Complaint

IN THE MATTER OF

S. POLLACK, INC., ET AL.

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

Docket 7779. Complaint, Feb. 9, 1960—Decision, Aug. 17, 1960

Consent order requiring furriers in Pottsville, Pa., to cease violating the Fur Products Labeling Act by using fictitious prices in advertising and labeling fur products; failing to set forth the term "Persian Lamb" on labels and invoices and the term "Dyed Mouton-processed Lamb" on invoices as required; representing falsely in advertising, by the word "Factory" and picturizations, that they owned a factory where they manufactured and remodeled fur products; and failing in other respects to comply with provisions of the Act.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that S. Pollack, Inc., a corporation, and Harold S. Pollack and Bernard S. Pollack, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Fur 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 S. Pollack, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania with its office and principal place of business located at 22 North Center Street, Pottsville, Pa.

Individual respondents Harold S. Pollack and Bernard S. Pollack are president and secretary-treasurer respectively of the said corporate respondent and control, formulate and direct the acts, practices and policies of the said corporate respondent. Their office and principal place of business is the same as that of the corporate respondent.

PAR. 2. Subsequent to the effective date of the Fur Products Labeling Act on August 9, 1952, respondents have been and are now engaged in the introduction into commerce, and in the sale, advertising, and offering for sale, in commerce, and in the transportation and distribution, in commerce of fur products and have sold, advertised, offered for sale, transported and distributed fur products which have been made in whole or in part of fur which had been

shipped and received in commerce, as the terms "commerce", "fur" and "fur product" are defined in the Fur Products Labeling Act, and have sold, advertised, offered for sale or processed fur products which have been shipped and received in commerce upon which fur products a substitute label has been placed by respondents.

PAR. 3. Certain of said fur products were misbranded in that labels affixed thereto contained fictitious prices and misrepresented the regular retail selling prices of such fur products in that the prices represented on such labels as the regular prices of the fur products were in excess of the retail prices at which the respondents usually and regularly sold such fur products in the recent regular course of its business, in violation of Section 4(1) of the Fur Products Labeling Act.

PAR. 4. Certain of said fur products were misbranded in that they were not labeled as required under the provisions of Section 4(2) of the Fur Products Labeling Act and in the manner and form prescribed by the Rules and Regulations promulgated thereunder.

PAR. 5. Certain of said fur products were misbranded in violation of the Fur Products Labeling Act in that they were not labeled in accordance with the Rules and Regulations promulgated thereunder in the following respects:

(a) Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was set forth in abbreviated form, in violation of Rule 4 of said Rules and Regulations.

(b) The term "Persian Lamb" was not set forth in the manner required, in violation of Rule 8 of the Rules and Regulations.

(c) Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was mingled with non-required information, in violation of Rule 29(a) of said Rules and Regulations.

(d) Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was set forth in handwriting on labels, in violation of Rule 29(b) of said Rules and Regulations.

PAR. 6. Certain of said fur products were falsely and deceptively invoiced by respondents in that they were not invoiced as required by Section 5(b)(1) of the Fur Products Labeling Act, and in the manner and form prescribed by the Rules and Regulations promulgated thereunder.

PAR. 7. Certain of said fur products were falsely and deceptively invoiced in that respondents set forth on invoices pertaining to fur products the name of an animal other than the name of the animal

that produced the fur, in violation of Section 5(b)(2) of the Fur Products Labeling Act.

PAR. 8. Certain of said fur products were falsely and deceptively invoiced in violation of the Fur Products Labeling Act in that they were not invoiced in accordance with the Rules and Regulations promulgated thereunder in the following respects:

(a) Information required under Section 5(b)(1) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was set forth in abbreviated form, in violation of Rule 4 of said Rules and Regulations.

(b) The term "Persian Lamb" was not set forth in the manner required, in violation of Rule 8 of said Rules and Regulations.

(c) The term "Dyed Mouton-processed Lamb" was not set forth in the manner required, in violation of Rule 9 of said Rules and Regulations.

(d) Required item numbers were not set forth on invoices, in violation of Rule 40 of said Rules and Regulations.

PAR. 9. Certain of said fur products were falsely and deceptively advertised in violation of the Fur Products Labeling Act in that respondents caused the dissemination in commerce, as "commerce" is defined in said Act, of certain radio and newspaper advertisements, concerning said products, which were not in accordance with the provisions of Section 5(a) of the said Act and the Rules and Regulations promulgated thereunder; and which advertisements were intended to aid, promote and assist, directly or indirectly, in the sale and offering for sale of said fur products.

PAR. 10. Among and included in the advertisements as aforesaid, but not limited thereto, were advertisements of respondents which appeared over the radio and in issues of the Pottsville Republican, a newspaper published in the City of Pottsville, State of Pennsylvania, and having a wide circulation in said state and various other States of the United States.

By means of said advertisements and others of similar import and meaning, not specifically referred to herein, respondents falsely and deceptively advertised fur products in that said advertisements:

(a) Contained information required under Section 5(a) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder which was not set forth in type of equal size and conspicuousness and in close proximity with each other, in violation of Rule 38(a) of said Rules and Regulations.

(b) Represented prices of fur products as being the regular or usual prices where the so-called regular or usual prices were in fact fictitious in that they were not the prices at which said merchan-

dise was usually sold by respondents in the recent regular course of business, in violation of Section (a)(5) of the Fur Products Labeling Act.

PAR. 11. In advertising fur products for sale, as aforesaid, respondents falsely and deceptively advertised such fur products in violation of Section 5(a)(5) of the Fur Products Labeling Act, by representing in newspaper advertisements as follows: "Choose new styles and have your old fur coat remodeled at low cost during the summer months. All work done in Pollacks own factory", and by using the term "Factory" together with picturizations of Mink animals on their Mink Farm Show Room Building, that respondents own, operate and control a factory wherein they manufacture their own fur products and perform their own remodeling services thus affording savings to their customers, whereas respondents do not own, operate or control a factory; remodeling is performed on contract by another concern and respondents purchase their fur products and from distinct and separate sources of supply.

PAR. 12. In advertising fur products for sale as aforesaid respondents made claims and representations respecting the prices and values of fur products. Respondents in making such claims and representations failed to maintain full and adequate records disclosing the facts upon which such claims and representations were based in violation of Rule 44(e) of said Rules and Regulations.

PAR. 13. The aforesaid acts and practices of respondents, as herein alleged, are in violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder and constitute unfair and deceptive acts and practices in commerce under the Federal Trade Commission Act.

Frederick McManus Esq. supporting the complaint.

James P. Bohorad, Esq., of *Houck, Bohorad & Lipkin*, of Pottsville, Pa., for respondents.

INITIAL DECISION BY LEON R. GROSS, HEARING EXAMINER

On February 9, 1960, the Federal Trade Commission issued a complaint against the above-named respondents in which they were charged with violating the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder by, among other things, misbranding, failing to brand properly, falsely and deceptively invoicing, failing to label or improperly labeling, and falsely and deceptively advertising respondents' fur products sold by them in interstate commerce. A true and correct copy of the complaint was served upon the respondents and each and all of them, as required by law. Thereafter respondents appeared by counsel and

agreed to dispose of this proceeding without a formal hearing pursuant to the terms of an agreement dated June 17, 1960, containing consent order to cease and desist. The agreement was submitted to the undersigned hearing examiner on June 22, 1960, in accordance with Section 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings. The agreement purports to dispose of this proceeding as to the respondents and each and all of them and contains the form of a consent cease and desist order which the parties have represented is dispositive of the issues involved in this proceeding. The agreement has been signed by the president of the corporate respondent, by the individual respondents, by the attorney for the respondents, by counsel supporting the complaint, and has been approved by the Assistant Director, Associate Director, and Director of the Bureau of Litigation of the Federal Trade Commission. In said agreement of June 17, 1960, respondents admit all of the jurisdictional facts alleged in the complaint and agree that the record may be taken as if findings of jurisdictional facts had been made in accordance with such allegations. In the agreement the respondents waive: (a) any further procedural steps before the hearing examiner and the Commission; (b) the making of findings of fact or conclusions of law; and (c) all rights respondents may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement.

The parties further agree, in said agreement, that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and the agreement; that the agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Federal Trade Commission; that the order to cease and desist entered in this proceeding by the Commission may be entered without further notice to the respondents, and when so entered such order will have the same force and effect as if entered after a full hearing. Said order may be altered, modified or set aside in the manner provided for other orders. The complaint may be used in construing the terms of the order.

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

This proceeding having now come on for final consideration on the complaint and the aforesaid agreement of June 17, 1960, containing consent order, and it appearing that the order which is approved in and by said agreement disposes of all of the issues presented by the complaint as to all of the parties involved, said

agreement of June 17, 1960, is hereby accepted and order filed at the same time this decision becomes the decision of the Federal Trade Commission pursuant to Section 3.21 and 3.25 of the Commission's Rules of Practice for Adjudicative Proceeding. The undersigned hearing examiner having considered the agreement and proposed order and being of the opinion that the acceptance thereof will be in the public interest, makes the following findings and issues the following order:

FINDINGS

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

2. Respondent S. Pollack, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania with its office and principal place of business located at 22 North Center Street, Pottsville, Pa.

3. Individual respondents, Harold S. Pollack and Bernard S. Pollack, are president and secretary-treasurer, respectively, of said corporate respondent and control, formulate and direct the acts, practices, and policies of the said corporate respondent. Their office and principal place of business is the same as that of the corporate respondent;

4. Respondents are engaged in commerce as "commerce" is defined in the Federal Trade Commission Act;

5. The complaint filed herein states a cause of action against the respondents under the Fur Products Labeling Act, and the Rules and Regulations issued pursuant thereto; and this proceeding is in the public interest. Now, therefore,

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

1. Misbranding fur products by:

A. Falsely and deceptively labeling or otherwise identifying such products as to regular prices thereof by any representation that the

regular or usual prices of such products are any amount in excess of the prices at which respondents have usually and customarily sold such products in the recent regular course of business.

B. 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.

C. Setting forth on labels affixed to fur products:

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

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

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

D. Failing to set forth the term "Persian Lamb" in the manner required.

2. Falsely or deceptively invoicing fur products by:

A. Failing to furnish the 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.

B. Setting forth the name or names of any animal or animals other than the name or names specified in Section 5(b)(1)(A) of the Fur Products Labeling Act.

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

D. Failing to set forth the term "Persian Lamb" in the manner required.

E, Failing to set forth the term "Dyed Mouton Processed Lamb" in the manner required.

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

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

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

B. Represents, directly or by implication, that respondents own, operate or control a factory, remodel fur products or manufacture fur products, unless such is the fact.

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

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

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

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 17th day of August 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

APPLETONE DRUGS, INC., ET AL.

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

Docket 7855. Complaint, Apr. 6, 1960—Decisions, Aug. 17, 1960

Consent orders requiring a Detroit drug wholesaler and the operator of a Milwaukee drugstore to cease representing falsely in advertising in newspapers and otherwise that a drug preparation known as "Berside-'X'" was a competent treatment and cure for arthritis, rheumatism, and similar diseases, would relieve pains thereof, would help the body produce its own cortisone, and was a new wonder formula; and requiring said wholesaler to cease representing falsely that advertising copy it furnished to retail druggists had been examined and approved by Government agencies.

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 Appletone Drugs,

Inc., a corporation, and Bernard J. Dziedzic, an individual trading as Kadow's Drug Store, 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 Appletone Drugs, Inc., is a corporation organized, existing and doing business under and laws of the State of Michigan, with its principal office and place of business located at 11329 Jos. Campau Avenue, in the City of Detroit, State of Michigan.

Respondent Bernard J. Dziedzic is an individual trading as Kadow's Drug Store, with his principal office and place of business located at 1950 West Mitchell Street, in the City of Milwaukee, State of Wisconsin.

Respondent Appletone Drugs, Inc., is a wholesaler of drug preparations which it sell to retail drug stores. Kadow's Drug Store is a retail drug store owned and operated by respondent Bernard J. Dziedzic.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the sale and distribution of a preparation containing ingredients which come within the classification of drugs as the term "drug" is defined in the Federal Trade Commission Act.

The designation used by respondents for said preparation, the formula thereof, and directions for use are as follows:

Designation: "Berside-'X'." Formula—

Each tablet contains:

Aspirin	3 grs.
Salicylamide	4 grs.
Phenacetin	1 gr.
Aluminum Hydroxide	2 grs.
Calcium Carbonate	1 gr.
Magnesium Oxide	1 gr.
Lemon Bioflavonoid Complex	15 mgs.
Ascorbic Acid	25 mgs.

Directions:

For Adults only: Take two (2) tablets with water every three to four hours, as required, but not more than ten (10) tablets during any 24 hour day.

PAR. 3. Respondent Appletone Drugs, Inc. causes the said preparation, when sold, to be transported from its place of business in the State of Michigan to purchasers thereof located in various other States of the United States. This respondent maintains, and at all times mentioned herein has maintained, a course of trade in said preparation in commerce as "commerce" is defined in the Federal

Trade Commission Act. The volume of business in such commerce has been and is substantial.

Respondent Bernard J. Dziedzic sells the preparation in the said Kadow's Drug Store and by mail order. This respondent's volume of business in said preparation has been and is substantial.

PAR. 4. In the course and conduct of their said businesses, respondents have disseminated, and caused the dissemination of, certain advertisements concerning the said preparation by the United States mails and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, including, but not limited to, advertisements inserted in newspapers and other advertising media, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said preparation; and have disseminated, and caused the dissemination of, advertisements concerning said preparation by various means, including but not limited to the aforesaid media, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said preparation in commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. Among and typical of the statements and representations contained in said advertisements disseminated as hereinabove set forth are the following:

ARTHRITIS
RHEUMATISM
Bursitis—Neuritis
The new Wonder Formula Is Here—Berside-"X" Is Its Name
"Stabbing Pains" (in) Neck, Head, Shoulders
* * *
Sharp, Sword Pains (in arms and hands)
* * *
Aching and Soreness (in shoulder muscles)
* * *
Sharp, Heavy and Dull Pains (in back)
* * *
Sharp Agony Pains (in leg muscles)
* * *
Berside-"X" Has Been Known to Help Body
PRODUCE ITS OWN CORTISONE.
Berside-"X" STOPS, REALLY STOPS PAINS.

PAR. 6. Through the use of said advertisements and others similar thereto not specifically set out herein, respondents have represented and are representing, directly and by implication:

1. That Berside-"X" will arrest the progress of, correct the underlying causes of and cure all kinds of arthritis, rheumatism, neuritis and bursitis.

2. That Berside-"X" is an adequate, effective and reliable treatment for all kinds of arthritis, rheumatism, neuritis and bursitis.

3. That Berside-"X" will afford complete relief of the aches and pains of all kinds of arthritis, rheumatism, neuritis, bursitis and affected body muscles, including the severe aches and pains thereof.

4. That Berside-"X" will help the body produce its own cortisone.

5. That Berside-"X" is a new, wonder formula.

PAR. 7. The said advertisements were and are misleading in material respects and constituted, and now constitute, "false advertisements" as that term is defined in the Federal Trade Commission Act. In truth and in fact:

1. Berside-"X" will not arrest the progress of, correct the underlying causes of or cure any kind of arthritis, rheumatism, neuritis or bursitis.

2. Berside-"X" is not an adequate, effective or reliable treatment for any kind of arthritis, rheumatism, neuritis or bursitis.

3. Berside-"X" will not afford any relief of the severe aches and pains of any kind of arthritis, rheumatism, neuritis, bursitis, or affected body muscles, or have any beneficial effect in any of such conditions or disorders in excess of affording temporary relief of the minor aches or pains thereof.

4. Berside-"X" will not help the body produce its own cortisone.

5. Berside-"X" is not a new, wonder formula.

PAR. 8. Through the use of statements in advertisements disseminated as aforesaid, respondent Appletone Drugs, Inc., has also represented, directly or by implication, that advertising copy furnished by it to retail druggists for publication by the latter in local newspapers for the purpose of promoting sales of Berside-"X" had been examined by all Government agencies and the claims made in said copy approved by all said agencies or found by them to be correct.

PAR. 9. The said advertisements referred to in the foregoing Paragraph 8 are also misleading in material respects and also constitute "false advertisements" as that term is defined in the Federal Trade Commission Act. In truth and in fact, no agency of the United States Government had or has approved this respondent's advertising or found the claims made therein to be correct.

PAR. 10. The dissemination by the respondents of the false advertisements, as aforesaid, constituted, and now constitutes, unfair and deceptive acts and practices in commerce, within the intent and meaning of the Federal Trade Commission Act.

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

Mr. Berryman Davis supporting the complaint.

Respondent Appletone Drugs, Inc., a corporation, *Pro Se.*

INITIAL DECISION AS TO APPLETONE DRUGS, INC., A CORPORATION

On April 6, 1960, the Federal Trade Commission issued a complaint charging that the above-named respondents had violated the provisions of the Federal Trade Commission Act by the use of false advertising in the sale and distribution of a preparation designated as Berside-"X".

After issuance and service of the complaint the above-named respondents filed their separate answers and entered into separate agreements for a consent order. The agreements dispose of the matters complained about. The proceeding as to respondent Bernard J. Dziedzic, an individual trading as Kadow's Drug Store will be disposed of in a separate initial decision.

The pertinent provisions of said agreement are as follows: Respondent Appletone Drugs, Inc., a corporation, 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 Appletone Drugs, Inc., a corporation, waives the requirement that the decision must contain a statement of findings of fact and conclusions of law; said 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; said respondent also waives any right to challenge or contest the validity of the order in accordance with the agreement and the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent Appletone Drugs, Inc., a corporation, that it has violated the law as alleged in the complaint.

Upon consideration of the allegations of the complaint and the provisions of the agreement and the proposed order, the hearing examiner is of the opinion that such order constitutes a proper disposition of this proceeding insofar as it relates to respondent Appletone Drugs, Inc., a corporation. Accordingly, the hearing examiner finds that the acceptance of such agreement will be in the public interest and hereby accepts such agreement, makes the following jurisdictional findings and issues the following order.

