

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

UNITED STATES ASSOCIATION
OF CREDIT BUREAUS, INC., ET AL.

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

Docket 7043. Complaint, Jan. 15, 1958—Decision, June 8, 1961

Order requiring a collection agency at Oak Forest, Ill., to cease representing falsely, by use of its misleading trade name, that it was an "association" and "credit bureau", and, by use of the words "United States" and official-looking insignia, that it was connected with the United States Government; misrepresenting the organization of its business, services rendered its clients, and commissions retained; and using "skip-tracing" material which represented falsely that it was to the addressees' financial advantage to provide requested information concerning debtors.

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

Mr. Harold A. Kennedy and *Mr. Thomas F. Howder* for the Commission.

Hopkins, Sutter, Owen, Mulroy & Wentz, of Chicago, Ill., for respondents.

FINDINGS AS TO THE FACTS, CONCLUSIONS AND ORDER

The Federal Trade Commission issued its complaint against the above-named respondents on January 15, 1958, charging them with engaging in unfair and deceptive acts and practices and unfair methods of competition in violation of said Act. Hearings were held before a hearing examiner of the Commission and testimony and other evidence in support of and in opposition to the allegations of the complaint were received into the record. In an initial decision filed on July 29, 1960, the hearing examiner found that certain of the complaint's allegations were sustained by the evidence and that others were not so supported.

The Commission having considered the cross-appeals filed from the initial decision and the entire record in this proceeding, and having ruled on said appeals, and having determined that the initial decision should be vacated and set aside, the Commission further finds that this proceeding is in the public interest and now makes

its findings as to the facts, conclusions drawn therefrom and order, which together with the accompanying opinion, shall be in lieu of those contained in said initial decision.

FINDINGS AS TO THE FACTS

1. The respondent, United States Association of Credit Bureaus, Inc., is a corporation organized and doing business under the laws of the state of Illinois with its office and principal place of business located at 4809 West 159th Street, Oak Forest, Illinois.

Individual respondents, John W. Burns and Harold E. Holder, are president and secretary-treasurer respectively of the corporate respondent. They, together with the wife of Harold E. Holder, own all of the stock in respondent corporation. Mr. Burns exercises prime responsibility in formulating and directing the acts, policies and practices of the corporate respondent while Mr. Holder is engaged principally in personnel work.

2. The respondents are engaged in the business of collecting delinquent accounts for business concerns and professional men located in various parts of the United States. The respondents' customers are secured principally through solicitors employed on a commission basis who call on such customers in the various states. The respondents furnish their solicitors with contract forms sometimes called "listing sheets" which provide for the listing of each delinquent account by a creditor customer. The contract forms bearing the name and last known address of each debtor, the amount of each delinquent account and the date incurred are forwarded by the solicitors to respondents at their place of business in Oak Forest, Illinois.

3. In the operation of their business, respondents transmit checks or money orders, letters, contracts, forms and other written instruments through the United States mails from their place of business in the State of Illinois to customers in various other states of the United States. Respondents also transmit through the United States mails across state lines, letters, forms and various commercial documents to debtors of their customers and receive letters, money, checks or money orders and other written instruments from said debtors located in the various states. Thus, respondents are engaged in extensive commercial intercourse in commerce, as "commerce" is defined in the Federal Trade Commission Act.

4. In the course and conduct of their business, respondents use and feature the corporate name United States Association of Credit Bureaus, Inc. Through the use of said name, respondents represent, directly and by implication that the corporate respondent is

Findings

58 F.T.C.

an association of credit bureaus, that is an organization composed of members banded together for the primary purpose of collecting and disseminating all available information as to the credit worthiness of an individual who has obtained, or who desires to obtain, credit. Such representation by respondents is false, misleading and deceptive. The corporate respondent is neither an association nor a credit bureau but is essentially a single business enterprise with its activities being limited primarily to the collection of delinquent accounts by mail.

