L. Payton, an individual trading as Payton Jersey Farm with principal place of business in Stephenville, Tex., agreed to forthwith cease and desist from disseminating or causing to be disseminated any advertisement for the product now designated "Immune Milk," or any other product of substantially the same composition or possessing substantially the same properties, or produced by the same or a substantially similar method, which represents directly or by implication that said product has any beneficial effect either in the prevention, treatment or relief of rheumatoid arthritis or any other rheumatic or arthritic condition, or on the symptoms thereof, or that it confers immunity against such conditions. (6023833, Nov. 8, 1960.)

9350. **Scales—Guarantees.**—The Borg-Erickson Corporation, an Illinois corporation with principal place of business in Chicago, Ill., agreed that in connection with the offer and sale of scales or other products in commerce it will forthwith cease and desist from:

(1) Representing, directly or by implication, that such products are guaranteed unless the nature and extent of the guarantee and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed;

(2) Using the words "Life" or "Lifetime" to show the duration of a guarantee when the life referred to is other than that of the purchaser or original user and such fact is not clearly and conspicuously disclosed. (6023225, Nov. 15, 1960.)

9351. **Paint and Varnish Removers—Comparative Merits, Effectiveness.**—Universal Technical Products Co., a California corporation with principal place of business in Los Angeles, Calif., and John M. Phillips, Marjorie Phillips, Lowell W. Phillips and Marie Phillips, its officers, agreed that in connection with the offer and sale in commerce of paint and varnish removers designated Universal Remover, or any other products of substantially the same composition or possessing substantially the same properties, they and each of them, will forthwith cease and desist from representing that such products:

(1) Have "triple strength" or otherwise representing that such products are stronger or more efficient than competitive products, when such is not the fact;

(2) Remove paint, varnish or lacquer without limitation in seconds, or otherwise representing the speed of action of such products in any manner not in accordance with the facts. (6023917, Nov. 15, 1960.)

9352. **Woolen Fabrics—Noncompliance with Wool Labeling Act.**—A. G. Dewey Company, Inc., a Vermont corporation with principal place of business in Enfield, N.H., and William T. Dewey and Leon N.

Roberts, its officers, agreed that in connection with the introduction, or manufacture for introduction, into commerce, or the sale, transportation or distribution in commerce of woolen fabrics, or any other wool product within the meaning of the Wool Products Labeling Act, they and each of them will forthwith cease and desist from:

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

(2) Failing to affix labels to wool products showing each element of information required to be disclosed by Section 4(a)(2) of the Wool Products Labeling Act of 1939. (5823379, Nov. 22, 1960.)

9353. **TV, Radio and Phonograph Cabinets—"Wood" Composition.**—Admiral Corporation, a Delaware corporation with principal office and place of business in Chicago, Ill., agreed that in connection with the offer and sale in commerce of television or radio sets, phonographs or other products, it will forthwith cease and desist from:

(a) Using such terms as "mahogany grained finish," "blond oak grained finish" or any other term or expression suggestive of wood or of a particular kind of wood, as descriptive of any such products having non-wood cabinets, unless in immediate conjunction therewith there appear other words or descriptions which clearly disclose the material of which said cabinets are made;

(b) Failing to attach to any such products having cabinets made of hardboard or other similar material finished with a surface which simulates or has the appearance of wood, in such a manner that it cannot readily be removed or of such a nature as to remain on the product until it reaches the ultimate purchaser, a tag, label or other notice clearly informing the consumer-purchaser as to the material of which such cabinets are made. (5923262, Nov. 10, 1960.)

9354. **TV, Radio, and Phonograph Cabinets—"Wood" Composition.**—General Electric Company, a New York corporation with principal office in Schenectady, N.Y., agreed that in connection with the offer and sale in commerce of television or radio sets, phonographs or other products, it will forthwith cease and desist from:

(a) Using such terms as "mahogany grain finish," "white oak grain finish," or any other term or expression suggestive of wood or of a particular kind of wood, as descriptive of any such products having non-wood cabinets, unless in immediate conjunction therewith there appear words or descriptions which clearly disclose the material of which said cabinets are made;

(b) Failing to attach to any such products having cabinets made of hardboard or other similar material finished with a surface which simulates or has the appearance of wood, in such a manner that it cannot readily be removed or of such a nature as to remain on the product until it reaches the ultimate purchaser, a tag, label or other

notice clearly informing the consumer-purchaser as to the material of which such cabinets are made. (5923298, Nov. 10, 1960.)