JURISDICTIONAL FINDINGS

1. Respondent Appletone Drugs, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the

State of Michigan, with its principal office and place of business located at 11329 Jos. Campau Avenue, Detroit, Mich.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Appletone Drugs, Inc., a corporation and the proceeding is in the public interest.

ORDER

It is ordered, That respondent Appletone Drugs, Inc., a corporation, and its officers, and respondent's representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of the preparation designated Berside-"X", or any other preparation of substantially similar composition or possessing substantially similar properties, whether sold under the same name or any other name, do forthwith cease and desist from, directly or indirectly:

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

A. That said preparation:

1. Will arrest the progress of, correct the underlying causes of or cure any kind of arthritis, rheumatism, neuritis or bursitis.

2. Is an adequate, effective or reliable treatment for any kind of arthritis, rheumatism, neuritis or bursitis.

3. Will afford any relief of the severe aches and pains of any kind of arthritis, rheumatism, neuritis, bursitis, or affected body muscles, or have any beneficial effect in any of such conditions or disorders in excess of affording temporary relief of the minor aches or pains thereof.

4. Will help the body produce its own cortisone.

5. Is a new, wonder formula.

B. That the United States Government or any agency thereof has approved this respondent's advertising or found any claim made therein to be correct.

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

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall on the 17th day of

August 1960, become the decision of the Commission; and, accordingly:

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

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

Mr. Berryman Davis supporting the complaint.

Mr. Herbert L. Mount of Milwaukee, Wisc., for Bernard J. Dziedzic an individual trading as Kadow's Drug Store.

Initial Decision as to Bernard J. Dziedzic an Individual Trading as Kadow's Drug Store

On April 6, 1960, the Federal Trade Commission issued a complaint charging that the above-named respondents had violated the provisions of the Federal Trade Commission Act by the use of false advertising in the sale and distribution of a preparation designated as Berside-"X".

After issuance and service of the complaint the above-named respondents filed their separate answers and entered into separate agreements for a consent order. The agreements dispose of the matters complained about. The proceeding as to respondent Appletone Drugs, Inc., a corporation, will be disposed of in a separate initial decision.

The pertinent provisions of said agreement are as follows: Respondent Bernard J. Dziedzic, an individual trading as Kadow's Drug Store 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 Bernard J. Dziedzic, an individual trading as Kadow's Drug Store waives the requirement that the decision must contain a statement of findings of fact and conclusions of law; said 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; said respondent also waives any right to challenge or contest the validity of the order in accordance with the agreement and the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent Bernard J. Dziedzic,

an individual trading as Kadow's Drug Store, that he has violated the law as alleged in the complaint.

Upon consideration of the allegations of the complaint and the provisions of the agreement and the proposed order, the hearing examiner is of the opinion that such order constitutes a proper disposition of this proceeding insofar as it relates to respondent Bernard J. Dziedzic, an individual trading as Kadow's Drug Store. Accordingly, the hearing examiner finds that the acceptance of such agreement will be in the public interest and hereby accepts such agreement, makes the following jurisdictional findings and issues the following order.

JURISDICTIONAL FINDINGS

1. Respondent Bernard J. Dziedzic is an individual trading as Kadow's Drug Store, with his principal office and place of business located at 1950 West Mitchell Street, Milwaukee, Wis.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Respondent Bernard J. Dziedzic, an individual trading as Kadow's Drug Store and the proceeding is in the public interest.

ORDER

It is ordered, That respondent Bernard J. Dziedzic, an individual, trading as Kadow's Drug Store, or under any other name, and respondent's representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of the preparation designated Berside-"X", or any other preparation of substantially similar composition or possessing substantially similar properties, whether sold under the same name or any other name, do forthwith cease and desist from, directly or indirectly:

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

a. Will arrest the progress of, correct the underlying causes of or cure any kind of arthritis, rheumatism, neuritis or bursitis.

b. Is an adequate, effective or reliable treatment for any kind of arthritis, rheumatism, neuritis or bursitis.

c. Will afford any relief of the severe aches and pains of any kind of arthritis, rheumatism, neuritis, bursitis, or affected body muscles, or have any beneficial effect in any of such conditions or disorders in excess of affording temporary relief of the minor aches or pains thereof.

d. Will help the body produce its own cortisone.

e. Is a new, wonder formula.

2. Disseminating or causing the dissemination of any advertisement by any means for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase of said preparation in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement contains any of the representations prohibited in subparagraphs (a) to (e) inclusive, of paragraph 1 hereof.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall on the 17th day of August 1960, become the decision of the Commission; and, accordingly:

It is ordered, That respondent Bernard J. Dziedzic, an individual trading as Kadow's Drug Store, shall within sixty (60) days after service upon him of this order, file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with the order to cease and desist.

IN THE MATTER OF

FRANK JOHN MICELI, JR., DOING BUSINESS AS INTERNATIONAL EXPRESS SYSTEM, ETC.

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

Docket 7810. Complaint, Mar. 10, 1960—Decision, Aug. 18, 1960

Consent order requiring an individual in Somerville, Mass., to cease obtaining information from delinquent debtors through subterfuge—specifically, selling to creditors "skip tracing" forms, which carried the letterhead "International Express System", advising the delinquent debtor recipient that a prepaid package was being held for him and would be delivered if the "shipping instructions" on an enclosed tag were filled out and returned, whereupon he received as the "package" promised, an envelope containing a blank sheet of paper.

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 Frank Miceli, Jr., an individual trading and doing business as International Express System and Information Unlimited, hereinafter referred to as the 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 Frank John Miceli, Jr., is an individual, trading and doing business under the names International Express System, and Information Unlimited, with his office and principal place of business located at 302 Broadway, Somerville, Mass.

PAR. 2. Respondent is now, and for more than one year last past has been, engaged in the business of selling printed mailing forms. Respondent causes said printed forms when sold to be transported from his place of business in Somerville, Mass., to purchasers thereof in various States of the United States. Respondent maintains a substantial course of trade in said printed forms in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 3. The said printed forms sold by the respondent, as alleged above, are designed and intended to be used by collection agencies, merchants and others to whom such forms are sold for the purpose of obtaining information concerning alleged delinquent debtors with the aid and assistance of the respondent as hereinafter set forth. The forms use the name "International Express System" and are supplied in sets consisting of a form letter, a shipping tag to be filled in by the recipient, a label and a return postage paid envelope.

The form letter, printed upon the letterhead of the "International Express System" states that a prepaid package is being held for the addressee who is requested to fill in the shipping instructions called for by the enclosed tag. These instructions which, if answered, provide information which is considered to be of value in the collection of accounts owed or alleged to be owed by the addressee. The purchasers of respondent's printed forms fill in where appropriate the name and last known address of the alleged debtors and mail them. Included with the forms is a form letter purporting to be from International Express System which states that a prepaid package is being held for the addressee which cannot be delivered due to error or change of address and that if the questions set out on the form are answered delivery of the package will be made. If the addressees complete the forms and mail them to respondent at Somerville, Massachusetts, in self-addressed envelopes which are sent with the forms and letters, respondent mails small envelopes bearing the legend "This is Your Package" to said persons containing a blank sheet of paper. Respondent sends the completed tags to the purchasers of the forms. Copies of printed forms or pertinent parts thereof sold by respondent and used, as aforesaid, marked Exhibits 1, 2 and 3, are as follows:


INTERNATIONAL EXPRESS SYSTEM

CARTAGE - DOCK - RAIL FACILITIES

Dear Friend:

We are holding a Prepaid [illegible] for you which we cannot deliver due to [illegible] address. Please identify [illegible] and [illegible] all the questions on the enclosed shipping tag so we will be able to make delivery.

This parcel is prepaid so there are no charges. We will hold this parcel for thirty days, at Your Risk, subject to your shipping instructions and complete identification. All questions on shipping tag must be answered. Send reply promptly in the enclosed, self-addressed prepaid envelope, so that we may forward package promptly.

Yours truly,

INTERNATIONAL EXPRESS SYSTEM

By J. R. Fitzgerald

J. R. Fitzgerald

TRANSCONTINENTAL SERVICE

This communication comes to you from SPECIAL DELIVERY DEPT.

REGARDING PACKAGE ARRIVAL

PREPAID BY SHIPPER

TERMINALS

Main Terminal Chicago

Sub-Terminals

Akron, Albuquerque, Baltimore, Boston, Bridgeport, Buffalo, Cincinnati, Cleveland, Dallas, Denver, Des Moines

Detroit, Fort Worth, Hartford, Houston, Indianapolis, Jersey City, Kansas City, Los Angeles, Louisville, New Orleans, New York

Oklahoma City, Omaha, Philadelphia, Pittsburgh, Pa., Rochester, St. Louis, San Francisco, Seattle, Springfield, Mass., Syracuse, Toledo

Trenton, Washington, D. C.

Canada: Montreal, Toronto, Vancouver

Puerto Rico: San Juan, Santurce

Mexico: Acapulco, Tijuana, Mexico City

Receiving stations and Truck stops in every key city throughout the U.S.A. Canada and Mexico

Form [illegible]

[illegible] International Express System

EXHIBIT 1

Form 91825GRT
MADE IN USA

SHIPPING TAG
DO NOT DESTROY

Ship to
Name
Street and No.
City or Town
State

From INTERNATIONAL EXPRESS SYSTEM
302 BROADWAY, SOMERVILLE, MASS

B 8390

All Parcels must be Claimed through Main Office in Somerville, Mass.

DO NOT DETACH B 8390

IMPORTANT: All questions must be answered accurately and correctly to verify identity.

Type or print all information of Consignee or package will not be delivered.

(1) PRINT CORRECT NAME — PHONE NO.
(2) PRINT CORRECT ADDRESS
(3) PRINT CORRECT CITY — STATE
(4) PRESENT EMPLOYER
(5) ADDRESS — CITY — STATE
(6) NAME AND ADDRESS OF BANK
(7) MATE'S NAME IF MARRIED — OR 7A — SINGLE ☐ DIVORCED ☐ SEPARATED ☐ WIDOWED ☐
(8) NAME OF ONE REFERENCE
ADDRESS — CITY — STATE

RETURN THIS TAG IMMEDIATELY	ADDRESSEE ONLY MAY COMPLETE	NO GOODS DELIVERED TO UNIDENTIFIED CLAIMANTS

DETACH HERE B 8390

SURRENDER THIS STUB WHEN PACKAGE IS DELIVERED

CLAIM CHECK

NO CHARGES

THIS CHECK IS NECESSARY TO RECEIVE DELIVERY PLEASE DON'T LOSE IT.

I ACKNOWLEDGE RECEIPT OF SHIPMENT IN GOOD ORDER

SIGN HERE WHEN PARCEL IS DELIVERED ONLY.

Signature.....

EXHIBIT 3

ADDRESSEE: RETURN THIS LABEL WITH TAG

HIGHLY PERISHABLE

DO NOT CRUSH

PLACE ON TOP AND STAPLE ON CARTON

DISPATCHER: SECURE FIRMLY TO CARTON WITH BOTH GLUE AND STAPLES.

INTERNATIONAL EXPRESS SYSTEM #8635 RT

EXHIBIT 2

PAR. 4. Through the use of the aforesaid forms the respondent represented and placed in the hands of purchasers of the forms the means and instrumentalities whereby they represent and imply, to those to whom said forms are mailed that respondent is a bona fide express organization holding a package of merchandise for delivery and that the information called for on the shipping tag is necessary to effectuate the shipment of such merchandise.

PAR. 5. The aforesaid representations and implications were, and are, false, misleading and deceptive. In truth and in fact, (1) the respondent is not engaged in any express or forwarding business, (2) the package sent to those responding to the forms is only an envelope containing a blank sheet of paper and (3) the forms are used only for the purpose of obtaining information concerning alleged debtors by subterfuge. The practice is a scheme to mislead the addressees and to conceal the purpose for which the information is sought.

PAR. 6. The use, as hereinabove set forth, of said forms has had, and now has, the tendency and capacity to mislead persons to whom said forms are sent into the erroneous and mistaken belief that the said representations and implications are true, and to induce the recipients thereof to supply information which they otherwise would not have supplied.

PAR. 7. The aforesaid acts and practices of respondent, as herein alleged, were, and are, all to the prejudice and injury of the public and constituted, and now constitute, unfair and deceptive acts and practices, in commerce, within the intent and meaning of the Federal Trade Commission Act.

Mr. Ames W. Williams for the Commission.
Respondent *Pro se.*

INITIAL DECISION BY EDGAR A. BUTTLE, HEARING EXAMINER

On March 10, 1960, the Federal Trade Commission issued its complaint against the above-named respondent charging him with violating the provisions of the Federal Trade Commission Act in connection with the business of selling printed mailing forms designed and intended to be used by collection agencies, merchants and others to whom such forms are sold for the purpose of obtaining information concerning alleged delinquent debtors. On May 20, 1960, the respondent and counsel supporting the complaint entered into an agreement containing a consent order to cease and desist in accordance with section 3.25(a) of the Rules of Practice and Procedure of the Commission.

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

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

1. Respondent Frank John Miceli, Jr., is an individual, trading and doing business under the names International Express System, and Information Unlimited, with his office and principal place of business located at 302 Broadway, Somerville, Mass.

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

ORDER

It is ordered, That respondent, Frank John Miceli, Jr., an individual, trading and doing business as International Express System and Information Unlimited, or trading and doing business under any other name or names, and respondent's representatives, agents and employees, directly or through any corporate or other device, in connection with the business of obtaining information concerning delinquent debtors, or the offering for sale, sale or distribution of forms or other materials, for use in obtaining information concerning delinquent debtors, or in the collection of, or attempting to collect

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

1. Using the name "International Express System", or any other name of similar import to designate, describe or refer to respondent's business; or representing, directly or by implication, that a package is being held for delivery by him to persons from whom information is requested, unless such is the fact, and unless a description of the contents, or the value thereof is accurately stated.

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

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 18th day of August, 1960, become the decision of the Commission; and, accordingly:

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

IN THE MATTER OF

CARLTON RECORD CORPORATION ET AL.

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

Docket 7825. Complaint, Mar. 17, 1960—Decision, Aug. 18, 1960

Consent order requiring two associated New York City manufacturers of phonograph records to cease giving concealed payola to radio and television disc jockeys or other personnel of broadcasting stations to induce frequent broadcast of their records in order to increase sales.

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 Carlton Record Corporation, a corporation; Carlton Record Distributing Corporation, a corporation, and Joseph R. Carlton, Norman Walters, and

Don Genson, individually, and as officers of said corporations, 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. Carlton Record Corporation and Carlton Record Distributing Corporation, are corporations organized, existing and doing business under and by virtue of the laws of the State of New York, with their principal office and place of business located at 345 West 58th Street, New York, N.Y.

The respondents, Joseph R. Carlton, Norman Walters and Don Genson, are respectively, president, vice president and vice president of said corporate respondents. These individual respondents formulate, direct and control the acts and practices of the corporate respondents, including the acts and practices herein set out. The address of the individual respondents is the same as that of said corporate respondents.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the manufacture, distribution and sale of phonograph records to independent distributors for resale to retail outlets and jukebox operators in various States of the United States.

In the course and conduct of their business, respondents now cause, and for some time last past have caused, the records they manufacture, sell and distribute to be shipped from their place of business in the State of New York 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 phonograph records in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 3. In the course and conduct of their business, at all times mentioned herein, respondents have been, and are now, in substantial competition, in commerce, with corporations, firms and individuals in the sale and distribution of phonograph records.

PAR. 4. After World War II, when television and radio stations shifted from "live" to recorded performances for much of their programming, the production, distribution and sale of phonograph records emerged as an important factor in the musical industry, with a sales volume of approximately $400,000,000 in 1958.

Record manufacturing companies and distributors ascertained that popular disk jockeys could, by "exposure" or the playing of a record day after day, sometimes as high as six to ten times a day, substantially increase the sales of those records so "exposed". Some

record manufacturers and distributors obtained and insured the "exposure" of certain records in which they were financially interested by disbursing "payola" to individuals authorized to select and "expose" records for both radio and television programs.

"Payola", among other things, is the payment of money or other valuable consideration to disk jockeys of musical programs on radio and television stations to induce, stimulate or motivate the disk jockey to select, broadcast, "expose" and promote certain records in which the payer has a financial interest.

Disk jockeys, in consideration of their receiving the payments heretofore described, either directly or by implication represent to their listening public that the records "exposed" on their broadcasts have been selected on their personal evaluation of each record's merits or its general popularity with the public, whereas, in truth and in fact, one of the principal reasons or motivations guaranteeing the record's "exposure" is the "payola" payoff.

PAR. 5. In the course and conduct of their business, in commerce, during the last several years, the respondents have engaged in unfair and deceptive acts and practices and unfair methods of competition in the following respects:

The respondents alone, or with certain unnamed record manufacturers, have negotiated for and disbursed "payola" to disk jockeys broadcasting musical programs over radio or television stations broadcasting across state lines, or to other personnel who influence the selection of the records "exposed" by the disk jockeys on such programs.

Deception is inherent in "payola" inasmuch as it involves the payment of a consideration on the express or implied understanding that the disk jockey will conceal, withhold or cauoflage such fact from the listening public.

The respondents, by participating individually or in a joint effort with certain collaborating record manufacturers, have aided and abetted the deception of the public by various disk jockeys by controlling or unduly influencing the "exposure" of records by disk jockeys with the payment of money or other consideration to them, or to other personnel which select or participate in the selection of the records used on such broadcasts.

Thus, "payola" is used by the respondents to mislead the public into believing that the records "exposed" were the independent and unbiased selections of the disk jockeys based either on each record's merit or public popularity. This deception of the public has the capacity and tendency to cause the public to purchase the "ex-

posed" records which they otherwise might not have purchased and, also, to enhance the popularity of the "exposed" records in various popularity polls, which in turn has the capacity and tendency to substantially increase the sales of the "exposed" records.

PAR. 6. The aforesaid acts, practices and methods have the capacity and tendency to mislead and deceive the public, and to hinder, restrain and suppress competition in the manufacture, sale and distribution of phonograph records, and to divert trade unfairly to the respondents from their competitors, and substantial injury has thereby been done and may continue to be done to competition in commerce.