5. In the course and conduct of their business, respondents use and feature the name "United States" in connection with an insignia on certain of their advertising and correspondence composed of a facsimile of the American eagle and a shield, the upper portion of which contains stars on a dark background, and the lower portion of which bears the legend

U.S.A.
of
C.B.

upon a red background. The record established that through the use of the name "United States" and through the use of said insignia, respondents represent, directly or by implication, that they are in some manner connected with, or an agency of the United States government. Said representations are false, misleading and deceptive. Respondents are in no way connected or associated with any branch, arm or agency of the United States Government.

6. In the course and conduct of their business and for the purpose of inducing individuals, firms and corporations to enter into contracts with them, respondents have represented, directly and by implication, that their business is organized into separate functional divisions; that they employ local representatives, regional investigators, correspondents and lawyers on their personnel staff in various states; that personal calls are made on debtors to collect delinquent accounts; that if no collections are made on a specific account there will be no charge thereon; that their commission fee is based on the percentage collected with the maximum rate never in excess of fifty per cent; and that they furnish credit reports to parties who have assigned accounts to them.

7. The aforesaid representations by the respondents are false, misleading and deceptive. The respondents' business is not organized into separate functional divisions since with the possible exception of their skip-tracing operation, all other of respondents' collection functions are handled interchangeably by correspondents, typists and other clerical help at respondents' office in Oak Forest,

Illinois. The respondents do not have a personnel staff outside their office in Oak Forest, other than solicitors whose only function is to solicit accounts for collection. Nor do the respondents make personal calls on debtors to collect accounts as they confine their collection efforts primarily to the use of the mails. Respondents charge a listing fee on certain accounts on which they have made no collection. Fifty per cent of the amount collected is not the maximum commission rate in many instances as respondents charge a listing fee on certain accounts which is deducted from the proceeds of an account on which respondents have charged a fifty per cent commission. Respondents do not issue credit reports as that term is normally understood.

8. In the course and conduct of their business, respondents have used and have caused the use of printed "skip-tracing" forms, cards, and other material designed to obtain information relating to delinquent debtors. Respondents' procedure has been to purchase the forms from various firms, fill in the name and address of the debtor, return the form to the firm from which it was obtained and after the completed form was returned to that firm by the addressee, the form was forwarded to the respondents. Respondents' transmittal of said forms through the United States mails across state lines constituted acts and practices in commerce, as "commerce" is defined in the Federal Trade Commission Act.

The aforesaid forms represent that it is to the addressee's financial advantage to furnish the requested information. In truth and in fact the amount of the financial advantage given in return is not sufficient to justify any reference to it. The truth is that the sole purpose of the form is to locate a debtor and collect a debt. Therefore, the representation as to financial advantage is found to be false, misleading and deceptive. Said forms deceive recipients respecting the purpose for which the information is being requested and will be used.

Although respondents have discontinued the use of the aforesaid forms, one such form was in use subsequent to the issuance of the complaint herein. There has been no change in the competitive situation nor are there any unusual circumstances which warrant a conclusion that in the absence of an order, respondents will not resume the use of said forms.

9. The use by respondents of the aforesaid skip-tracing material has the capacity and tendency to mislead a substantial number of debtors and others into the erroneous belief that such representation found in paragraph 8 thereof is true and to induce them because

Order

58 F.T.C.

of such erroneous and mistaken belief to furnish information which they would not have otherwise provided.

The use by respondents of the false, misleading and deceptive representations found in paragraphs 4, 5, 6 and 7 hereof has had and now has the tendency and capacity to mislead creditors into the erroneous and mistaken belief that such representations are true, and into signing a substantial number of assignment contracts with respondents because of such mistaken and erroneous belief.