9355. **TV, Radio, and Phonograph Cabinets—"Wood" Composition.**—Radio Corporation of America, a Delaware corporation with principal office in New York, N.Y., agreed that in connection with the offer and sale in commerce of television or radio sets, phonographs or other products, it will forthwith cease and desist from:

(a) Using such terms as "mahogany-grained finish," "limed-oak grained finish," or any other term or expression suggestive of wood or of a particular kind of wood, as descriptive of any such products having non-wood cabinets, unless in immediate conjunction therewith there appear other words of descriptions which clearly disclose the material of which said cabinets are made:

(b) Failing to attach to any such products having cabinets made of hardboard or other similar material finished with a surface which simulates or has the appearance of wood, in such a manner that it cannot readily be removed or of such a nature as to remain on the product until it reaches the ultimate purchaser, a tag, label or other notice clearly informing the consumer-purchaser as to the material of which such cabinets are made. (5823447, Nov. 10, 1960.)

9356. **TV, Radio, and Phonograph Cabinets—"Wood" Composition.**—Motorola, Inc., an Illinois corporation with principal office and place of business in Chicago, Ill., agreed that in connection with the offer and sale in commerce of television or radio sets, phonographs or other products, it will forthwith cease and desist from:

1. Using such terms as "grained mahogany finish," "mahogany finish" and "walnut finish," or any other term or expression suggestive of wood or of a particular kind of wood, as descriptive of any such products having non-wood cabinets, unless in immediate conjunction therewith there appear other words or descriptions which clearly disclose the material of which said cabinets are made;

2. Failing to attach to any such products having cabinets made of hardboard or other similar material finished with a surface which simulates or has the appearance of wood, in such a manner that it cannot readily be removed or of such a nature as to remain on the product until it reaches the ultimate consumer, a tag, label or other notice clearly informing the consumer-purchaser as to the material of which such cabinets are made. (5923566, Nov. 10, 1960.)

9357. **TV, Radio, and Phonograph Cabinets—"Wood" Composition.**—Westinghouse Electric Corporation, a Pennsylvania corporation with principal office and place of business in Pittsburgh, Pa., agreed that in connection with the offer and sale in commerce of television or radio sets, phonographs or other products, it will forthwith cease and desist from:

(a) Using such terms as "mahogany grain finish," "limed oak grain finish," or any other term or expression suggestive of wood or of a particular kind of wood, as descriptive of any such products having non-wood cabinets, unless in immediate conjunction therewith there appear other words or descriptions which clearly disclose the material of which said cabinets are made;

(b) Failing to attach to any such products having cabinets made of hardboard or other similar material finished with a surface which simulates or has the appearance of wood, in such a manner that it cannot readily be removed or of such a nature as to remain on the product until it reaches the ultimate purchaser, a tag, label or other notice clearly informing the consumer-purchaser as to the material of which such cabinets are made. (5923380, Nov. 10, 1960.)

9358. **TV, Radio, and Phonograph Cabinets—"Wood" Composition.**—Emerson Radio & Phonograph Corporation, a New York corporation with principal office and place of business in Jersey City, N.J., agreed that in connection with the offer and sale in commerce of television or radio sets, phonographs or other products, it will forthwith cease and desist from:

(a) Using such terms as "mahogany grain finish," "limed oak grain finish," or any other term or expression suggestive of wood or of a particular kind of wood, as descriptive of any such products having non-wood cabinets, unless in immediate conjunction therewith there appear other words or descriptions which clearly disclose the material of which said cabinets are made;

(b) Failing to attach to any such products having cabinets made of hardboard or other similar material finished with a surface which simulates or has the appearance of wood, in such manner that it cannot readily be removed or of such a nature as to remain on the product until it reaches the ultimate purchaser, a tag, label or other notice clearly informing the consumer-purchaser as to the material of which such cabinets are made. (5923465, Nov. 10, 1960.)