PAR. 7. The aforesaid acts and practices of respondents, as alleged herein, were and are all to the prejudice and injury of the public and of 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.

Mr. John T. Walker and *Mr. James H. Kelley* for the Commission.
Mr. Benjamin Starr, of New York, N.Y., for respondents.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

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

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

The agreement states that respondents Carlton Record Corporation and Carlton Record Distributing Corporation are corporations organized, existing and doing business under and by virtue of the laws of the State of New York, with their principal office and place of business located at 345 West 58th Street, New York, N.Y.; that respondents Joseph R. Carlton, Norman J. Walter (erroneously named in the complaint as Norman Walters), and Don Genson are, respectively, president, vice president and vice president of said corporate respondents; that these individual respondents formulate, direct and control the acts and practices of the corporate respondents; and that the address of the individual respondents is the same as that of said corporate respondents.

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

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

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

It is ordered, That Carlton Record Corporation, a corporation; Carlton Record Distributing Corporation, a corporation, and their officers, and Joseph R. Carlton, Norman J. Walter, and Don Genson,

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

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

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

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

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner did, on the 18th day of August 1960, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Carlton Record Corporation, a corporation; Carlton Record Distributing Corporation, a corporation, and Joseph R. Carlton and Norman J. Walter (erroneously named in the complaint as Norman Walters), and Don Genson, individually and as officers of said corporation, shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist.

IN THE MATTER OF

BYER-ROLNICK HAT CORPORATION

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

Docket 7837. Complaint, Mar. 21, 1960—Decision, Aug. 18, 1960

Consent order requiring the third largest hat manufacturer in the industry, with main office and manufacturing facilities in Texas, to cease discriminating in price between competing purchasers in violation of Sec. 2(a) of the Clayton Act by means of annual cumulative quantity discounts ranging from one to five percent which penalized smaller buyers unable to reach the volume required and which had increased competitive effect in that chain or multiple-store purchasers were permitted to combine the purchase volumes of their various outlets so as to qualify for the higher discount allowed on the aggregate total.

COMPLAINT

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

PARAGRAPH 1. Respondent, Byer-Rolnick Hat Corporation, formerly known as Resistol Hats, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal office located in the City of Garland, State of Texas.

PAR. 2. Respondent is engaged in the manufacture, sale, and distribution of hats. Among the various well-known brands of hats manufactured and sold by respondent are Resistol, Kevin McAndrew, Churchill, Bradford, and Luxureze. Respondent is a substantial factor in the hat industry, ranking as the third largest company in the industry, with a sales volume in excess of $5,950,000 for the fiscal year ending March 31, 1959. The principal manufacturing facilities of respondent are located in the State of Texas.

PAR. 3. In the course and conduct of its business, respondent now causes, and for some time last past has caused, its hats when sold for resale, to be shipped from its manufacturing facilities in the aforesaid State to purchasers thereof located in various other States of the United States and maintains and at all times mentioned

herein has maintained a substantial course of trade in said hats in commerce as "commerce" is defined in the aforesaid Clayton Act.

PAR. 4. Respondent, in the course and conduct of its business, has discriminated in price between different purchasers of its hats of like grade and quality, by selling of said products at higher and less favorable net purchase prices to some purchasers, than the same are sold to other purchasers who have been and are in competition with the nonfavored purchasers.

PAR. 5. The following example is illustrative of respondent's discriminatory pricing practices.

Respondent now has, and for the past several years has had in effect, an annual cumulative quantity discount system ranging from one to five percent, based on the amount of the customer's annual purchases of Resistol and Kevin McAndrew brand hats for the fiscal year ending March 31 of each year as follows:

Annual Purchases	*Discount (percent)*
Up to $2,499	0
$2,500 to $5,000	1
$5,001 to $10,000	1½
$10,001 to $15,000	2
$15,001 to $20,000	2½
$20,001 to $35,000	3
$35,001 to $50,000	4
$50,001 and over	5

Respondent's aforedescribed annual cumulative quantity discount system results in discriminatory net sales prices as between competitive purchasers in the different volume and discount brackets of said schedule. Purchasers of respondent's products for competitive resale unable to reach an annual purchase volume of $2,500, for example, receive no volume discounts on their purchase and thus have a significant buying price disadvantage.

Moreover, the competitive effect of the resulting net price differences becomes even more apparent in connection with respondent's application of the above discount schedule to chain or multiple-store purchasers. Respondent allows such purchasers to combine the purchase volumes of their various outlets so as to qualify for the higher discount allowed on the larger aggregate total of such purchase volume. In many instances the separate purchase volumes of these different individual stores are not sufficient to warrant such higher discount, but because of the policy of the respondent in granting the rate of discount on the combined purchase volumes of all such outlets, each individual store is allowed this higher discount.

In many instances respondent's other customers are purchasing individually from respondent in considerably greater volume than the individual chain or multiple-store with whom they compete, and in so doing receive either no discount or at best a low bracket discount corresponding with their actual volume of purchases, while the competitive individual chain or multiple-store is allowed the larger discount not related to its actual individual purchase volume. The products sold under respondent's different product lines are of like grade and quality in its respective product lines, and these independent non-chain customers purchase the same grade and quality of merchandise from respondent as do its chain and multiple-store customers. In many instances all the aforesaid stores are located in the same city or metropolitan area and all such stores are in active and constant competition with and among and between each other for the consumer trade.

Specific illustrations of representative price discriminations occasioned between and among various but not all of the said favored and non-favored competing customers on commodities of like grade and quality sold by respondent in commerce during the fiscal year ending March 31, 1959, are as follows in but two sample areas:

Detroit Trade Area

Customer	Purchase volume	Rebate	Rebate
			Percent
Harry Suffrin: [1]			
Store 1, Detroit	$20,764.16		
Store 2, Detroit	13,990.25		
Store 3, Detroit	8,712.00		
	$43,466.41	$1,738.66	4.00
Van Horns, Inc.: [2]			
Store 1, Detroit	4,884.42		
Store 2, Detroit	318.50		
Store 3, Royal Oak	458.50		
Store 4, Harper Woods	651.00		
	6,312.42	94.69	1.50
Danbys Store for Men: [3]			
Store 1, Detroit	1,671.25		
Store 2, Detroit	162.00		
Store 3, Birmingham	2,683.58		
	4,516.83	45.17	1.00
Morey Scholnick	4,188.00	41.88	1.00
Le Clair (formerly Culver Reame Best)	2,472.50		.00
E. J. Hickey	2,016.75		.00
Dearborn Toggery	1,852.00		.00
Carlisle Men's Wear	939.75		.00
Blocks Clothes	315.00		.00

[1] Under respondent's schedule Store 1 would receive 3%; Store 2, 2%; Store 3, 1½%. All stores received 4%.
[2] Under respondent's schedule Store 1 would receive 1%; Stores 2, 3, 4, no rebate. All stores received 1½%.
[3] Under respondent's schedule Store 3 would receive 1%; Stores 1, 2, no rebate. All stores received 1%.

Oklahoma City Trade Area

Customer	Purchase volume	Rebate	Rebate
			Percent
May Bros	$12,984.64	$259.69	2.00
Sturms	10,032.74	200.65	2.00
Parks: [1]			
Store 1, Oklahoma City	2,399.75		
Store 2, Oklahoma City	1,163.25		
Store 3, Oklahoma City	782.25		
Store 4, Oklahoma City	601.50		
Store 5, Midwest City	463.75		
	5,410.50	81.16	1.50
Bundys Western Shop	4,351.63	43.52	1.00
Men's, Inc	3,166.50	31.66	1.00
Bonds, Inc.[2]	385.00	3.85	1.00
Cutchalls	1,461.25		.00
Frontier City Western Store	1,384.50		.00

[1] Under respondent's schedule Stores 1, 2, 3, 4, 5, would receive no rebate. All 5 stores received 1½%.
[2] The Bonds, Inc. Oklahoma City Store purchase volume of $385.00 was combined with the following 6 Bonds Stores: 1. Houston, Texas, $1,260.75; 2. Houston, Texas, $838.25; 3. Dallas, Texas, $686.00; 4. Dallas, Texas, $364.00; 5. Mesquite, Texas, $271.83; 6. Fort Worth, Texas, $342.42. None of these 7 stores would have individually qualified for any discount under respondent's schedule.

PAR. 6. The effect of respondent's aforesaid discriminations in price between the said different purchasers of its said products of like grade and quality sold in manner and method and for purposes as aforestated, may be substantially to lessen competition or tend to create a monopoly in the lines of commerce in which respondent and the aforesaid favored purchasers are engaged, or to injure, destroy or prevent competition with said respondent or said favored purchasers.

PAR. 7. The aforesaid discriminations in price by respondent as hereinabove alleged and described constitute violations of subsection (a) of Section 2 of the aforesaid Clayton Act as amended.

Mr. Eldon P. Schrup for the Commission.

Johnson, Bromberg, Leeds & Riggs, by *Mr. Otis B. Gary*, of Dallas, Tex., for respondent.

INITIAL DECISION BY WALTER R. JOHNSON, HEARING EXAMINER

In the complaint dated March 21, 1960, the respondent is charged with violating the provisions of subsection (a) of section 2 of the Clayton Act, as amended.

On May 30, 1960, the respondent and its attorney, entered into an agreement with counsel in support of the complaint for a consent order.

Under the foregoing agreement, the respondent admits the jurisdictional facts alleged in the complaint. The parties agree, among other things, that the cease and desist order there set forth may be

entered without further notice and have the same force and effect as if entered after a full hearing and the document includes a waiver by the respondent of all rights to challenge or contest the validity of the order issuing in accordance therewith. The agreement further recites that it is for settlement purposes only and does not constitute an admission by the respondent that it has violated the law as alleged in the complaint.

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

The complaint insofar as it concerns the allegation of "primary line injury" namely, to substantially lessen competition or tend to create a monopoly in the line of commerce in which respondent is engaged, or to injure, destroy or prevent competition with said respondent, should be dismissed on the grounds that the evidence at hand in the light of subsequent developments is insufficient to substantiate such allegation.

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, Byer-Rolnick Hat Corporation, formerly known as Resistol Hats, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal office located in the City of Garland, State of Texas.

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

ORDER

It is ordered, That respondent Byer-Rolnick Hat Corporation, a corporation, and its officers, representatives, agents and employees, directly or through any corporate or other device, in or in connection with the sale of hats or related items in commerce, as "commerce" is defined in the Clayton Act, do forthwith cease and desist from discriminating, directly or indirectly, in the price of any such products of like grade and quality by selling to any one purchaser at net prices higher than the net prices charged to any other purchaser who, in fact, competes with the purchaser paying the higher price in the resale and distribution of respondent's products.

It is further ordered, That the allegation in the complaint to substantially lessen competition or tend to create a monopoly in the line of commerce in which respondent is engaged, or to injure, destroy or prevent competition with said respondent, be dismissed.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 18th day of August 1960, become the decision of the Commission; and, accordingly:

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

IN THE MATTER OF

HUGO & LUIGI PRODUCTIONS, INC., ET AL.

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

Docket 7883. Complaint, May 11, 1960—Decision, Aug. 18, 1960

Consent order requiring a New York City producer of master recordings for record manufacturers to reproduce on phonograph records, to cease giving concealed payola to radio and television disc jockeys or other personnel of broadcasting stations to induce frequent broadcast of their records in order to increase sales.

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 Hugo & Luigi Productions, Inc., a corporation, and Hugo Peretti and Luigi Creatore, 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 Hugo & Luigi Productions, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its principal office and place of business located at 155 East 24th Street, New York, N.Y.

Respondents Hugo Peretti and Luigi Creatore are, respectively, president-secretary and vice president-treasurer of the corporate respondent, and formulate, direct and control the acts and practices of said corporate respondent, including the acts and practices herein set out. The address of the individual respondents 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 production and sale of master recordings which are purchased by record manufacturers and reproduced on phonograph records which are sold and distributed in the various states of the United States.

Said respondents are responsible for the selection, production and promotion of such records which are sold and distributed in commerce and the individual respondents have traveled extensively in several states of the United States for the purpose of promoting the sales of certain records which they have produced.

The respondents maintain and have maintained at all times pertinent herein a substantial course of trade in master and phonograph records in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 3. In the course and conduct of their business, at all times mentioned herein, respondents have been, and are now, in substantial competition, in commerce, with corporations, firms and individuals in the sale and distribution of phonograph records.

PAR. 4. After World War II, when television and radio stations shifted from "live" to recorded performances for much of their programming, the production, distribution and sale of phonograph records emerged as an important factor in the musical industry, with a sales volume of approximately $400,000,000 in 1958.

Record manufacturing companies and distributors ascertained that popular disk jockeys could, by "exposure" or the playing of a record day after day, sometimes as high as six to ten times a day, substantially increase the sales of those records so "exposed". Some record manufacturers and distributors obtained and insured the "exposure" of certain records in which they were financially interested by disbursing "payola" to individuals authorized to select and "expose" records for both radio and television programs.

"Payola", among other things, is the payment of money or other valuable consideration to disk jockeys of musical programs on radio and television stations to induce, stimulate or motivate the disk jockeys to select, broadcast, "expose" and promote certain records in which the payer has a financial interest.

Disk jockeys, in consideration of their receiving the payments heretofore described, either directly or by implication, represent to

their listening public that the records "exposed" on their broadcasts have been selected on their personal evaluation of each record's merits or its general popularity with the public, whereas, in truth and in fact, one of the principal reasons or motivations guaranteeing the record's "exposure" is the "payola" payoff.

PAR. 5. In the course and conduct of their business in commerce during the last several years, the respondents have engaged in unfair and deceptive acts and practices and unfair methods of competition in the following respects:

The respondents have negotiated for and disbursed "payola" to disk jockeys broadcasting musical programs over radio or television stations broadcasting across state lines.

Deception is inherent in "payola" inasmuch as it involves the payment of a consideration on the express or implied understanding that the disk jockey will conceal, withhold or camouflage such fact from the listening public.

The respondents have aided and abetted the deception of the public by various disk jockeys by controlling or unduly influencing the "exposure" of records by disk jockeys with the payment of money or other consideration to them.

Thus, "payola" is used by the respondents to mislead the public into believing that the records "exposed" were the independent and unbiased selections of the disk jockeys based either on each record's merit or public popularity. This deception of the public has the capacity and tendency to cause the public to purchase the "exposed" records which they otherwise might not have purchased and, also, to enhance the popularity of the "exposed" records in various popularity polls, which in turn has the capacity and tendency to substantially increase the sales of the "exposed" records.

PAR. 6. The aforesaid acts, practices and methods have the capacity and tendency to mislead and deceive the public, and to hinder, restrain and suppress competition in the manufacture, sale and distribtuion of phonograph records, and to divert trade unfairly to the respondents from their competitors and substantial injury has thereby been done and may continue to be done to competition in commerce.

PAR. 7. The aforesaid acts and practices of respondents, as alleged herein, were and are all to the prejudice and injury of the public and of 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.

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

Reinheimer & Cohen, by *Mr. Irving Cohen*, of New York, N.Y., for respondents.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

The Federal Trade Commission (sometimes also hereinafter referred to as the Commission) on May 11, 1960, issued its complaint herein, charging the above-named respondents, who are engaged in the production and sale of master recordings which are purchased by record manufacturers and reproduced on phonograph records which are sold and distributed in the various States of the United States, with violation of the Federal Trade Commission Act, in that respondents, alone or with certain unnamed record manufacturers, have negotiated for and disbursed "payola," i.e., the payment of money or other valuable consideration to disk jockeys of musical programs on radio and television stations, to induce, stimulate or motivate the disk jockeys to select, broadcast, "expose" and promote certain records, in which respondents are financially interested, on the express or implied understanding that the disk jockeys will conceal, withhold or camouflage the fact of such payment from the listening public. Respondents were duly served with process.

On July 18, 1960, there was submitted to the undersigned hearing examiner of the Commission for his consideration and approval an "Agreement Containing Consent Order To Cease and Desist," which had been entered into by respondents, their counsel, and counsel supporting the complaint, under date of July 11, 1960, subject to the approval of the Bureau of Litigation of the Commission, which had subsequently duly approved the same.

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

1. Respondent Hugo & Luigi Productions, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal place of business located at 155 East 24th Street, New York, N.Y.

Respondents Hugo Peretti and Luigi Creatore are, respectively, president-secretary and vice president-treasurer of the corporate respondent, and formulate, direct and control the acts and practices of said corporate respondent. The address of the individual respondents is the same as that of the corporate respondent.

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

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

4. Respondents waive:

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

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

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

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

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

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

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

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

It is ordered, That respondents Hugo & Luigi Productions, Inc., a corporation, and its officers, and Hugo Peretti and Luigi Creatore,

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

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

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

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

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

The Commission having considered the hearing examiner's initial decision, filed July 19, 1960, accepting an agreement containing a consent order theretofore executed by the respondents and counsel in support of the complaint; and

It appearing that said initial decision is appropriate to dispose of this proceeding, except that the statement therein that the respondents were charged with having engaged in certain practices with certain unnamed record manufacturers is in error; and

The Commission being of the opinion that this error should be corrected:

It is ordered, That the initial decision be, and it hereby is, amended by striking from lines eight and nine of the first paragraph thereof the words ",alone or with certain unnamed record manufacturers,"

as they appear immediately following the word "respondents" in line eight.

It is further ordered, That the initial decision, as so amended, did, on the 18th day of August 1960, become the decision of the Commission.

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

IN THE MATTER OF

DONALD C. SUSSMAN TRADING AS WATERMAN PHARMACY, ETC.

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

Docket 7788. Modified order, Aug. 23, 1960

Order modifying earlier consent order, dated May 25, 1960, 56 F.T.C. 1456, prohibiting false advertising of a drug designated "Cel-Ate Tablets," by substituting a phrase as below indicated.