CONCLUSION

The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents. The aforesaid acts and practices of respondents, as herein found, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER

It is ordered, That respondent, United States Association of Credit Bureaus, Inc., a corporation, and its officers, and respondents, John W. Burns and Harold E. Holder, individually and as officers of said corporate respondent, and said respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the solicitation of accounts for collection, or the collection of, or attempts to collect accounts, or to obtain information concerning delinquent debtors, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the words "association" or "credit bureaus", or any other term of similar import or meaning in the corporate name or in any other manner to designate, describe or refer to respondents' business, or otherwise representing, directly or by implication, that respondents' business is an association or a credit bureau.
2. Using the name "United States" in the corporate name or in any other manner, or an insignia so designed as to suggest government connection, to designate, describe, or refer to respondents' business; or otherwise representing, directly or by implication, that they are an agency or branch of the United States government, or that their business is in any way connected with the United States government.
3. Representing, through the use of a corporate or other trade name, or in any other manner, that their business is other than that of a collection agency engaged in collecting past due accounts.

4. Representing, directly or by implication:

(a) That their business is organized into separate functional divisions for the collection of accounts;

(b) That they employ local representatives, regional investigators, correspondents or lawyers on their personnel staff in various states or throughout the world, or that they employ any one on their personnel staff except solicitors anywhere outside of the Chicago or Oak Forest, Illinois area;

(c) That they make personal calls on debtors to collect accounts;

(d) That no charges will be made for accounts unless they are collected;

(e) That the collection fee or commission is less than any amount actually to be charged or retained by respondents from accounts collected;

(f) That they furnish credit reports to parties who have assigned accounts to them.

5. Using, or causing to be used, any forms, cards, or other material, printed or written, for use in obtaining information concerning delinquent debtors, which represent, directly or by implication, that money or property is being held for, or is due, persons concerning whom the information is sought, or is collectible by such persons, unless money or property is in fact due and collectible by such persons and the amount of money or property is actually stated.

6. Using, or causing to be used, any forms, cards or other material, 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.

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

Commissioner Elman not participating.

OPINION OF THE COMMISSION

By KERN, *Commissioner*:

The complaint in this matter charges respondents with misrepresentation in violation of the Federal Trade Commission Act in connection with their business of collecting delinquent accounts. In his initial decision, the hearing examiner found that certain of the charges were sustained by the evidence and ordered respondents to cease and desist from the practices found to be unlawful. He found

that the remaining charges were not supported and ordered that they be dismissed. Both sides have appealed from this decision.

Considering first the appeal of counsel supporting the complaint, the first issue presented is whether the hearing examiner erred in finding that the name United States Association of Credit Bureaus, Inc., is not deceptive. The complaint alleges that this name is false, misleading and deceptive because respondents are neither an association nor a credit bureau, but are instead a collection agency. The hearing examiner correctly found that respondents' primary business is the collection of delinquent accounts. However, he found that respondents had five members at the time complaint issued and ruled in effect that since the evidence failed to establish that a credit bureau must perform the functions of credit reporting to the exclusion of collecting accounts, the allegations were not sustained.

Counsel supporting the complaint introduced the testimony of two experts in the field of credit reporting. These witnesses testified in substance that a credit bureau is any organization whose primary function and objective is to gather and disseminate information as to the credit worthiness of any individual who may be the subject of a credit inquiry. The information is gathered from numerous sources and constitutes a record of the subject's paying habits. It is recorded in bureau files which remain active and may reflect a good as well as bad credit standing. The information is disseminated to businesses which have extended credit or who wish to have some basis for either extending or rejecting an individual's credit.

Both witnesses testified that credit bureaus may and do offer a debt collection service. However, it is clear from their testimony that the collection function is entirely separate and distinct from the credit reporting function of these organizations and that in the absence of this latter function, no organization can be considered to be a credit bureau.

Except in rare instances, the gathering and dissemination of credit information by respondents is purely incidental to their primary function of collecting accounts. Moreover, it is clear that such information as they do obtain is not sufficient to be of benefit to those concerned with the extension of credit. Respondents obviously do not qualify as a credit bureau and we find that the use of that term in their name is misleading. Cf. In the Matter of *United States Retail Credit Association, Incorporated*, Docket No. 7488, (1960).