9359. **TV, Radio, and Phonograph Cabinets—"Wood" Composition.**—Philco Corporation, a Pennsylvania corporation with principal office in Philadelphia, Pa., agreed that in connection with the offer and sale in commerce of television or radio sets, phonographs or other products, it will forthwith cease and desist from:

1. Using such terms as "grained mahogany finish," "mahogany finish," and "Walnut finish," or any other term or expression suggestive of wood or of a particular kind of wood, as descriptive of any such products having non-wood cabinets, unless in immediate conjunction therewith there appear other words or descriptions which clearly disclose the material of which said cabinets are made;

2. Failing to attach to any such products having cabinets made of hardboard or other similar material finished with a surface which

simulates or has the appearance of wood, in such a manner that it cannot readily be removed or of such a nature as to remain on the product until it reaches the ultimate purchaser, a tag, label or other notice clearly informing the consumer-purchaser as to the material of which said such cabinets are made. (5923564, Nov. 10, 1960.)

9360. **TV, Radio, and Phonograph Cabinets—"Wood" Composition.**—Zenith Radio Corporation, a Delaware corporation with principal office and place of business in Chicago, Ill., agreed that in connection with the offer and sale in commerce of television or radio sets, phonographs or other products, it will forthwith cease and desist from:

Failing to attach to any such products having cabinets made of hardboard or other similar material finished with a surface which simulates or has the appearance of wood, in such manner that it cannot readily be removed or of such a nature as to remain on the product until it reaches the ultimate purchaser, a tag, label or other notice clearly informing the consumer-purchaser as to the material of which such cabinets are made. (5923565, Nov. 10, 1960.)

9361. **TV, Radio, and Phonograph Cabinets—"Wood" Composition.**—Sylvania Electric Products, Inc., a Delaware corporation with principal office in New York, N.Y., agreed that in connection with the offer and sale in commerce of television or radio sets, phonographs or other products, it will forthwith cease and desist from:

(a) Using such terms as "grain finished in blonde Oak," "Fruitwood grained finish," "Grained finishes in mahogany or blonde Oak," and "wood-tone finish grained in mahogany" or any other term or expression suggestive of wood or of a particular kind of wood, as descriptive of any such products having non-wood cabinets, unless in immediate conjunction therewith there appear other words or descriptions which clearly disclose the material of which said cabinets are made;

(b) Failing to attach to any such products having cabinets made of hardboard or other similar material finished with a surface which simulates or has the appearance of wood, in such a manner that it cannot readily be removed or of such a nature as to remain on the product until it reaches the ultimate purchaser, a tag, label or other notice clearly informing the consumer-purchaser as to the material of which such cabinets are made. (6023093, Nov. 10, 1960.)

9362. **Adhesives and Fillers—Composition, Effectiveness.**—Woodhill Chemical Company and Woodhill Chemical Sales Corporation, Ohio, corporations with principal offices in Cleveland, Ohio, and Norman J. Freeman, James M. Freeman, Philip E. Freeman and Victor Gelb, officers thereof, agreed that in connection with the offer and sale of the products now designated "Chemsteel," "Liquid Steel," "Plastic Rubber," "Plastic Aluminum" and "Plastic Porcelain Repair," or any similar products whether sold under said names or any other names in

commerce, they and each of them will forthwith cease and desist from:

(1) Representing through use of the brand names "Chemsteel," "Liquid Steel," or by any other means, that the products so designated are composed in whole or in substantial part of steel; provided, however, that this shall not be construed as an agreement not to use said trade names to designate products composed in substantial part of steel in some form, when accompanied by a clear and conspicuous disclosure of the true composition of such products;

(2) Representing that the product designated "Chemsteel" hardens into steel;

(3) Representing that the product designated "Liquid Steel" will repair metal unless it is clearly and conspicuously disclosed that the effectiveness of the product is limited to minor repairs;

(4) Using the brand name "Plastic Rubber" or "Plastic Aluminum" without clearly and conspicuously disclosing the true composition of the products so designated;