ORDER REOPENING CASE AND MODIFYING ORDER TO CEASE AND DESIST

It appearing that respondent Donald C. Sussman, an individual, trading as Waterman Pharmacy and as Waterman Drug Company, and respondent's counsel entered into an agreement with counsel supporting the complaint for a consent order which was accepted by the hearing examiner in his initial decision which became the decision of the Commission on May 25, 1960; and

Counsel supporting the complaint and counsel for respondent, on June 30, 1960, having filed a joint motion approved and concurred in by respondent, seeking to reopen this proceeding and to have modified the order to cease and desist heretofore entered against said respondent by striking the phrase "or have any beneficial effect on ulcers in excess of affording temporary relief from the discomforts of some peptic ulcers" from Subparagraph 1 of said order and substituting therefor the phrase "or have any beneficial effect on ulcers beyond that of an antacid temporarily relieving excess gastric acidity, which may temporarily lessen or relieve the pain in certain cases of peptic ulcers"; and

The Commission having concluded that the modification sought is warranted:

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

It is further ordered, That the order to cease and desist heretofore entered herein be, and it hereby is, modified by striking the phrase "or have any beneficial effect on ulcers in excess of affording temporary relief from the discomforts of some peptic ulcers" from Subparagraph 1 of said order and by substituting therefor the phase "or have any beneficial effect on ulcers beyond that of an antacid temporarily relieving excess gastric acidity, which may temporarily lessen or relieve the pain in certain cases of peptic ulcers," and that as so modified said Subparagraph shall now read as follows:

"1. Disseminating or causing to be disseminated, by means of the United States mails or by any means in commerce, as 'commerce' is defined in the Federal Trade Commission Act, any advertisement which represents, directly or by implication, that Cel-Ate Tablets are an adequate, effective or reliable treatment for the cure of or will afford complete relief from ulcers, or have a therapeutic effect on the symptoms or manifestations thereof, or have any beneficial effect on ulcers beyond that of an antacid temporarily relieving excess gastric acidity, which may temporarily lessen or relieve the pain in certain cases of peptic ulcers."

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

IN THE MATTER OF

UNITED ELECTRONICS LABORATORIES, INC., ET AL.

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

Docket 7820. Complaint, Mar. 11, 1960—Decision, Aug. 23, 1960

Consent order requiring operators of a correspondence school in Louisville, Ky., to cease making—in "Men Wanted" columns of newspapers and other advertising and by canvassers—such false claims as unwarranted employment opportunities, exaggerated earnings, special selection of students, limited enrollment, and other misrepresentations to sell a home-study and residence course in electronics technician training.

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 United Electronics Laboratories, Inc., a corporation, and Wirth L. Rector, Arthur W.

Grafton and Oliver S. Hammer, 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 United Electronics Laboratories, Inc. is a corporation organized and existing under the laws of the State of Kentucky, with its office and principal place of business located at 3947 Park Drive, Louisville 16, Ky. Individual respondents Wirth L. Rector, Arthur W. Grafton and Oliver S. Hammer are officers of the corporate respondent. They formulate, direct and control the acts, policies and practices of the said corporate respondent, including the acts and practices hereinafter set forth.

PAR. 2. The respondents are now, and for some time last past have been, engaged in the sale and distribution of a combined correspondence and residence course of study in electronics technician training. The curriculum, pursued in part through the medium of the United States mails, consists of some one hundred home study assignments in either color television or applied electronics and four weeks of residence training at the respondents' place of business in Louisville, Ky.

Said respondents in the course and conduct of their business have caused, and now cause, the correspondence portion of said course of study to be transported from their place of business in Louisville, Ky., to purchasers thereof located in various other states and maintain and have maintained a course of trade in commerce, as "commerce" is defined in the Federal Trade Commission Act. Their volume of business in such commerce has been and is substantial.

PAR. 3. In the course and conduct of their business as hereinbefore described, respondents make and have made, published, and caused to be published a variety of statements in various newspapers and periodicals, and by pass out cards, direct mailing pieces and canvassers, of which the following examples are typical, but not exclusive:

UNSKILLED MEN
of employable age—To qualify for
ELECTRONIC EMPLOYMENT
Studio Engr. * Automation * Micro Waves Radar * Missiles *
Computers * Etc.

When thoroughly qualified this man will be offered a permanent, interesting and substantial paying position as a certified ELECTRONICS TECHNICIAN.

National firm will select several capable men to train for responsible positions in the electronic industry. Must be ambitious, mechanically inclined, good health and habits. Must be willing to follow instructions and to devote

six hours each week training locally by working with practical electronic equipment under supervision and guidance of our Engineers, with arrangements made so that it will not interfere with your present job.

If you wish to discuss your qualifications with our Personnel Representative and have a sincere desire to enter electronic employment, fill in and mail to:

United Electronics Laboratories, Box X-83, Columbus Citizen, 34 N. Third St.

* * *

MEN WANTED

for Electronic Field From Area—Wages 125 per Week or Better

We will train personnel from this immediate area for jobs available soon. No previous experience necessary as those accepted will be trained under the supervision and guidance of our engineers. You will train and work on practical equipment. This will be arranged so as not to interfere with your present job.

Three Years Guaranteed Placement Service

If you wish to discuss your qualifications with our personnel representative fill in and mail to

Electronics

* * *

Men Needed For Electronic Work in this Area

For permanent employment, wages $100 and up per week.

* * *

Opportunities Unlimited for Men and Women in Electronics Field, Television Studio Field, Technical Television Field

No experience necessary. Employment training can be arranged for men and women who are not now qualified. Immediate openings for those thoroughly qualified. The demand is urgent! The opportunities are unlimited! If you are interested in these high paying, secure fields, now is the time to take action. Complete the attached card and mail today for details.

* * *

Employment Division—United Electronics and Television
Park Drive, Louisville 16, Kentucky

* * *

PAR. 4. By means of the statements appearing in said advertising material, respondents represent, directly or by implication, that such advertisements are offers of employment.

PAR. 5. Said statements and representations are false, misleading and deceptive. In truth and in fact, said advertisements are not offers of employment, but are published for the purpose of obtaining purchasers for the respondents' course in electronics technician training.

PAR. 6. Respondents employ commission sales agents who call upon the leads established through the means described above and endeavor to sell respondents' course of study. Respondents furnish said sales agents with various kinds of printed material for use in soliciting students.

PAR. 7. By means of oral statements made by their sales agents and statements contained in the aforesaid printed material furnished

to said sales agents and used by them in soliciting the sale of said course of study, respondents represent and imply:

1. That the school is selective and that enrollees must qualify for admission by examination, references, etc.

2. That beginning salaries for electronic technicians trained by respondents range from $90 to $160 per week.

3. That the school has only a limited number of openings available to new students.

4. That employment for graduates is guaranteed.

PAR. 8. The aforesaid statements and representations were, and are, false, misleading and deceptive. In truth and in fact,

1. Respondents do not select enrollees upon the exclusive basis of qualifications for undertaking the course of study but with few exceptions they will enroll all persons who agree to pay the requisite fee.

2. Starting salaries for electronic technicians trained by respondents are frequently less than those represented.

3. There is no limit as to the number of enrollees the respondents will accept.

4. While respondents attempt to find employment for those completing the couse of study, they do not find employment for all of said persons.

PAR. 9. Respondents employ sales agents, which they designate as "personnel representatives" in the advertisements set out in paragraph 4, to sell their course of instruction upon a commission basis.

PAR. 10. Said designation is false, misleading and deceptive. Said commission salesmen are not personnel representatives that is, persons seeking prospects for employment as said advertisements represent or imply.

PAR. 11. Respondents, in the conduct of their business, are in competition, in commerce, with corporations, firms and individuals in the sale of courses of instruction covering the same or similar subjects as are covered by respondents' course.

PAR. 12. The use by respondents of the aforesaid false, misleading and deceptive statements and representations has had, and now has, the tendency and capacity to mislead a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations are true and into the purchase of a substantial number of said courses of instruction because of such erroneous and mistaken belief. As a result thereof, trade in commerce has been unfairly diverted to respondents from their competitors and injury has thereby been done to competition in commerce.

PAR. 13. The aforesaid acts and practices of respondents, as herein alleged, 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 for the Commission.

Mr. Arthur W. Grafton, for *Wyatt, Grafton & Sloss*, of Louisville, Ky., for respondents.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

The Federal Trade Commission (sometimes also hereinafter referred to as the Commission) on March 11, 1960, issued its complaint herein, charging the above-named respondents with having violated the provisions of the Federal Trade Commission Act in certain particulars.

On June 17, 1960, there was submitted to the undersigned hearing examiner for his consideration and approval an "Agreement Containing Consent Order To Cease And Desist," which had been entered into by and between respondents and counsel supporting the complaint, under date of June 10, 1960, subject to the approval of the Bureau of Litigation of the Commission, which had subsequently duly approved the same.

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

1. Respondent United Electronics Laboratories, Inc., is a corporation organized and existing under the laws of the State of Kentucky, with its office and principal place of business located at 3947 Park Drive, Louisville 16, Ky. Individual respondents Wirth L. Rector, Arthur W. Grafton and Oliver S. Hammer are officers of the corporate respondent. They formulate, direct and control the acts, practices and policies of the said corporate respondent, and their address is the same as that of the corporate respondent.

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

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

4. Respondents waive:

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

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

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

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

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

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

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

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

It is ordered, That respondents, United Electronics Laboratories, Inc., a corporation, and its officers, and Wirth L. Rector, Arthur W. Grafton and Oliver S. Hammer, individually and as officers of said corporate respondent, and respondents' 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 courses of study or instruction, do forthwith cease and desist from:

1. Representing, directly or indirectly, that:

(a) Employment is offered by respondents when, in fact, their purpose is to obtain purchasers of their course of study or instruction;

(b) The school is selective in accepting students or that enrollees must qualify for admission by examination, unless such is the fact;

(c) The salary of electronic technicians trained by respondents is greater than is the fact;

(d) The school has only a limited number of openings available to new students.

(e) Graduates are guaranteed employment or that they place any greater number of graduates in positions than is actually the fact.

2. Using the words "personnel representative" or words of similar import as descriptive of or in referring to respondents' salesmen.

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 23d day of August 1960, become the decision of the Commission; and, accordingly:

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

IN THE MATTER OF

HAYWARD-SCHUSTER WOOLEN MILLS, INC., ET AL.

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

Docket 7742. Complaint, Jan. 12, 1960—Decision, Aug. 25, 1960

Consent order requiring a manufacturer of wool fabrics and its corporate sales agent, in East Douglas, Mass., and New York City, respectively, to cease violating the Wool Products Labeling Act by such practices as labeling as "25% camel hair, 75% wool" and "15% camel hair and 85% wool", fabrics which contained substantially less than the stated amount of camel hair fibers, and by failing to label certain of such fabrics 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 Hayward-Schuster Woolen Mills, Inc., a corporation, and Winfield Schuster, Robert J. Frost and Bayliss Aldrich, individually and as officers of said corporation, and Schuster Woolens, Inc., a 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 Hayward-Schuster Woolen Mills, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts. Individual respondents Winfield Schuster, Robert J. Frost and Bayliss Aldrich are officers of Hayward-Schuster Woolen Mills, Inc., and cooperate in formulating, directing and controlling the acts and practices hereinafter referred to. All of the foregoing respondents have their office and principal place of business in East Douglas in the Commonwealth of Massachusetts.

Respondent Schuster Woolens, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal place of business located at 112 West 34th Street, in the City of New York, State of New York.

Schuster Woolens, Inc., is a sales agent of respondent Hayward-Schuster Woolen Mills, Inc.

PAR. 2. Subsequent to the effective date of the Wool Products Labeling Act of 1939, and more especially since June 1, 1958, respondent Hayward-Schuster Woolen Mills, Inc., has manufactured for introduction into commerce and said respondent and respondent Schuster Woolens, Inc., 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 products were fabrics labeled or tagged by respondents as "25% camel hair, 75% wool" and "15% camel hair and 85% wool", whereas, in truth and in fact, the fabrics labeled or tagged as containing 25% camel hair, 75% wool contained

substantially less than 25% camel hair fibers and the fabrics labeled or tagged as containing 15% camel hair and 85% wool contained substantially less than 15% camel hair fibers.

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 in 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 manufacture and sale of wool products, including fabrics containing camel hair fibers.

PAR. 6. The acts and practices of 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. Frederick McManus for the Commission.

Griffin and Pickens, of Washington, D.C., by *Mr. John K. Pickens* for respondents.

INITIAL DECISION BY EARL J. KOLB, HEARING EXAMINER

The complaint in this proceeding issued January 12, 1960, charged the respondents Hayward-Schuster Woolen Mills, Inc., a Massachusetts corporation, located at East Douglas, Mass., Winfield Schuster, Robert J. Frost, and Bayliss Aldrich, individually and as officers of said corporation, and located at the same address as the corporate respondent, and Schuster Woolens, Inc., a New York corporation, located at 112 West 34th Street, New York, N.Y., with the use of unfair and deceptive acts and practices and unfair methods of competition in interstate commerce in violation of the provisions of the Federal Trade Commission Act, and the Wool Products Labeling Act of 1939, and the Rules and Regulations made pursuant thereto, by misbranding certain wool products manufactured by them for introduction into commerce.

After the issuance of the complaint, respondents entered into an agreement containing consent order to cease and desist with counsel in support of the complaint, disposing of all the issues as to all parties in this proceeding.

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

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

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

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

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

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

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

ORDER

It is ordered, That respondents Hayward-Schuster Woolen Mills, Inc., a corporation, and its officers, and Winfield Schuster, Robert J. Frost and Bayliss Aldrich, 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 introduction or manufacture for introduction into commerce, or the offering for sale, sale, transportation and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, of wool fabrics or other "wool products," as such products are defined in

and subject to the said Wool Products Labeling Act, do forthwith cease and desist from misbranding such products by:

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

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

It is further ordered, That respondent Schuster Woolens, Inc., a corporation, and its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the offering for sale, sale, transportation and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, of wool fabrics or other "wool products," as such products are defined in and subject to the said Wool Products Labeling Act, do forthwith cease and desist from misbranding such products by:

1. Falsely or deceptively stamping, tagging, labeling or otherwise identifying such products as to the character and 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 25th day of August 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

MARCH OF TOYS, INC., ET AL.

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

Docket 7070. Complaint, Feb. 20, 1958—Decision, Aug. 26, 1960

Consent order requiring an association and its member toy wholesalers in various States to cease violating Sec. 2(f) of the Clayton Act by knowingly

inducing or accepting unlawful price discriminations from suppliers, and, in determining a "net price", to take into account discounts, rebates, etc., by which net prices are effected.

COMPLAINT

Pursuant to the provisions of the Clayton Act, as amended by the Robinson-Patman Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission having reason to believe that the parties named in the caption hereof and more particulraly described and referred to hereinafter as respondents, have violated the provisions of subsection (f) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act, (U.S.C. Title 15, Sec. 13) hereby issues its complaint stating its charges as follows:

PARAGRAPH 1. Respondent March of Toys, Inc., hereinafter referred to as respondent MOT, is a corporation organized and existing under the laws of the State of New York with its principal office and place of business located at 200 Fifth Avenue, New York 10, N.Y.

Respondent Henry Lang is an individual who is executive director and vice-president of respondent MOT, with his principal office and place of business located c/o March of Toys, Inc., 200 Fifth Avenue, New York 10, N.Y.

The hereinafter specifically named individual respondents are all officers or directors of respondent MOT:

Nathan Greenman,
85 Willis Avenue,
Mineola, Long Island,
New York, N.Y.
President and director.

John R. Olsen,
4639 Milwaukee Avenue,
Chicago 30, Ill.
Treasurer and director.

Albert Zamler,
2281 West Fort Street,
Detroit 16, Mich.
Director.

Samuel Dubin,
417 Market Street,
Philadelphia 6, Pa.
Director.

David Nesson,
Colonial at 22d Street,
Norfolk 10, Va.
Director.

S. S. Seidel, Sr.,
8th and O Streets,
Lincoln 1, Nebr.
Director.

Benjamin Shrager,
19 Terminal Way,
Pittsburgh 19, Pa.
Director.

A. L. Crowe,
P.O. Box 1859,
Louisville 1, Ky.
Director.

Leonard J. Brown,
109 Hopkins Place,
Baltimore 1, Md.
Executive vice president
and director.

Jerome G. Watson,
635 SW First Avenue,
Miami 32, Fla.
Secretary and director.

J. Bradbury Fellows,
51 High Street,
Boston 10, Mass.
Director.

Michael G. Hersh,
1400 Folsom Street,
San Francisco 3, Calif.
Director.

Alexander Gottsegen,
741 Magazine Street,
New Orleans 12, La.
Director.

J. Wasserman,
23 South 4th Street,
St. Louis 2, Mo.
Director.

Alan J. Goldstein,
8 Jay Street,
Rochester 6, N.Y.
Director.

Linden R. Thoreson,
2600 Canton Street,
Dallas 26, Tex.
Director.

The foregoing individual respondents direct, formulate and control the acts, practices and policies of MOT.

Respondent Baltimore Products Company is a corporation organized and existing under the laws of the State of Maryland, with its principal office and place of business located at 109 Hopkins Place, Baltimore 1, Md.

Respondents Albert Zamler and Abe Lapides are copartners, doing business under the firm name and style of Consolidated Athletic Supply Company, with their principal office and place of business located at 2281 West Fort Street, Detroit 16, Mich.

Respondents William H. Bernstein and Milton Miller are copartners, doing business under the firm name and style of Federal Wholesale Company, with their principal office and place of business located at 342 East 3d Street, Los Angeles 13, Calif.

Respondent Fellows and Company, Inc., is a corporation organized and existing under the laws of the Commonwealth of Massachusetts, with its principal office and place of business located at 51 High Street, Boston 10, Mass.

Respondent Samuel Dubin is an individual doing business under the name and style of General Novelty Company, with his principal office and place of business located at 417 Market Street, Philadelphia 6, Pa.

Respondent Gotham Industries, Inc., is a corporation organized and existing under the laws of the State of New York, with its principal office and place of business located at 741 Magazine Street, New Orleans 12, La.

Respondent Greenman Brothers, Inc., is a corporation organized and existing under the laws of the State of New York with its principal office and place of business located at 85 Willis Avenue, Mineola, Long Island, N.Y.