Of the five organizations named by the hearing examiner as being members of the corporate respondent at the time complaint issued, three were organized and became members within about three months

prior to the issuance of the complaint and subsequent to the completion of the investigation in this matter. All three were organized for collection purposes only, the stockholders of one being the individual respondents herein while the other two were organized by a friend of respondent Burns with the assistance of respondents' collection attorney.

Another of the organizations entered into an agreement with the corporate respondent in October, 1955, whereby the latter agreed to provide guidance, assistance and instruction in the general conduct of a collection business. The evidence discloses that the sole owner of that business contacted respondents in 1955 seeking a job and ended up entering into the agreement. For a short time he operated a small collection business which was being liquidated at the time of the hearing in 1958.

The fifth company, Federated Credit Control Corporation, was organized by respondents Burns and Holder, who are the officers thereof, less than one month before complaint issued. Admittedly, they began soliciting accounts for collection under that name to avoid unfavorable consequences attendant upon the issuance of the complaint herein.

It is obvious from this record that respondents are nothing more than a single business enterprise and are not an association as that term is understood, of either credit bureaus or any other business enterprises. Their use of the word "Association" in their name is clearly false and deceptive and the hearing examiner was in error in not so ruling.

Counsel supporting the complaint has requested that the order include a provision which would prohibit the respondents from representing that their business is other than a collection agency. We have found that respondents have engaged in the practice of misrepresenting the nature of their business by the use of a corporate name which states that they are an association of credit bureaus. The courts have made it clear that the Commission is not limited to proscribing an unfair practice in the precise form found to have existed in the past but may frame its order broadly enough to prohibit the future use of the deceptive practice in any form.¹ We believe that the provision in the order as requested by counsel supporting the complaint is necessary to achieve that purpose.

Counsel supporting the complaint next contends that the hearing examiner erred in failing to find that respondents falsely represent that they are in some manner connected with, or an agency of, the United States Government. On this point, the hearing exam-

¹ *Consumer Sales Corp. v. Federal Trade Commission*, 198 F. 2d 404 [5 S & D 419] (2d Cir. 1952).

Opinion

58 F.T.C.

iner ruled in effect that the use of the name "United States" in connection with an insignia composed of a facsimile of the American eagle and a shield with stars on a blue background and bearing the legend "U.S.A. of C.B." on a red background, standing alone, is not sufficient to justify a finding of government connection. He rejected the testimony of respondents' former clients on this point, characterizing such testimony as mere vague statements of subjective impressions. We have examined the testimony of these witnesses and in our opinion, the hearing examiner failed to give proper weight thereto. An example of such testimony is that of M. E. Fisher, a creditor client, who, in answer to a question from the hearing examiner as to why he believed respondent corporation was connected with the government, testified:

The Witness: Well, because they used this assumed name of this "United States" or whatever the name of the company is.

Mr. Kennedy: Do you want to use an exhibit?

The Witness: The United States Association of Credit Bureaus. It led me to believe that they were connected with the United States some way in that.

Another witness, Geraldine Capinski, stated:

A. . . . But, just by looking at it, "United States Association", it made us both think that it had something to do with the government.

We do not regard such statements as being vague. In our view, this testimony, together with testimony of like effect by other client witnesses, constitutes reliable and probative evidence in support of this allegation. Moreover, this allegation is amply supported by the testimony of one of respondents' former solicitors, Blumenshein, whose testimony was apparently ignored by the hearing examiner. Blumenshein stated that at the outset of his employment he himself inquired of respondents' representative who trained him whether either the representative or respondents' organization was with the government. Moreover, he testified that possibly one or two customers a day asked him if he was a government representative. Since these inquiries were not prompted by oral representations, a reasonable inference is that they resulted from the literature bearing the corporate name and insignia which was used by Blumenshein in soliciting accounts.