(5) Representing that "Plastic Rubber" is composed wholly of rubber, forms into rubber or is as efficient or tenacious as any vulcanized rubber;

(6) Representing that "Plastic Aluminum" is composed wholly of metal, that it hardens into metal, or that it is not a cement;

(7) Representing through use of the brand names "Plastic Porcelain," "Plastic Porcelain Repair," or by any other means, that the product so designated is composed in whole or in substantial part of porcelain;

(8) Representing that the product designated "Plastic Porcelain" or "Plastic Porcelain Repair" is chip-proof or that it provides a vitreous or kiln hardened finish, or otherwise representing the nature, hardness or chip-resistant properties of the product or its finish in any manner not in accordance with the facts. (5923686, Dec. 1, 1960.)

9363. **Rebuilt Automotive Parts—Nondisclosure of Used Nature.**—White Industries, Inc., and its subsidiary, Automotive Service Industries, Inc., Minnesota corporations with principal offices located in Minneapolis, Minn., and Norman A. White, an officer thereof, agreed that in connection with the offer and sale of rebuilt automotive parts in commerce, they will forthwith cease and desist, directly or through any corporate or other device, from:

Offering for sale, selling or delivering to others for sale or resale to the public any product containing parts which have been previously used without a clear and conspicuous disclosure of such prior use made on the product with sufficient permanency to remain thereon after installation, as well as in advertising and on the container in which the product is packed. (6023689, Dec. 1, 1960.)

9364. **Sleeping Bags—Misleading Dimensions.**—H. Wenzel Tent & Duck Company, a Missouri corporation with principal place of busi-

ness in St. Louis, Mo., and Hermann Wenzel, Fred Wenzel and William Wenzel, officers thereof, agreed that in connection with the offer and sale in commerce of sleeping bags or other products, they and each of them, will forthwith cease and desist from:

Advertising, labeling or otherwise representing the "cut size" or dimensions of materials used in their construction, unless such representation is accompanied by an at least equally conspicuous description of the finished or actual size; or otherwise representing the size or dimensions of such products in any manner not in accordance with the facts. (6023267, Dec. 1, 1960.)

9365. **Combs—"Rubber" Composition.**—Hyman and Hyman Beauty Products, Inc., a corporation with principal place of business in New York, N.Y., agreed that in connection with the offer and sale of combs in commerce, it will forthwith cease and desist from representing, directly or by implication that such combs are "Genuine Hard Rubber," "rubber," "hard rubber," "resin rubber," "rubber resin" or representing in any manner or by any means that such combs are made of rubber or hard rubber unless they are in fact made of vulcanized hard rubber. (6024087, Dec. 1, 1960.)

9366. **"Alfa-Eze" Arthritis Treatment—Effectiveness, Therapeutic Properties.**—National Medical Products Corporation, a Louisiana corporation with principal office and place of business in New Orleans, La., and Jules J. Paglin, Stanley W. Ray, Jr., and Carl Bradford, its officers, agreed to forthwith cease and desist from disseminating or causing to be disseminated any advertisement for the product now designated "Alfa-Eze (Liquid)" or the product now designated "Alfa-Eze (Tablets)" or any other product of substantially the same composition or possessing substantially the same properties, which represents directly or by implication that:

(1) Such product is an adequate, effective or reliable treatment or remedy for, will arrest the progress of, or correct the underlying causes of, arthritis, rheumatism, lumbago, neuralgia, bursitis, neuritis or any other arthritic or rheumatic condition;

(2) Such product is an adequate, effective or reliable treatment for the symptoms or manifestations of arthritis, rheumatism, lumbago, neuralgia, bursitis, neuritis or any other arthritic or rheumatic condition, will afford complete or long lasting relief of the aches or pains of any such condition or have any therapeutic effect upon any of the symptoms or manifestations thereof in excess of affording temporary relief of minor aches or pains;

(3) Such product is a new or magic formula, a proven or a potent analgesic medicine, or a wonder drug or wonder-working drug;

(4) The alfalfa content of the product is of any therapeutic value. (6024138, Dec. 6, 1960.)