Respondent Nesson Sales Company, Inc., is a corporation organized and existing under the laws of the State of Virginia, with its

principal office and place of business located at Colonial and 22d Street, Norfolk 10, Va.

Respondent Rochester Stationery Company, Inc., is a corporation organized and existing under the laws of the State of New York, with its principal office and place of business located at 8 Jay Street, Rochester 6, N.Y.

Respondent Schwarz Paper Company is a corporation organized and existing under the laws of the State of Nebraska, with its principal office and place of business located at Eighth and O Streets, Lincoln 1, Nebr.

Respondent M. Seller Company, is a corporation organized and existing under the laws of the State of California, with its principal office and place of business located at 1400 Folsom Street, San Francisco 3, Calif.

Respondent Shrager Brothers Company is a corporation organized and existing under the laws of the State of Pennsylvania, with its principal office and place of business located in the Terminal Building, 19 Terminal Way, Pittsburgh 10, Pa.

Respondent Singerman & Wasserman, Inc., is a corporation organized and eixsting under the laws of the State of Missouri, with its principal office and place of business located at 23 South 4th Street, St. Louis 2, Mo.

Respondent Stratton & Terstegge Company, Inc., is a corporation organized and existing under the laws of the State of Kentucky, with its principal office and place of business located at Post Office Box 1859, Louisville 1, Ky.

Respondent Thebault-Olsen Company is a corporation organized and existing under the laws of the State of Delaware, with its principal office and place of business located at 4639 Milwaukee Avenue, Chicago 30, Ill.

Respondent Linden R. Thoreson is an individual doing business under the name and style of Thoreson Sales Company, with his principal office and place of business located at 2600 Canton Street, Dallas 26, Tex.

Respondent Watson-Triangle Company is a corporation organized and existing under the laws of the State of Florida, with its principal office and place of business located at 635 South West First Avenue, Miami 32, Fla.

PAR. 2. All of the respondents named in Paragraph One, with the exception of respondent Henry Lang, have been and are now members of respondent MOT. Respondent Lang has been and is now an officer and executive director of respondent MOT.

PAR. 3. Respondent MOT was organized as a corporation under the name of Parade of Toys, Inc., on June 19, 1950, under the laws

of the State of New York. On November 9, 1951, its name was changed to March of Toys, Inc. Said respondent is engaged in the business of producing and publishing annually a catalog of toys. Various manufacturers of toys are advertisers in the catalog and the respondent members of respondent MOT sell such catalogs to retail toy distributors throughout the United States. Respondent MOT is owned and controlled by respondent members by virtue of their ownership of capital stock in the said respondent. Each member appoints one of the members of the Board of Directors and control over the corporations affairs rests in the board of directors at the annual meetings and in between times in the executive committee appointed by the board and the executive director.

The duties of the executive director are to determine the kinds of toys that should be recommended to the Board of Directors for inclusion in the catalogs and to advise the members of any new items that may appear on the market. He also is authorized to act and he has so acted as resident buyer for various members, purchasing toys in quantities authorized by individual members.

PAR. 4. Respondents in the course and conduct of their said business are engaged in commerce, as "commerce" is defined in the Clayton Act, in that they publish or cause to be published, sell and distribute toy catalogs, and purchase toys for resale from vendors thereof, located in various States and cause such products so purchased to be shipped and transported from the States where vendors are located to destinations in other States and the District of Columbia, and there is now and has been a constant course and flow of trade and commerce in such products and respondents are therefore subject to the jurisdiction of the Federal Trade Commission.

PAR. 5. In the course of their said business in commerce, said respondents have been in competition with other corporations, partnerships and individuals in the sale and distribution of toy catalogs and in the purchase of toys from various vendors, and in the resale thereof said respondents have been and are now in competition with other distributors, wholesalers, jobbers and others, except to the extent that such competition has been lessened or eliminated by the methods, practices and policies of respondents described herein.

PAR. 6. Said respondents in the course of their business in commerce of purchasing toys for resale, have since 1954, knowingly induced or knowingly received discriminatory prices from various toy vendors which prices were lower than the prices paid to the same vendors for toys of like grade and quality by other purchasers competing with said respondents in the resale of such products.

Respondent MOT and respondent Lang have acted as an instrumentality or intermediary for the respondent members, individuals, partnerships and corporations in inducing the various vendors to grant concessions in price to the respondent members with purchases being made by the individual respondent members sometimes through respondent MOT or respondent Lang, and shipments being made by the toy vendors in each case, to the respective places of business of the respondent members. Negotiations leading up to the granting of preferential prices to said respondents are and have been conducted by and through the office of respondent MOT and usually are and have been executed by respondent Lang as the executive director of respondent MOT, on behalf of, with the knowledge and at the request of all the respondent members of said respondent MOT.

Among the transactions in which said respondents have knowingly induced or knowingly received discriminatory prices from their vendors are:

(1) purchases of toys from Pressman Toy Corporation, a toy manufacturer in New York City, at a special two percent rebate from purchase price, while at the same time other competing wholesalers who purchased toys of like grade and quality from the same vendor did not receive such rebate and were thereby required to and did pay higher prices for such products;

(2) purchases of toys from Fred Bronner Corporation, a toy importer in New York City, at an extra three percent discount, while at the same time other competing wholesalers who purchased toys of like grade and quality from the same vendor were thereby required to and did pay higher prices for such products;

(3) purchases of toys from Empire Plastic Corporation, a toy manufacturer in New York City, at an extra five percent discount, while at the same time other competing wholesalers who purchased toys of like grade and quality from the same vendor were thereby required to and did pay higher prices for such products.

PAR. 7. The effect of said discriminations in price, knowingly induced or received by respondents as herein alleged may be substantially to lessen competition with or tend to create a monopoly in said respondents in the line of commerce in which they are engaged, or to injure, destroy or prevent competition with respondent members or with their customers.

PAR. 8. The foregoing acts and practices of the respondents and each of them in knowingly inducing, or in knowingly receiving the aforesaid discriminations in price are in violation of the provisions

of subsection (f) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

Mr. Lewis F. Depro and *Mr. Jerome Garfinkel* for the Commission.

Greenbaum, Wolff & Ernst, by *Mr. Frederic S. Nathan*, of New York, N.Y., for respondents.

INITIAL DECISION BY WALTER R. JOHNSON, HEARING EXAMINER

In the complaint dated February 20, 1958, the respondents are charged with violating the provisions of subsection (f) of section 2 of the Clayton Act, as amended.

On October 26, 1959, the respondents, except those herein specifically set forth, 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 business of respondent Linden R. Thoreson, doing business under the name of Thoreson Sales Company, has been succeeded to since about September 9, 1958 and is being carried on by a legal successor, Thoreson Sales, Inc., a corporation organized, existing and doing business under and by virtue of the laws of the State of Texas, with its office and principal place of business located at 2600 Canton Street, Dallas, Tex. Respondent Thoreson Sales, Inc. consents to a waiver of service of a true copy of the said complaint and agrees that service of said complaint upon respondent Linden R. Thoreson, doing business as Thoreson Sales Company, shall have the same legal force and effect as though it were served upon the corporate respondent Thoreson Sales, Inc.: that respondent Thoreson Sales, Inc., shall be and is legally bound by the service of a true copy of said complaint upon respondent Linden R. Thoreson, doing business as Thoreson Sales Company, as though such a copy was served upon the corporation, Thoreson Sales, Inc., and that respondent Thoreson Sales, Inc., as the legal successor to Linden R. Thore-

son, doing business as Thoreson Sales Company, be made a party respondent in this cause and be fully and completely bound as a respondent to the order hereinafter set forth.

The agreement also provides that the complaint may be dismissed as to the four individual respondents J. Bradbury Fellows, Alan J. Goldstein, and William H. Bernstein and Milton Miller, doing business as Federal Wholesale Company, and one corporate respondent, Fellows and Company, Inc., as they did not receive any discounts or rebates as alleged in the complaint or participate in any plan to do so, nor did they benefit therefrom, either directly or indirectly, and neither did they have any knowledge of such acts or practices, at least until after such alleged discounts and rebates had been made. There being no evidence to the contrary, the complaint may be dismissed as to the four individual respondents and the one corporate respondent hereinbefore referred to in this paragraph.

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 March of Toys, Inc., sometimes herein referred to as respondent MOT, 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 200 Fifth Avenue, in the city of New York, State of New York.

Respondent Henry Lang is an individual and executive director and vice president of the respondent MOT, with his office and principal place of business located at 200 Fifth Avenue, in the city of New York, State of New York.

Respondent Nathan Greenman is an individual and director of respondent MOT, with his office and principal place of business located at 85 Willis Avenue, in the city of Mineola, Long Island, State of New York,

Respondent Leonard J. Brown is an individual and president and director of respondent MOT, with his office and principal place of business located at 109 Hopkins Place, in the city of Baltimore, State of Maryland.

Respondent John R. Olsen is an individual and treasurer and director of respondent MOT, with his office and principal place of business located at 4639 Milwaukee Avenue, in the city of Chicago, State of Illinois.

Respondent Jerome G. Watson is an individual and director of respondent MOT, with his office and principal place of business located at 3401 N.W. 73d Street, in the city of Miami, State of Florida.

Respondent Albert Zamler is an individual and director of respondent MOT and copartner with respondent Abe Lapides, doing business as Consolidated Athletic Supply Company, with his office and principal place of business located at 2281 West Fort Street, in the city of Detroit, State of Michigan.

Respondent Samuel Dubin is an individual and director of respondent MOT, doing business as General Novelty Company, with his office and principal place of business located at 417 Market Street, in the city of Philadelphia, State of Pennsylvania.

Respondent Alexander Gottsegen is an individual and director of respondent MOT, with his office and principal place of business located at 310 Howard Avenue, in the city of New Orleans, State of Louisiana.

Respondent David Nesson is an individual and secretary and director of respondent MOT, with his office and principal place of business located at Colonial and 22d Street, in the city of Norfolk, State of Virginia.

Respondent Michael G. Hersh is an individual who was a director of respondent MOT, with his office and principal place of business located at 1400 Folsom Street, in the city of San Francisco, State of California.

Respondent S. S. Seidel, Sr., is an individual and director of respondent MOT, with his office and principal place of business located at 8th and O Streets, in the city of Lincoln, State of Nebraska.

Respondent Benjamin Shrager is an individual who was a director of respondent MOT, with his office and principal place of business located at 19 Terminal Way, in the city of Pittsburgh, State of Pennsylvania.

Respondent J. Wasserman is an individual and director of respondent MOT, with his office and principal place of business, located at 23 South 4th Street, in the city of St. Louis, State of Missouri.

Respondent A. L. Crowe is an individual who was a director of respondent MOT, with his office and principal place of business located at Post Office Box 1859, in the city of Louisville, State of Kentucky.

Respondent Linden R. Thoreson is an individual and executive vice president and director of respondent MOT, with his office and

principal place of business located at 2600 Canton Street, in the city of Dallas, State of Teaxs.

Respondent Baltimore Products Company is a corporation existing and doing business under and by virtue of the laws of the State of Maryland, with its office and principal place of business located at 109 Hopkins Place, in the city of Baltimore, State of Maryland.

Respondent Abe Lapides is an individual and copartner with respondent Albert Zamler doing business as Consolidated Athletic Supply Company, with his office and principal place of business located at 2281 West Fort Street, in the city of Detroit, State of Michigan.

Respondent Gotham Industries, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 310 Howard Avenue, in the city of New Orleans, State of Louisiana.

Respondent Greenman Brothers, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 85 Willis Avenue, in the city of Mineola, Long Island, State of New York.

Respondent Nesson Sales Company, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of Virginia, with its office and principal place of business located at Colonial and 22d Street, in the city of Norfolk, State of Virginia.

Respondent Rochester Stationery Company, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 8 Jay Street, in the city of Rochester, State of New York.

Respondent Schwarz Paper Company is a corporation existing and doing business under and by virtue of the laws of the State of Nebraska, with its office and principal place of business located at 8th and O Streets, in the city of Lincoln, State of Nebraska.

Respondent M. Seller Company is a corporation existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 1400 Folsom Street, in the city of San Francisco, State of California.

Respondent Shrager Brothers Company is a corporation existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its office and principal place of business located at 19 Terminal Way, in the city of Pittsburgh, State of Pennsylvania.

Respondent Singerman & Wasserman, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of Missouri, with its office and principal place of business located at 23 South 4th Street, in the city of St. Louis, State of Missouri.

Respondent Stratton & Terstegge Company, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of Kentucky, with its office and principal place of business located at Post Office Box 1859, in the city of Louisville, State of Kentucky.

Respondent Thebault-Olsen Company is a corporation existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 4639 Milwaukee Avenue, in the city of Chicago, State of Illinois.

Respondent Thoreson Sales, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of Texas with its office and principal place of business located at 2600 Canton Street, in the city of Dallas, State of Texas.

Respondent Watson-Triangle Company is a corporation existing and doing business under and by virtue of the laws of the State of Florida, with its office and principal place of business located at 3401 N.W. 73d Street, in the city of Miami, State of Florida.

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

ORDER

It is ordered, That respondent March of Toys, Inc., a corporation, and the following individual respondents, Henry Lang, Nathan Greenman, Leonard J. Brown, John R. Olsen, Jerome G. Watson, Albert Zamler, Samuel Dubin, Alexander Gottsegen, David Nesson, S. S. Seidel, Sr., Michael G. Hersh, Benjamin Shrager, J. Wasserman, A. L. Crowe, Linden R. Thoreson, and Abe Lapides; and the following corporate respondents; Baltimore Products Company, Gotham Industries, Inc., Greenman Brothers, Inc., Nesson Sales Company, Inc., Rochester Stationery Company, Inc., Schwarz Paper Company, M. Seller Company, Shrager Brothers Company, Singerman & Wasserman, Inc., Stratton & Terstegge Company, Inc., Thebault-Olsen Company, Thoreson Sales, Inc., and Watson-Triangle Company; and their respective officers, directors, representatives, agents and employees, directly or through any corporate or other device, in connection with the purchase of toys in commerce, as "commerce" is defined in the Clayton Act, do forthwith cease and desist from:

Knowingly inducing, or knowingly receiving or accepting, any discrimination in the price of such products, by directly or indirectly inducing, receiving, or accepting from any seller a net price known by the respective respondents to be below the net price at which said products of like grade and quality are being sold by such seller

to other customers, where respondents are competing with such other customers of the seller.

For the purpose of determining "net price" under the terms of this order, there shall be taken into account discounts, rebates, allowances, deductions, or other terms and conditions of sale by which net prices are effected.

It is ordered, That the complaint be dismissed as to individual respondents J. Bradbury Fellows, Alan J. Goldstein, William H. Bernstein and Milton Miller, and as to corporate respondent Fellows and Company, Inc.

FINAL ORDER

By its order of August 5, 1960, the Commission extended until further order the date on which the initial decision of the hearing examiner herein would become the decision of the Commission; and

The Commission now having concluded that said initial decision is appropriate in all respects to dispose of this proceeding:

It is ordered, That the initial decision of the hearing examiner filed June 24, 1960, be, and it hereby is, adopted as the decision of the Commission.

It is further ordered, That all of the respondents herein, except those as to whom the complaint has been dismissed, 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

SOUTHWESTERN SUGAR & MOLASSES COMPANY ET AL.

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

Docket 7461. Complaint, Apr. 1, 1959—Decision, Aug. 26, 1960

Consent order requiring a corporation in New York City, several of its subsidiaries and affiliates, and other leading concerns dealing in "blackstrap" molasses, to cease concerted price fixing in the industry, effected by use of a basing-point pricing system and other price-fixing formulae, refusing sales to non-cooperating truckers and other competitor-customers, dividing territories into exclusive trading zones and accounts among themselves, confining bids on available supplies to a designated one of their number, coercing competitor-customers to maintain their fixed prices and include their established freight charges in all delivered charges and threatening boycott of non-cooperators; requiring certain of said respondents to cease maintaining "Midwestern Terminals"—jointly operated terminals at inland river points ostensibly formed for legitimate purposes—as a device for

maintaining such fixed prices and joining with said New York City parent corporation in "joint account" relationships for the same purpose; and requiring said parent corporation to cease conspiring to prevent the purchase of "blackstrap" molasses in Mexico by a competitor.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondents named in the caption hereof, and hereinafter more particularly designated and described, have violated and are now violating Section 5 of the Federal Trade Commission Act (U.S.C., Title 15, Section 45) and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, the Commission hereby issues its complaint, stating its charges as follows:

COUNT I

PARAGRAPH 1. Respondent Southwestern Sugar & Molasses Company is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Texas, with its principal office and place of business at 115 Broadway, New York, N.Y. Respondent operates a direct branch in Houston, Texas; and respondents Abraham I. Kaplan, Peter Berdeshevsky, and Lutz H. Frieler are president, vice-president, and secretary-treasurer, respectively, and Stanley J. Posner is an employee, of said respondent corporation.

Respondent Molasses Products Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Louisiana with its principal office and place of business at 801 Queen & Crescent Building, New Orleans, La. Respondent is a subsidiary of respondent Southwestern Sugar & Molasses Company; and respondents Abraham I Kaplan and Peter Berdeshevsky are president and vice-president, respectively, of said corporate respondent Molasses Products Company.

Respondent Standard Molasses Company is a corporation organized, existing and doing business under the laws of the State of Texas, with its principal office and place of business at 115 Broadway, New York, N.Y. Respondent is a subsidiary of respondent Southwestern Sugar & Molasses Company, and operates a distributing station in Beaumont, Texas; and respondents Abraham I. Kaplan and Peter Berdeshevsky are president and vice president, respectively, of said corporate respondent Standard Molasses Company.

Respondent Imperial Molasses Company, Ltd. is a Canadian corporation with its principal place of business at the Board of Trade Building, Montreal, Canada, and doing business in the United States. Respondent is a subsidiary of respondent Southwestern Sugar &

Molasses Company; and respondents Abraham I. Kaplan and Peter Berdeshevsky are vice president and secretary-treasurer, respectively, of said corporate respondent Imperial Molasses Company, Ltd. The domestic address of said corporate respondent and its officers is the same as that of respondent Southwestern Sugar & Molasses Company.

Respondent Industrial Molasses Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey with its principal office and place of business at 321 Ft. Lee Road (Leonia Building) Leonia, N.J. Respondent is a business affiliate of respondent Southwestern Sugar & Molasses Company, and is known in the industry as a "satellite" of that company; and respondents Benjamin H. Ticknor, II, Albert A. Teeter, Jr., John P. Maynard, are president, vice president and vice president, respectively, of said corporate respondent Industrial Molasses Company.

Respondent Czarnikow Rionda 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 at 106 Wall Street, New York, N.Y.; and respondents George A. Braga, Joseph B. Clifford, and E. J. Kramer are president, assistant secretary and manager, molasses department, respectively, of the respondent corporation.

Respondent Molasses Trading Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Texas, with its principal office and place of business at 503 Jones Building, Corpus Christi, Tex. Respondent is a subsidiary of respondents Czarnikow Rionda Company and J. H. Leftwich & Company; and respondents J. H. Leftwich, F. M. Hicks, Jr., E. J. Kramer, Harold Fink, and R. L. McCauley, are president, vice president, assistant vice president, comptroller, and sales manager, respectively, of the said corporate respondent Molasses Trading Company.

Respondent J. H. Leftwich & Company, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Alabama with its principal office and place of business on the Alabama State Docks, P. O. Box 78, Mobile, Ala.; and respondents J. H. Leftwich and Frank M. Hicks, Jr., are president and vice president, respectively, of said respondent corporation.

Respondent National Molasses Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania with its principal office and place of business at Oreland, Pa. Respondent is a business affiliate of respondent Southwestern Sugar & Molasses Company and is known in the industry as a "satellite" of that company; and respondents Joshua Epstein,

Samuel G. Fischer, Joseph M. Rubenstone, and Sidney M. Cohen, are president, vice president, vice president and secretary-treasurer, respectively, of said respondent corporation.

Respondent Campania de Mieles de Mexico, S.A. is a Mexican Corporation with its principal place of business at Balderas 36, Mexico 1 D.F. Respondent is a subsidiary of respondent Southwestern Sugar & Molasses Company and ships molasses into the United States from various points in Mexico; and respondents Abraham I. Kaplan and Peter Berdeshevsky are the principal officers and stockholders of said corporate respondent Campania de Mieles de Mexico, S.A. The domestic address of said corporate respondent and its officers is the same as that of the corporate respondent Southwestern Sugar & Molasses Company.

Respondent New Mexico Timber Company is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New Mexico with its principal office and place of business at Albuquerque, N.Mex.; and respondent Thomas Gallagher is the principal officer of said respondent corporation.

The individual respondents named herein formulate, direct, and control the policies, acts, and practices of the respective corporate respondents of which they are officers or employees.

PAR. 2. All herein-named respondents are now and have been for several years last past engaged in one or more phases of the domestic and "offshore" purchase, storage, distribution, and/or sale of the commodity "blackstrap" molasses and are among the principal companies engaged in such business in the United States. Respondent Southwestern Sugar & Molasses Company is a leading importer and distributor of molasses in the United States, with sales of $20,000,000 in the year 1955.

PAR. 3. "Blackstrap" molasses is a byproduct of the manufacture of cane sugar. After the cane juice has been processed, and as much sugar as economically possible has been removed, the remaining liquid ("final molasses") is "blackstrap". Because of its sugar, vitamin, and mineral contents and, normally, because it is the least expensive carbohydrate available, "blackstrap" logically functions as an excellent livestock feed ingredient, although it has additional uses. "Blackstrap" molasses accounts for 70 to 80 percent of the total available supply of industrial molasses and, as a result, is the most important form. It is a custom in the molasses trade to consider a gallon of molasses to weigh nominally 11.7 pounds and 171 gallons equal one short ton.

In the regular and usual course and conduct of their business, respondents cause, and for the past several years have caused their

commodity "blackstrap" molasses, when purchased and sold, to be transported from places in the States of Louisiana and Texas, among others, to purchasers and sellers thereof located in various other States of the United States.

PAR. 4. Respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in "blackstrap" molasses in commerce, as "commerce" is defined in the Federal Trade Commission Act, among and between the various States of the United States. Respondents' volume of business in "blackstrap" molasses in said commerce is and has been substantial.

PAR. 5. Respondents at all times mentioned herein have been and are now in substantial competition with one another and with other corporations, firms, and individuals engaged in the sale of "blackstrap" molasses in commerce between and among the various States of the United States, except to the extent that such competition has been restrained, lessened, or eliminated by the unlawful acts and practices hereinafter alleged.

PAR. 6. The corporate respondents Southwestern Sugar & Molasses Company (hereinafter also referred to as Southwestern), Czarnikow Rionda Company, J. H. Leftwich & Company, Inc., New Mexico Timber Company, Molasses Trading Company, Molasses Products Company, and Standard Molasses Company, acting through their officers and employees herein named as respondents, and others, from time to time, and covering prolonged periods, beginning in 1955 or before, entered into, maintained, and effectuated an understanding, agreement, combination, and conspiracy to pursue, and they have pursued a planned common course of action between and among themselves to adopt and adhere to certain practices and policies to restrain, lessen, and eliminate competition between and among themselves and with others in the purchase, distribution, and sale of "blackstrap" molasses in commerce; and otherwise to further the leading and dominant position of the corporate respondents in the sale and distribution of the aforesaid product, in commerce.

PAR. 7. Pursuant to and in furtherance of said understanding, agreement, combination, conspiracy, and planned common course of action respondents have engaged in and carried out by various methods and means the following acts and practices, among others:

(1) Agreed to fix and maintain, and have fixed, maintained, and made effective, identical delivered price quotations of "blackstrap" molasses in certain areas of the United States to distributors and users thereof and to other purchasers thereof by means of a basing-point pricing system and by other pricing methods and systems;

(2) Adopted and continued in effect by agreement, understanding, and concerted action among themselves and others, price fixing formulae whereby identical delivered price quotations for the sale of "blackstrap" molasses are fixed and maintained;

(3) Agreed to preclude, and have precluded, the sale of "blackstrap" molasses to independent truckers (competitor-customers of said respondents) who do not adhere to the established price quotation formulae;

(4) Agreed to divide, and have divided, designated territories and accounts into exclusive trading zones and accounts between and among themselves to avoid competition and to aid in maintaining the established price structure;

(5) Agreed to exclude, and have excluded, from competition, via any available means, any competitor-customer acting contrary and in opposition to the pricing of said corporate respondents; and

(6) Agreed to refrain, and have refrained, from offering bids on available supplies of "blackstrap" molasses except by one of said respondents as a designated participant, thereby precluding any open and competitive bidding between and among themselves for such supplies.

PAR. 8. In addition to the acts and practices alleged in paragraph 7, the therein named respondents in concert acted to persuade, induce, coerce, intimidate, compel, cause, or otherwise influence, or attempt to influence, and have persuaded, coerced, intimiated compelled, caused, and influenced certain competitor-customers;

(1) To adopt, maintain, and not sell below prices fixed by the respondents in concert; and

(2) To base and include in all delivered prices, freight charges established by respondents acting in concert, from designated points to destinations irrespective of the actual point of origin of such shipments or means and costs of transportation.

PAR. 9. The aforesaid acts, practices, methods, agreements, and understandings of respondents as hereinbefore alleged are to the prejudice of the public; have a dangerous tendency and capacity to hinder, lessen, restrain, and eliminate competition between and among respondents and others, in the sale and distribution of domestic and "offshore" "blackstrap" molasses in commerce, and actually have hindered, lessened, restrained, and eliminated such competition, and constitute unfair methods of competition and unfair acts and practices in commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act.

COUNT II

PAR. 10. Paragraphs 1 through 5 of Count I are hereby incorporated by reference and made a part of the charge as fully and with the same effect as though here again set forth verbatim.

PAR. 11. The corporate respondents Industrial Molasses Company (hereinafter referred to as Industrial), National Molasses Company (hereinafter referred to as National), and corporate respondent Southwestern acting as such, or through its subsidiaries, respondents Molasses Products Company and Imperial Molasses Company, Ltd., all acting through their officers and employees herein named as respondents, among others, from time to time, and covering prolonged periods, beginning in 1955 or before, entered into, maintained, and effectuated an understanding, agreement, combination, and conspiracy to pursue, and they have pursued, a planned common course of action between and among themselves to adopt and adhere to certain practices and policies to restrain, lessen, and eliminate competition between and among themselves and with others in the purchase, distribution, and sale of "blackstrap" molasses, in commerce.

PAR. 12. Pursuant to, and in furtherance of, said understanding, agreement, combination, conspiracy, and planned common course of action, respondents have engaged in, performed, and carried out by various methods and means, the following acts and practices, among others:

(1) Joined in the formation of "Midwestern Terminals" for the ostensible purpose of jointly operating molasses terminals at inland river points but actually have been and now are using said joint operation as a device through, in connection with, and by which said respondents:

(a) Agreed to fix and maintain, and have fixed and maintained, certain established prices, and further agreed not to sell below said established prices;

(b) Agreed to establish and base, and have established and based, all delivered prices on rail freight charges from designated points to destinations irrespective of the actual point of origin of such shipments or means and cost of transportation;

(c) Agreed to divide, and have divided, certain designated territories and accounts into exclusive trading areas and accounts between and among themselves, to eliminate and avoid competition and aid in maintaining the established price structure;

(d) Agreed to preclude, and have precluded, the sale of "blackstrap" molasses to competitor-customers of "Midwestern Terminals";

(e) Attempted to induce competitors and independent truckers into maintaining the price structure established by said respondents.

2. In addition to, and in furtherance of, the above alleged acts and practices of respondents, respondents National and Industrial each joined separately and individually with respondent Southwestern in "joint account" relationships in order to further carry out the acts and practices herein described in paragraph 12, subsections (a) through (e), inclusive.

PAR. 13. Paragraph 9 of Count I is hereby incorporated by reference and made a part of the charge as fully and with the same effect as though here again set forth verbatim.

COUNT III

PAR. 14. Paragraphs 1 through 5 are hereby incorporated by reference and made a part of the charge as fully and with the same effect as though here again set forth verbatim.

PAR. 15. The corporate respondents Southwestern and Compania de Mieles de Mexico, S.A., acting through their officers and employees herein named as respondents, among others, from time to time and covering prolonged periods beginning in 1955 or before, entered into, maintained and effectuated an understanding, agreement, combination, and conspiracy to pursue, and they have pursued, a planned common course of action between and among themselves to adopt and adhere to certain practices and policies to restrain, lessen, and eliminate competition between and among themselves and with others in the purchase, distribution, and sale of "blackstrap" molasses, in commerce.

PAR. 16. Pursuant to, and in furtherance of, said understanding, agreement, combination, conspiracy, and planned common course of action, respondents have engaged in, performed, and carried out by various methods and means, the following acts and practices, among others:

Precluded the purchase of "blackstrap" molasses in Mexico (a regular "offshore" source of said product for the United States domestic market) by a domestic competitor of respondent Southwestern.

PAR. 17. Paragraph 9 of Count I is hereby incorporated by reference and made a part of the charge as fully and with the same effect as though here again set forth verbatim.

Mr. James S. Kelaher and *Mr. Eugene Kaplan* supporting the complaint.

Berlack, Israels & Liberman, of New York, N.Y., for corporate respondents Southwestern Sugar, Molasses Products, Standard Molasses, Imperial Molasses, New Mexico Timber, and Compania De Mieles De Mexico (appearing specially for latter respondent), and

certain related individual respondents; and *Sutin and Jones*, of Albuquerque, N. Mex., co-counsel for individual respondent Gallagher;

Curtis, Mallet-Prevost, Colt & Mosle, of New York, N.Y., for individual respondent Berdeshevsky;

Hughes, Hubbard, Blair & Reed, of New York, N.Y., for corporate respondent Industrial Molasses and certain related individual respondents;

Sullivan & Cromwell, by *Mr. Hamilton F. Potter, Jr.*, of New York, N.Y., for corporate respondents Czarnikow-Rionda, Molasses Trading, and Leftwich Company, and certain related individual respondents; and *McCorvey, Turner, Johnstone, Adams & May*, of Mobile, Ala., cocounsel for Leftwich Company and certain related individual respondents; and

Mr. Zola A. Aronson, of New York, N.Y., for corporate respondent National Molasses and certain related individual respondents.

INITIAL DECISION BY JOHN LEWIS, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on April 1, 1959, charging them with the use of unfair methods of competition and unfair acts and practices, in commerce, in violation of the Federal Trade Commission Act by entering into and maintaining certain agreements, combinations and conspiracies to restrain, lessen and eliminate competition in the purchase, distribution and sale of "blackstrap" molasses. After being served with said complaint all of the respondents, except the individual respondent Kaplan and the corporate respondent Compania De Mieles De Mexico, appeared by counsel and filed their respective answers thereto. A motion to dismiss was filed on behalf of the individual respondent Kaplan, based on the fact that said respondent was deceased. Said motion was granted by order of the undersigned, dated July 7, 1959, to the extent that provision for dismissal as to said respondent would be made in the initial decision to be issued at the conclusion of this proceeding. A special appearance was filed on behalf of the respondent Compania De Mieles De Mexico, S.A., challenging the jurisdiction of the Commission on the ground that said respondent does not do business in the United States.

Thereafter, all of the respondents, except the individual respondent Kaplan and the corporate respondents Compania De Mieles De Mexico and New Mexico Timber Company, entered into a series of five separate agreements purporting to dispose of all of this proceeding as to all of the remaining respondents. Said agreements, which are dated, respectively, March 22, 1960, April 4 and 8, 1960, and May 16, 1960, and have been signed by all respondents who are

parties thereto and by counsel supporting the complaint, and approved by the Director and Associate Director of the Commission's Bureau of Litigation have been, submitted to the above-named hearing examiner for his consideration, in accordance with Section 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings.

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

There have also been filed in this proceeding motions to dismiss as to the remaining respondents, Compania De Mieles De Mexico and New Mexico Timber Company. The ground of the motion to dismiss as to the former respondent, which has appeared specially herein, is that it has sold its business assets, has dicontinued its business operations, and is now in the process of liquidation. The motion to dismiss as to the latter respondent is based upon the grounds that all of its operating assets were sold, effective February 28, 1959; that since that time its sole business has consisted of transactions in securities; and that prior thereto its activities in the purchase and sale of blackstrap molasses were incidental to its main business of cutting and selling timber, and were negligible in amount. Counsel supporting the complaint do not oppose the granting of said motions to dismiss, and have alleged in their answers to said motions that the orders to cease and desist which have been agreed to by the other respondents will effectively prevent continuation or repetition of the acts and pratcices alleged in the complaint, and that the public interest will not be served by prolonging this proceeding as to the moving respondents under the circumstances set forth in their motions.

Based on the facts set forth in the affidavits attached to the motions to dismiss, which are not substantially disputed by counsel

supporting the complaint, and in view of the lack of opposition to said motions by counsel supporting the complaint for the reasons above stated, it is the opinion of the undersigned that this proceeding may appropriately be dismissed as to the moving respondents, subject to this decision's becoming the decision of the Commission with respect to the other respondents.

This proceeding having now come on for final consideration on the complaint and the aforesaid agreements containing consent orders, and it appearing that the orders provided for in said agreements cover all of the allegations of the complaint and provide for an appropriate disposition of this proceeding as to all parties signatory thereto, and that this proceeding will otherwise be appropriately disposed of as to all remaining parties, said agreements are hereby accepted and are ordered filed upon this decision's becoming the decision of the Commission pursuant to Sections 3.21 and 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings, and the hearing examiner, accordingly, makes the following jurisdictional findings and order:

1. Respondent Southwestern Sugar and Molasses Company (designated in the complaint as Southwestern Sugar & Molasses Company) is a corporation organized, existing and doing business under and by virtue of the laws of the State of Texas, with its principal office and place of business located at 55 Fifth Avenue, in the city of New York, State of New York. Said corporate resopndent operates a direct branch in the city of Houston, State of Texas. Respondents Lutz H. Frieler and Stanley J. Posner are employees of said corporate respondent. The respective addresses of respondents Lutz H. Frieler and Stanley J. Posner are 1110 Fair Oaks, Houston, Tex., and 6159 Aztec Road, El Paso, Tex. (Said corporate respondent formerly had its principal office and place of business located at 115 Broadway, New York, N.Y., and it is so designated in the complaint. Respondent Lutz H. Frieler formerly was secretary-treasurer of said corporate respondent and is designated as such in the complaint.)

Respondent Molasses Products, Inc. (designated in the complaint as Molasses Products Company) is a corporation organized and existing under and by virtue of the laws of the State of Louisiana, with its principal office and place of business located at 801 Queen & Crescent Building, in the city of New Orleans, State of Louisiana. Said corporate respondent is an affiliate (designated in the complaint as a subsidiary) of corporate respondent Southwestern Sugar and Molasses Company. (Respondent Molasses Products, Inc. is designated in the complaint as doing business under and by virtue of the laws of the State of Louisiana but is presently inoperative.)

Respondent Standard Molasses Company, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Texas, with its principal office and place of business located at the foot of Milam Street, in the city of Beaumont, State of Texas. Said corporate respondent is a subsidiary of corporate respondent Southwestern Sugar and Molasses Company. (Respondent Standard Molasses Company, Inc., is designated in the complaint as Standard Molasses Company, organized, existing and doing business under the laws of the State of Texas, with its principal office and place of business being the same as corporate respondent Southwestern Sugar and Molasses Company.)

Respondent Imperial Molasses Company, Ltd., is a corporation organized, existing and doing business under and by virtue of the laws of the Dominion of Canada, with its principal office and place of business located in the Board of Trade Building, in the city of Montreal, province of Quebec, Canada, and doing business in the United States. Respondent is a subsidiary of corporate respondent Southwestern Sugar and Molasses Company. (The complaint designates the domestic address of corporate respondent Imperial Molasses Company, Ltd. as being the same as that of corporate respondent Southwestern Sugar and Molasses Company.)