9367. **Bedspreads—Domestically Fabricated as Imported.**—Cabin Crafts, Incorporated, a Georgia corporation with principal place of business in Dalton, Ga., agreed that in connection with the offer and sale of bedspreads or other products in commerce, it will forthwith cease and desist from designating such products made of domestic fabrics as "Petti-Swiss," or any variation thereof employing the word "Swiss," without clearly disclosing that the products are made in the United States. (6023989, Dec. 6, 1960.)

9368. **Shoes—Hand-sewn.**—G. H. Bass & Co., a Maine corporation with principal office and place of business in Wilton, Maine, and John R. Bass, George H. Bass, II, and Robert N. Bass, officers thereof, agreed that in connection with the offer and sale of shoes in commerce, they, and each of them, will forthwith cease and desist from representing directly or by implication:

That their shoe products are hand-sewn except as to such part or parts as may be sewn by hand or that such products embody hand operations in their manufacture except in accordance with the facts. (6023002, Dec. 8, 1960.)

9369. **Reclaimed Motor Oil—Nondisclosure of Used Nature, Fictitious Pricing.**—Top Oil Company, Inc., a Texas corporation with principal place of business in Lubbock, Tex., and Raymond G. Billingsley, an officer thereof, agreed that in connection with the offer and sale of previously used motor oil in commerce, they will forthwith cease and desist from:

(1) Representing, directly or by implication, that such lubricating oil is processed from other than previously used oil;

(2) Advertising, offering for sale or selling any lubricating oil which is composed in whole or in part of oil which has been previously used, without disclosing such prior use in advertising, in sales promotional material, and by a clear and conspicuous statement to that effect on the container;

(3) Representing, directly or by implication, or supplying to or causing to be placed in the hands of others the means of representing, that the regular and usual retail price of any product is any amount greater than the price at which the product is regularly and usually sold at retail, or otherwise representing prices or savings in any manner not in accordance with the facts. (6024118, Dec. 13, 1960.)

9370. **Song Poems and Lyrics—Publication Opportunities, Royalties, Guarantees.**—Alex Salomon, an individual trading as Hollywood Tunesmiths with principal place of business in Hollywood, Calif., agreed that in connection with the solicitation of song poems and lyrics to be set to music, in commerce, he will forthwith cease and desist from:

(1) Representing directly or by implication that at least one song a month based on lyrics submitted by persons subscribing to his service will be published by an independent music publisher without cost

to the subscriber for such publication or otherwise representing the opportunity for publication of songs in any manner not in accordance with the facts;

(2) Representing directly or by implication that an advance royalty or other payment will be made to a person whose song has been selected for publication unless such is the fact;

(3) Using any guarantee representation unless the nature and extent of the guarantee and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed. (6023589, Dec. 20, 1960.)

9371. **Furniture—Domestic as Imported, "Walnut."**—Curtis Brothers, Inc., a Delaware corporation doing business as Curtis Brothers Furniture Company with principal place of business in Washington, D.C., and George T., Harry H., Arthur B. and Charles W. Curtis, its officers, agreed that in connection with the offer and sale of furniture in commerce, they, and each of them, will forthwith cease and desist from:

(1) Using the word "Danish" or any other word or words in such manner as to represent, directly or by implication, that furniture is imported from Denmark or is made of wood imported from Denmark, when such is not the fact;

(2) Using the word "Walnut," either alone or in conjunction with any other word or words, to designate or describe any wood other than that of the genus Juglans of the walnut tree family, or otherwise representing in any manner the kind or nature of woods not in accordance with the facts. (6023277, Dec. 27, 1960.)

9372. **Shoes—Hand Sewn.**—Haymaker Shoe Corporation, a Massachusetts corporation with principal office and place of business in New York, N.Y., agreed that in connection with the offer and sale, in commerce, of golf shoes and other footwear, it will forthwith cease and desist from representing, directly or by implication:

That its shoe products are hand sewn except as to such part or parts as may be sewn by hand or that such products embody hand operations in their manufacture except in accordance with the facts. (5923733, Dec. 27, 1960.)

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[1] Commodities involved in dismissing or vacating orders are indicated by italicized page reference. For table of commodities in stipulations in this volume, see p. 1574.

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