Respondent Thomas P. Gallagher is an individual residing at 1508 Washington Street, NE., Albuquerque, N. Mex. (Respondent Thomas P. Gallagher is designated Thomas Gallagher in the complaint and formerly was the principal officer of corporate respondent New Mexico Timber Company and is designated as such in the complaint. Respondent is no longer associated with New Mexico Timber Company.)

Respondent Peter G. Berdeshevsky is an individual residing at 8 East 96th Street, New York, N.Y. (Respondent was designated in the complaint as Peter Berdeshevsky and as an employee and officer of Southwestern Sugar & Molasses Company, Molasses Products Company, Standard Molasses Company, Imperial Molasses Company and Compania de Mieles de Mexico, S.A. Respondent is no longer an employee or officer of Southwestern Sugar & Molasses Company, Molasses Products Company, Standard Molasses Company, Imperial Molasses Company, and never has been an employee or officer of Compania de Mieles de Mexico, S.A.)

Respondent Industrial Molasses Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey with its principal office and place of business at Leonia, N.J.; and respondents Benjamin H. Ticknor, II, Albert A. Teeter, Jr. and John P. Manard are president, vice-president and vice president, respectively, of said respondent corporation.

Respondent Industrial Molasses Corporation is a business affiliate of corporate respondent Southwestern Sugar & Molasses Company. (Respondent Industrial Molasses Corporation is designated in the complaint as Industrial Molasses Company. Respondent John P. Manard is designated in the complaint as John P. Maynard.)

Respondent Czarnikow Rionda 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 at 106 Wall Street, New York, N.Y., and respondents George A. Braga and Joseph B. Clifford are president and assistant secretary, respectively, of the respondent corporation. (Respondent E. J. Kramer formerly was manager, molasses department, of said corporate respondent and is designated as such in the complaint.)

Respondent Molasses Trading Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Texas, with its principal office and place of business at 503 Jones Building, Corpus Christi, Tex. Respondent is a subsidiary of corporate respondents Czarnikow Rionda Company and J. H. Leftwich & Company, Inc. (designated as J. H. Leftwich & Company in the complaint), and respondents J. H. Leftwich and Frank M. Hicks, Jr. (designated as F. M. Hicks, Jr. in the complaint) are president and vice president, respectively, of the said corporate respondent Molasses Trading Company. (Respondent Harold Fink formerly was comptroller, respondent E. J. Kramer formerly was assistant vice president and respondent R. L. McCauley formerly was sales manager, of said corporate respondent Molasses Trading Company and are designated as such in the complaint.)

Respondent J. H. Leftwich & Company, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Alabama with its principal office and place of business on the Alabama State Docks, P.O. Box 78, Mobile, Ala., and respondents J. H. Leftwich and Frank M. Hicks, Jr. are president and vice president, respectively, of said respondent corporation.

Respondent National Molasses Company is a corporation organized, existing and doing bsuiness under and by virtue of the laws of the State of Pennsylvania with its principal office and place of business at Oreland, Pa., and respondents Joshua Epstein, Samuel G. Fisher, Joseph M. Rubenstone and Sidney M. Cohen, are president, vice president, vice president and secretary-treasurer, respectively, of said respondent corporation. Respondent National Molasses Company is a business affiliate of corporate respondent Southwestern Sugar & Molasses Company. (Respondent Samuel G. Fisher is designated in the complaint as Samuel G. Fischer.)

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents named in paragraph 1, hereof. The complaint states a cause of action against said respondents under the Federal Trade Commission Act, and this proceeding is in the interest of the public.

ORDER

It is ordered, That respondent Southwestern Sugar and Molasses Company, a corporation, and its officers, representatives, agents and employees, and respondents Lutz H. Frieler and Stanley J. Posner, individually and as employees of said corporation, and their representatives, agents and employees; respondent Molasses Products, Inc., a corporation, and its officers, representatives, agents and employees; respondent Standard Molasses Company, Inc., a corporation, and its officers, representatives, agents and employees; respondent Imperial Molasses Company, Ltd., a corporation, and its officers, representatives, agents and employees; respondent Peter G. Berdeshevsky, individually, and his representatives, agents and employees; respondent Industrial Molasses Corporation, a corporation, and its officers, representatives, agents and employees, and respondents Benjamin H. Ticknor, II, Albert A. Teeter, Jr., and John P. Manard, individually and as officers and employees of said corporation, and their representatives, agents and employees; respondent Czarnikow Rionda Company, a corporation, and its officers, representatives, agents and employees, and respondents George A. Braga and Joseph B. Clifford, individually and as officers of said corporation, and respondent E. J. Kramer, individually, and their representatives, agents and employees; respondent Molasses Trading Company, a corporation, and its officers, representatives, agents and employees, and respondents J. H. Leftwich and Frank M. Hicks, Jr., individually and as officers of said corporation, and respondents Harold Fink, E. J. Kramer and R. L. McCauley, individually, and their representatives, agents and employees; respondent J. H. Leftwich & Company, Inc., a corporation, and its officers, representatives, agents and employees, and respondents J. H. Leftwich and Frank M. Hicks, Jr., individually and as officers of said corporation, and their representatives, agents and employees; respondent National Molasses Company, a corporation, and its officers, representatives, agents and employees, and respondents Joshua Epstein, Samuel G. Fisher, Joseph M. Rubenstone and Sidney M. Cohen, individually and as officers of said corporation, and their representatives, agents and employees; and respondent Thomas P. Gallagher, individually, and his representatives, agents and employees; directly or through any corporate or other

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

(1) Establishing, fixing or maintaining prices, quotations, terms or conditions of sale for the sale of blackstrap molasses in the United States, or adhering to any prices, quotations, terms or conditions of sale so established, fixed or maintained;

(2) Quoting or selling blackstrap molasses at prices calculated or determined pursuant to or in accordance with any single basing-point delivered-price system or any other plan or system of delivered prices which includes freight charges by any seller from a designated point or points to destination other than the actual point of origin and irrespective of means and costs of transportation, resulting in identical price quotations or prices for blackstrap molasses at points of quotation or sale or to particular purchasers by any two or more competing sellers of blackstrap molasses using such plan or system.

(3) Entering into, continuing, maintaining or enforcing any agreement or understanding, express or implied, with any purchaser of blackstrap molasses concerning the price at which such product is to be resold by such purchaser or by which such purchaser agrees or undertakes to include in any delivered price or price quotation any freight or other charge which is different from the actual cost incurred.

(4) Persuading, inducing, coercing, intimidating, compelling, or attempting to influence any purchaser of blackstrap molasses:

(a) To adopt, maintain, or sell or offer to sell such product at any particular price or prices; or

(b) To include in any delivered price or price quotation any freight or other charge which is different from the actual cost incurred.

(5) Threatening to boycott, attempting to boycott or boycotting any purchaser or prospective purchaser of blackstrap molasses.

(6) Designating territories or accounts as exclusive trading territories or accounts for any of the respondents or any competing seller of blackstrap molasses.

It is further ordered, That respondent Southwestern Sugar and Molasses Company, a corporation, and its officers, representatives, agents and employees and respondents Lutz H. Frieler and Stanley

J. Posner, individually and as employees of said corporation, and their representatives, agents and employees; respondent Molasses Products, Inc., a corporation, and its officers, representatives, agents and employees; respondent Standard Molasses Company, Inc., a corporation and its officers, representatives, agents and employees; respondent Imperial Molasses Company, Ltd., a corporation, and its officers, representatives, agents and employees; respondent Peter G. Berdeshevsky, individually, and his representatives, agents and employees; respondent Czarnikow Rionda Company, a corporation, and its officers, representatives, agents and employees, and respondents George A. Braga and Joseph B. Clifford, individually and as officers of said corporation, and respondent E. J. Kramer, individually, and their representatives, agents and employees; respondent Molasses Trading Company, a corporation, and its officers, representatives, agents and employees, and respondents J. H. Leftwich and Frank M. Hicks, Jr., individually and as officers of said corporation, and respondents Harold Fink, E. J. Kramer and R. L. McCauley, individually, and their representatives, agents and employees; respondent J. H. Leftwich & Company, Inc., a corporation, and its officers, representatives, agents and employees, and respondents J. H. Leftwich and Frank M. Hicks, Jr., individually and as officers of said corporation, and their representatives, agents and employees; and respondent Thomas P. Gallagher, individually, and his representatives, agents and employees; directly or through any corporate or other device, or in connection with the offering for sale, sale and distribution of blackstrap molasses in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from entering into, continuing, cooperating in, or carrying out any planned common course of action, understanding, agreement, combination, or conspiracy between or among any two or more of said respondents, or between any one or more of said respondents and another or others not party hereto, to do or perform the following: Designating supplies of blackstrap molasses in the United States or any Territory thereof as available for purchase by only one or more of the respondents or any competing seller of blackstrap molasses, thereby precluding open and competitive bidding therefor.

It is further ordered, That respondent Southwestern Sugar and Molasses Company, a corporation, and its officers, representatives, agents and employees, and respondents Lutz H. Frieler and Stanley J. Posner, individually and as employees of said corporation, and their representatives, agents and employees; respondent Molasses Products, Inc., a corporation, and its officers, representatives, agents and employees; respondent Standard Molasses Company, Inc., a corporation, and its officers, representatives, agents and employees;

respondent Imperial Molasses Company, Ltd., a corporation, and its officers, representatives, agents and employees; respondent Peter G. Berdeshevsky, individually, and his representatives, agents and employees; respondent Industrial Molasses Corporation, a corporation, and its officers, representatives, agents and employees, and respondents Benjamin H. Ticknor, II, Albert A. Teeter, Jr., and John P. Manard, individually and as officers and employees of said corporation, and their representatives, agents and employees; respondent National Molasses Company, a corporation, and its officers, representatives, agents and employees, and respondents Joshua Epstein, Samuel G. Fisher, Joseph M. Rubenstone and Sidney M. Cohen, individually and as officers of said corporation, and their representatives, agents and employees; and respondent Thomas P. Gallagher, individually, and his representatives, agents and employees; directly or through any corporate or other device, in or in connection with the offering for sale, sale and distribution of blackstrap molasses in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from entering into, continuing, cooperating in, or carrying out any planned common course of action, understanding, agreement, combination, or conspiracy between or among any two or more of said respondents, or between any one or more of said respondents and another or others not party hereto, to do or perform the following: Continuing the joint venture known as "Midwestern Terminals".

It is further ordered, That respondent Southwestern Sugar and Molasses Company, a corporation, and its officers, representatives, agents and employees, and respondents Lutz H. Frieler and Stanley J. Posner, individually and as employees of said corporation, their representatives, agents and employees; and respondent Peter G. Berdeshevsky, individually, and his representatives, agents and employees, in or in connection with the offering for sale, sale or distribution of molasses in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from entering into, continuing, cooperating in, or carrying out any conspiracy with Compania de Mieles de Mexico, S.A. (a Mexican corporation), or with any other corporation or person, involving the malicious interference with any other corporation's or person's supply of, or the prevention by other unlawful means of the purchase of. blackstrap molasses intended for resale in the United States.

It is further ordered, That respondent Southwestern Sugar and Molasses Company, a corporation, and its officers, representatives, agents and employees, and respondents Lutz H. Frieler and Stanley J. Posner, individually and as employees of said corporation, and their representatives, agents and employees; respondent Molasses

Products, Inc., a corporation, and its officers, representatives, agents and employees; respondent Standard Molasses Company, Inc., a corporation, and its officers, representatives, agents and employees; respondent Imperial Molasses Company, Ltd., a corporation, and its officers, representatives, agents and employees; respondent Peter Berdeshevsky, individually, and his representatives, agents and employees; respondent Industrial Molasses Corporation, a corporation, and its officers, representatives, agents and employees, and respondents Benjamin H. Ticknor, II, Albert A. Teeter, Jr., and John P. Manard, individually and as officers and employees of said corporation, and their representatives, agents and employees; respondent Czarnikow Rionda Company, a corporation, and its officers, representatives, agents and employees, and respondents George A. Braga and Joseph B. Clifford, individually and as officers of said corporation, and respondent E. J. Kramer, individually, and their representatives, agents and employees; respondent Molasses Trading Company, a corporation, and its officers, representatives, agents and employees, and respondents J. H. Leftwich and Frank M. Hicks, Jr., individually and as officers of said corporation, and respondents Harold Fink, E. J. Kramer and R. L. McCauley, individually, and their representatives, agents and employees, respondent J. H. Leftwich & Company, Inc., a corporation, and its officers, representatives, agents and employees, and respondents J. H. Leftwich and Frank M. Hicks, Jr., individually and as officers of said corporation, and their representatives, agents and employees; respondent National Molasses Company, a corporation, and its officers, representatives, agents and employees, and respondents Joshua Epstein, Samuel G. Fisher, Joseph M. Rubenstone and Sidney M. Cohen, individually and as officers of said corporation, and their representatives, agents and employees; and respondent Thomas P. Gallagher, individually, and his representatives, agents and employees, in or in connection with the offering for sale, sale or distribution of blackstrap molasses in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist, for a period of five years following the entry of this order by the Federal Trade Commission, from quoting or selling such product at prices calculated or determined pursuant to or in accordance with any single basing-point delivered-price system which results in identical price quotations or prices for blackstrap molasses at points of quotation or sale or to particular purchasers by any two or more competing sellers of blackstrap molasses using such plan or system.

Provided, however, That nothing herein contained shall be deemed or construed to prohibit any of the above named corporate respondents from entering into or maintaining any bona fide intracorporate

or intraenterprise activities with its officers, directors, employees, principals, agents, subsidiaries or business affiliates relating to the sole and separate intracorporate or intraenterprise business of said corporate respondent when it can show (1) that it is not in competition with said officers, directors, employees, principals, agents, subsidiaries or business affiliates; and (2) that the transactions covered by the intracorporate or intraenterprise activities relate solely to the internal operations (intracorporate or intraenterprise) of said corporate respondent, and do not include or involve any competitor or competitors of said respondent or its officers, directors, employees, principals, agents, subsidiaries or business affiliates.

It is further ordered, That the complaint herein be, and the same hereby is, dismissed without prejudice as to the respondents Abram I. Kaplan (incorrectly named in the complaint as Abraham I. Kaplan), Compania De Mieles De Mexico, S.A., and New Mexico Timber Company, subject to this decision's becoming the decision of the Commission as to the other respondents in this proceeding.

FINAL ORDER

By its order of July 28, 1960, the Commission extended until further order the date on which the initial decision of the hearing examiner herein would become the decision of the Commission; and

The Commission now having concluded that said initial decision is appropriate in all respects to dispose of this proceeding:

It is ordered, That the initial decision of the hearing examiner filed June 10, 1960, be, and it hereby is, adopted as the decision of the Commission.

It is further ordered, That all of the respondents herein, except those as to whom the complaint has been dismissed, 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

GARAY & CO., INC., ET AL.

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

Docket 7836. Complaint, Mar. 21, 1960—Decision, Aug. 30, 1960

Consent order requiring New York City distributors to cease using the term "Copy Calf" and picture of a calf in advertising in newspapers and advertising material furnished their retailers and on attached tags, to describe ladies' plastic handbags.

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 Garay & Co., Inc., a corporation, and Arnold Garay and Aaron Jarvis, 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 Garay & Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and place of business located at 33 East 33d Street, New York, N.Y. Individual respondents Arnold Garay and Aaron Jarvis are officers of said corporation. They formulate, direct and control the policies of the corporate respondents. The address of the individual respondents 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 sale and distribution of ladies' handbags, including a handbag sold under the name of "Copy Calf," to retailers for resale to the public.

PAR. 3. In the course and conduct of their business respondents cause and have caused said handbags, when sold, to be shipped from their place of business in the State of New York to purchasers thereof located in various other states, and maintain, and have maintained, a substantial course of trade in said products, in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Respondents in the conduct of their business have been, and are, engaged in substantial competition in commerce, with corporations, firms and individuals engaged in the sale and distribution of ladies' handbags.

PAR. 5. Respondents in the course and conduct of their said business, and for the purpose of inducing the purchase of their ladies' handbags have placed advertisements in newspapers of general circulation, and have furnished advertising matter to retailers of their products for placement in newspapers of general circulation. Among and typical, but not all inclusive, of the statements appearing in said newspaper advertisements are the following:

(The picturization of a calf surrounded by ladies' handbags.)

"I've been compromised—My hide's intact, but oh—my pride. Me, they, put inside the bag while Copy Calf* glows out in front. It's so soft and supple

with the rich gloss that comes from easy living. Ah to be a Garay Copy Calf instead of the real live thing."

(At the bottom of the page the following appears: "* Garay's Calf-grained plastic.")

Respondents also attach tags to their said handbags upon which the name "Copy Calf" is printed.

PAR. 6. By and through the use of the aforesaid statements respondents represented and now represent that their "Copy Calf" handbags are composed of leather.

PAR. 7. Said statements and representations were, and are, false, misleading and deceptive. In truth and in fact, the said handbags do not contain leather and are composed largely of plastic.

PAR. 8. The use by the respondents of the aforesaid false, misleading and deceptive statements and representations had, and now has, the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements were true, and into the purchase of substantial quantities of the aforesaid products, because of said mistaken and erroneous belief. As a result thereof, trade in commerce has been unfairly diverted to the respondents from their competitors and injury has thereby been done to competition in commerce.

PAR. 9. The aforesaid acts and practices of the 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.

Garland S. Ferguson, Esq., for the Commission.

Sol Siegel, Esq., of New York, N.Y., for respondents.

INITIAL DECISION BY ROBERT L. PIPER, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on March 21, 1960, charging them with having violated the Federal Trade Commission Act by misrepresenting the ladies' handbags they sell. Respondents appeared by counsel and entered into an agreement, dated June 27, 1960, containing a consent order to cease and desist, disposing of all the issues in this proceeding without further hearings, which agreement has been duly approved by the appropriate officials of the Bureau of Litigation. Said agreement has been submitted to the undersigned, heretofore duly designated to act as hearing examiner

herein, for his consideration in accordance with § 3.25 of the Rules of Practice of the Commission.

Respondents, pursuant to the aforesaid agreement, have admitted all of the jurisdictional allegations of the complaint and agreed that the record may be taken as if findings of jurisdictional facts had been made duly in accordance with such allegations. Said agreement further provides that respondents waive all further procedural steps before the hearing examiner or the Commission, including the making of findings of fact or conclusions of law and the right to challenge or contest the validity of the order to cease and desist entered in accordance with such agreement. It has also been agreed that the record herein shall consist solely of the complaint and said agreement, that the agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission, that said agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint, that said order to cease and desist shall have the same force and effect as if entered after a full hearing and may be altered, modified or set aside in the manner provided for other orders, and that the complaint may be used in construing the terms of the order.

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

1. Respondent Garay & Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and place of business located at 33 East 33d Street, New York, N.Y. Individual respondents Arnold Garay and Aaron Jarvis are officers of said corporation. They formulate, direct and control the policies of the corporate respondent. The address of the individual respondents is the same as that of the corporate respondent.

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

It is ordered, That respondents Garay & Co., Inc., a corporation, and its officers, and Arnold Garay and Aaron Jarvis, 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 of ladies' plastic handbags, or any other plastic product, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(1) Using the term "Copy Calf" or any other words or terms of similar import in connection with said products;

(2) Representing in any manner, directly or by implication, that said products are leather.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 30th day of August 1960, become the decision of the Commission; and, accordingly:

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

IN THE MATTER OF

MANGOLD DISTRIBUTING COMPANY ET AL.

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

Docket 7890. Complaint, May 13, 1960—Decision, Aug. 30, 1960

Consent order requiring Baltimore distributors of phonograph records to cease giving concealed payola to disc jockeys broadcasting musical programs over radio or television stations, or to other station personnel, to induce frequent playing of their records to increase sales.

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 Mangold Distributing Company and Marshall Enterprises, Inc., corporations, and Emanuel Goldberg, individually and as an officer of said corpora-

tions, 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. Respondents Mangold Distributing Company and Marshall Enterprises, Inc. are corporations organized, existing and doing business under and by virtue of the laws of the State of Maryland, with their principal office and place of business located at 638 West Baltimore Street, in the city of Baltimore, State of Maryland.

Respondent Emanuel Goldberg is an officer of the corporate respondents. He formulates, directs and controls the acts and practices of the corporate respondents, including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondents.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the distribution, offering for sale, and sale of phonograph records to various retail outlets.

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

PAR. 4. In the course and conduct of their business, and at all times mentioned herein, respondents have been in competition, in commerce, with corporations, firms and individuals in the sale of phonograph records.

PAR. 5. After World War II when TV and radio stations shifted from "live" to recorded performances for much of their programming, the production, distribution and sale of phonograph records emerged as an important factor in the musical industry with a sales volume of approximately $400,000,000 in 1958.

Record manufacturing companies and distributors ascertained that popular disk jockeys could, by "exposure" or the playing of a record day after day, sometimes as high as 6 to 10 times a day, substantially increase the sales of those records so "exposed." Some record manufacturers and distributors obtained and insured the "exposure" of certain records in which they were financially interested by disbursing "payola" to individuals authorized to select and "expose" records for both radio and TV programs.

"Payola", among other things, is the payment of money or other valuable consideration to disk jockeys of musical programs on radio and TV stations to induce, stimulate or motivate the disk jockey to select, broadcast, "expose" and promote certain records in which the payer has a financial interest.

Disk jockeys, in consideration of their receiving the payments heretofore described, either directly or by implication, represent to their listening public that the records "exposed" on their broadcasts have been selected on their personal evaluation of each record's merits or its general popularity with the public, whereas, in truth and in fact, one of the principal reasons or motivations guaranteeing the record's "exposure" is the "payola" payoff.

PAR. 6. In the course and conduct of their business, in commerce, during the last several years, the respondents have engaged in unfair and deceptive acts and practices and unfair methods of competition in the following respects:

The respondents alone or with certain unnamed record distributors negotiated for and disbursed "payola" to disk jockeys broadcasting musical programs over radio or television stations broadcasting across state lines, or to other personnel who influence the selection of the records "exposed" by the disk jockeys on such programs.

Deception is inherent in "payola" inasmuch as it involves the payment of a consideration on the express or implied understanding that the disk jockey will conceal, withhold or camouflage such fact from the listening public.

The respondents by participating individually or in a joint effort with certain collaborating record distributors have aided and abetted the deception of the public by various disk jockeys by controlling or unduly influencing the "exposure" of records by disk jockeys with the payment of money or other consideration to them, or to other personnel which select or participate in the selection of the records used on such broadcasts.

Thus, "payola" is used by the respondents to mislead the public into believing that the records "exposed" were the independent and unbiased selection of the disk jockeys based either on each record's merit or public popularity. This deception of the public has the capacity and tendency to cause the public to purchase the "exposed" records which they might otherwise not have purchased and also to enhance the popularity of the "exposed" records in various popularity polls, which in turn has the capacity and tendency to substantially increase the sales of the "exposed" records.

PAR. 7. The aforesaid acts, practices and methods have the capacity and tendency to mislead and deceive the public and to hin-

der, restrain and suppress competition in the manufacture, sale or distribution of phonograph records, and to divert trade unfairly to the respondents from their competitors and substantial injury has thereby been done and may continue to be done to competition in commerce.

PAR. 8. The aforesaid acts and practices of respondents, as alleged herein, were and are all to the prejudice and injury of the public and of 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.

Mr. Arthur Wolter, Jr., for the Commission.

Mr. Bernard M. Goldstein, of Baltimore, Md., for respondents.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

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

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

The agreement states that respondents Mangold Distributing Company and Marshall Enterprises, Inc. are corporations existing and doing business under and by virtue of the laws of the State of Maryland, with their office and principal place of business located at 638 West Baltimore Street, Baltimore, Md.; that individual respondent Emanuel Goldberg is an officer of the corporate respondents and formulates, directs and controls the acts and practices of the corporate respondents, his address being the same as that of the corporate respondents.

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

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

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

It is ordered, That respondents Mangold Distributing Company and Marshall Enterprises, Inc., corporations, and their officers, and Emanuel Goldberg, individually and as an officer of said corporations, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with phonograph records which have been distributed in commerce, or which are used by radio or television stations in broadcasting programs in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

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

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

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

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 30th day of August 1960, become the decision of the Commission; and, accordingly:

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

IN THE MATTER OF

MANNY PRUSKAUER, ET AL. TRADING AS MANNY PRUSKAUER COMPANY

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

Docket 7857. Complaint, Apr. 6, 1960—Decision, Aug. 31, 1960

Consent order requiring Chicago furriers to cease violating the Fur Products Labeling Act by failing to comply with labeling requirements and by advertising in catalogs, circulars, and postcards which failed to disclose the name of the animal producing the fur in a fur product or the country of origin of imported furs, failed to reveal when fur products were composed of artificially colored fur, falsely guranteed that fur products were properly labeled, and failed in other respects to comply with requirements of the Act.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Manny Pruskauer, Jess Pruskauer and Irwin Gellar, individually and as copartners trading as Manny Pruskauer Company, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Fur 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. Manny Pruskauer, Jess Pruskauer and Irwin Gellar are individuals and copartners trading as Manny Pruskauer Company with their office and principal place of business located at 318 West Adams Street, Chicago, Illinois.

PAR. 2. Subsequent to the effective date of the Fur Products Labeling Act on August 9, 1952, respondents have been and are now engaged in the introduction into commerce, and in the sale, advertising and offering for sale, in commerce, and in the transportation and distribution, in commerce, of fur products and have sold, advertised, offered for sale, transported and distributed fur products which have been made in whole or in part of fur which had been shipped and received in commerce, as the terms "commerce," "fur" and "fur product" are defined in the Fur Products Labeling Act, and have sold, advertised, offered for sale, or processed fur products which have been shipped and received in commerce upon which fur products a substitute label has been placed by respondents.

PAR. 3. Certain of said fur products were misbranded in that they were not labeled as required under the provisions of Section 4(2) of the Fur Products Labeling Act and in the manner and form prescribed by the Rules and Regulations promulgated thereunder.

PAR. 4. Certain of said fur products were misbranded in violation of the Fur Products Labeling Act in that they were not labeled in accordance with the Rules and Regulations promulgated thereunder in the following respects:

(a) Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was mingled with non-required information, in violation of Rule 29(a) of said Rules and Regulations.

(b) Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was not set forth separately on labels with respect to

each section of fur products composed of two or more sections containing different animal furs, in violation of Rule 36 of said Rules and Regulations.

PAR. 5. Certain of said fur products were falsely and deceptively advertised in violation of the Fur Products Labeling Act in that respondents caused the dissemination in commerce, as "commerce" is defined in said Act, of certain advertisements concerning said products, which were not in accordance with the provisions of Section 5(a) of the said Act and the Rules and Regulations promulgated thereunder; and which advertisements were intended to aid, promote and assist, directly or indirectly, in the sale and offering for sale of said fur products.

PAR. 6. Among and included in the advertisements, as aforesaid, but not limited thereto, were advertisements of respondents which appeared in catalogs, circulars and postcards published in the State of Illinois and circulated in said state and various other States of the United States.

By means of said advertisements and others of similar import and meaning, not specifiaclly referred to herein, respondents falsely and deceptively advertised fur products in that said advertisements:

(a) Failed to disclose the name or names of the animal or animals that produced the fur contained in the fur product, as set forth in the Fur Products Name Guide, in violation of Section 5(a)(1) of the Fur Products Labeling Act.

(b) Failed to disclose that fur products contained or were composed of bleached, dyed or otherwise artificially colored fur, when such was the fact, in violation of Section 5(a)(3) of the Fur Products Labeling Act.

(c) Failed to disclose the name of the country of origin of the imported furs contained in the fur products, in violation of Section 5(a)(6) of the Fur Products Labeling Act.

(d) Falsely and deceptively guaranteed that fur products were labeled in accordance with Federal Trade Commission Regulations when such was not the fact, in violation of Section 5(a)(5) of the Fur Products Labeling Act.

(e) Failed to set forth the full and complete term "Dyed Mouton processed Lamb" when an election was made to use that term instead of "Lamb", in violation of Rule 9(a) of the said Rules and Regulations.

(f) Failed to set forth the information required under Section 5(a) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder in type of equal size and conspicuousness and in close proximity with each other, in violation of Rule 38(a) of said Rules and Regulations.

PAR. 7. The aforesaid acts and practices of respondents, as herein alleged, are in violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder and constitute unfair and deceptive acts and practices in commerce under the Federal Trade Commission Act.

William A. Somers, Esq., for the Commission.
Irwin Gellar, Esq., of Chicago, Ill., for respondents.

INITIAL DECISION BY ROBERT L. PIPER, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on April 6, 1960, charging them with having violated the Fur Products Labeling Act, the rules and regulations issued thereunder, and the Federal Trade Commission Act, by misbranding and falsely representing their fur products. Respondents appeared by counsel and entered into an agreement, dated June 14, 1960, containing a consent order to cease and desist, disposing of all the issues in this proceeding without further hearing, which agreement has been duly approved by the Bureau of Litigation. Said agreement has been submitted to the undersigned, heretofore duly designated to act as hearing examiner herein, for his consideration in accordance with § 3.25 of the Rules of Practice of the Commission.

Respondents, pursuant to the aforesaid agreement, have admitted all of the jurisdictional allegations of the complaint and agreed that the record may be taken as if findings of jurisdictional facts had been made duly in accordance with such allegations. Said agreement further provides that respondents waive all further procedural steps before the hearing examiner or the Commission, including the making of findings of fact or conclusions of law and the right to challenge or contest the validity of the order to cease and desist entered in accordance with such agreement. It has also been agreed that the record herein shall consist solely of the complaint and said agreement, that the agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission, that said agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint, that said order to cease and desist shall have the same force and effect as if entered after a full hearing and may be altered, modified, or set aside in the manner provided for other orders, and that the complaint may be used in construing the terms of the order.

This proceeding having now come on for final consideration on the complaint and the aforesaid agreement containing the consent

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

1. Respondents Manny Pruskauer, Jess Pruskauer and Irwin Gellar are individuals and copartners trading as Manny Pruskauer Company, with their office and principal place of business located at 318 West Adams Street, Chicago, Ill.

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

ORDER

It is ordered, That Manny Pruskauer, Jess Pruskauer and Irwin Gellar, individually and as copartners trading as Manny Pruskauer Company, or under any other trade name, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the sale, advertising, or offering for sale in commerce, or the transportation or distribution in commerce of fur products, or in connection with the sale, advertising, offering for sale, transportation, or distribution of fur products which are made in whole or in part of fur which has been shipped and received in commerce, as "commerce," "fur" and "fur products" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

1. Misbranding fur products by:

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

B. Setting forth on labels affixed to fur products information required under § 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder mingled with nonrequired information;

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

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

A. Fails to disclose:

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

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

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

B. Falsely or deceptively guarantees that fur products are labeled in accordance with Federal Trade Commission regulations when such is not the fact.

C. Fails to set forth the full and complete term "Dyed Mouton processed Lamb" when an election is made to use that term instead of Lamb.

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

It is further ordered, That in connection with the selling, advertising, offering for sale or processing of fur products which have been shipped and received in commerce that respondents cease and desist from using substitute labels on such fur products that do not contain all of the information required to be disclosed by each of the subsections of § 4(2) of the Fur Products Labeling Act or do not conform to the Rules and Regulations promulgated under the said Act.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 31st day of August 1960, become the decision of the Commission; and, accordingly:

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

IN THE MATTER OF

THE HERST-ALLEN COMPANY

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

Docket 7867. Complaint, Apr. 19, 1960—Decision, Aug. 31, 1960

Consent order requiring a Chicago distributor of a wide variety of non-edible household products to retail food chains, supermarkets, and other outlets, to cease discriminating in price in violation of Sec. 2(d) of the Clayton Act by paying some retailers allowances—such as payments of $300 and $150 for advertising services to a retail grocery chain with headquarters in Burlington, Iowa—which were not made available on proportionally equal terms to all its competitors.

COMPLAINT

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

PARAGRAPH 1. Respondent The Herst-Allen Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at 1901 W. Carroll Street, Chicago, Ill.

PAR. 2. Respondent is now and has been engaged in the business of selling and distributing a wide variety of non-edible products to retail food chains, retail super markets and other retail outlets. Respondent's sales of its products are substantial, exceeding $9,000,000 annually.

PAR. 3. Respondent sells and causes its products to be transported from its principal place of business in the State of Illinois to customers located in other States of the United States. There has been at all times mentioned herein a continuous course of trade in said products in commerce, as "commerce" is defined in the Clayton Act, as amended.

PAR. 4. In the course and conduct of its business in commerce, and particularly since 1958, respondent paid or contracted for the payment of something of value to or for the benefit of some of its customers as compensation or in consideration for services or facilities furnished by or through such customers in connection with their offering for sale or sale of products sold to them by respondent, and such payments were not made available on proportionally equal

terms to all other customers competing in the sale and distribution of respondent's products.

PAR. 5. For example, in the years 1958 and 1959, respondent contracted to pay and did pay to Benner Tea Company, a retail grocery chain with headquarters in Burlington, Iowa, the amounts of $300.00 and $150.00 as compensation or as allowances for advertising or other services or facilities furnished by or through Benner Tea Company in connection with its offering for sale or sale of products sold to it by respondent. Such compensation or allowances were not offered or otherwise made available on proportionally equal terms to all other customers competing with Benner Tea Company in the sale and distribution of products of like grade and quality purchased from respondent.

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

Mr. John Perechinsky for the Commission.

Mr. E. C. Heininger, of *Mayer, Friedlich, Spiess, Tierney, Brown & Platt*, of Chicago, Ill., for respondent.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

The Federal Trade Commission (sometimes also hereinafter referred to as the Commission) on April 19, 1960, issued its complaint herein, charging the above-named respondent with having violated the provisions of subsection (d) of § 2 of the Clayton Act, as amended (U.S.C., Title 15, § 13), and the respondent was duly served with process.

On July 5, 1960, there was submitted to the undersigned hearing examiner of the Commission for his consideration and approval an "Agreement Containing Consent Order To Cease And Desist," which had been entered into by and between respondent, its counsel, and counsel supporting the complaint, under date of July 1, 1960, subject to the approval of the Bureau of Litigation of the Commission, which had subsequently duly approved the same.

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

1. Respondent The Herst-Allen Company is a corporation existing and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at 1901 W. Carroll Street, Chicago, Ill.

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

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

4. Respondent waives:

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

b. The making of findings of fact or conclusions of law; and

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

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

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

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

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

Upon due consideration of the complaint filed herein and the said "Agreement Containing Consent Order To Cease And Desist," the latter is hereby approved, accepted and ordered filed, the same not to become a part of the record herein, however, unless and until it becomes a part of the decision of the Commission. The hearing examiner finds from the complaint and the said "Agreement Containing Consent Order To Cease And Desist" that the Commission has jurisdiction of the subject matter of this proceeding and of the respondent herein; that the complaint states a legal cause for complaint under the Clayton Act as amended (U.S.C., Title 15, § 13) against the respondent both generally and in each of the particulars alleged therein; that this proceeding is in the interest of the public; that the following order as proposed in said agreement is appropriate for the just disposition of all of the issues in this pro-

ceeding as to all of the parties hereto; and that said order therefore should be, and hereby is, entered as follows:

It is ordered, That respondent The Herst-Allen Company, a corporation, and its officers, employees, agents and representatives, directly or through any corporate or other device, in or in connection with the offering for sale, sale or distribution of any of its products in commerce, as "commerce" is defined in the Clayton Act, as amended, do forthwith cease and desist from:

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

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 31st day of August 1960, become the decision of the Commission; and, accordingly:

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

IN THE MATTER OF

ASSETS, INC., ET AL.

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

Docket 7874. Complaint, Apr. 28, 1960—Decision, Aug. 31, 1960

Order requiring a concern in Hoboken, N.J., to cease obtaining current information on delinquent debtors by use of the trade name "Trans-American Express Agency" and deceptive "skip-tracing" forms which represented that it was an express agency holding valuable property for debtor recipients and that the information requested was to be used to make delivery—for receipt of which information a pack of chewing gum was sent the debtor.

Mr. Harry E. Middleton, Jr., supporting the complaint.

No appearance for respondents.