It is undisputed that respondents are in no way connected or associated with any branch of the United States Government. Accordingly, we find that respondents' use of the name "United States" together with the insignia is false and misleading. Moreover, the evidence of record fully supports a finding that respondents' use of the name "United States", whether or not used with the insignia, has a tendency and capacity to mislead and deceive

creditors. The initial decision's dismissal of this charge was therefore erroneous.

The next issue raised by counsel supporting the complaint is whether the hearing examiner erred in failing to find that respondents falsely represented that their business is organized into separate functional divisions.

The hearing examiner found that there was no evidence that respondents' solicitors had made the alleged representation and that no statement in respondents' brochure supported such an interpretation. Counsel supporting the complaint, however, points to the following language in a so-called "welcome" letter (Commission Exhibit 28) sent by respondents to new creditor clients: "Each account is being carefully studied and referred to the department we believe best suited to handle the particular case, depending upon the circumstances involved. Whether it be our Collection Division, our Tracing Division, our Credit Reporting Division, Analytical Division . . . local representatives, investigators, correspondents . . . depends upon the account itself and the reaction of the debtor after the initial contact." This letter is sent to a client after respondents receive from their solicitor a list of accounts that have been turned over for collection by that client.

The evidence establishes that with the possible exception of their skip-tracing function, respondents' business is not organized into separate functional divisions as represented in the letter. However, the hearing examiner ruled that since the letter was sent to the client after the accounts were assigned, it could not possibly have induced the assignment of those accounts. Thus, he concluded that said representation is harmless and may be considered as mere "puffing". However, the hearing examiner's conclusion overlooks the fact that the "welcome" letter is an integral part of respondents' collection business. The evidence shows that in many instances clients assign only a portion of their available delinquent accounts when contacted by respondents' solicitors. Hence, the "welcome" letter may be construed as soliciting such additional accounts as is evidenced by the following language: "And, too, I would like to point out right here at the outset that you may feel free to call upon us at any time for assistance in connection with your outstanding receivables." It is clear that the assignment of accounts for collection and the solicitation thereof are continuing propositions not limited to an initial contact by a solicitor. In our view, the "welcome" letter representation may well induce the assignment of further accounts. The hearing examiner's characterization

of the statement in the letter as "harmless" and "puffing" is in error as is his ruling on this point.

The next question raised in the appeal of counsel supporting the complaint relates to the examiner's ruling that the evidence fails to sustain a finding that respondents have ever represented that they employ local representatives on their personnel staff in various states.

Page 3 of respondents' brochure is headed with the statement "With our Nation Wide Associates, Affiliates, Bonded Attorneys, Collectors, Investigators, and Skip-Tracers, directed by Nationally Known Leaders in this field, we can convert your Losses into Recovered Principal and PROFIT". On page 4 of this brochure there appears a map of the United States with numerous dots in each of the states. The map is headed with the statement "Points From Which You Can Have Personal Service On Your Accounts Thru Bonded Collectors and Investigators". In addition, the front page of the brochure bears a picture of respondents' office building with the words "HOME OFFICE" depicted thereon in large letters. On the basis of our own examination of the brochure, we find it unnecessary to rule on the hearing examiner's rejection of the consumer testimony on this point.² We have no doubt that these statements do, and were intended to, convey the impression that respondents have offices throughout the country and that on the staff of these offices there are investigators, correspondents and lawyers employed by respondents for the purpose of collecting accounts.

It is admitted by respondents that except for their solicitors, all of their employees are located at respondents' only place of business in Oak Forest, Illinois. Also, the solicitors' function is limited solely to the soliciting of delinquent accounts from creditors and respondents' collection business is conducted almost entirely by mail. We find that the statements appearing in respondents' brochure are false and misleading and that the examiner erred in dismissing this charge.

The next issue for our consideration relates to the hearing examiner's finding that respondents misrepresented the amount or percentage of their collection fees. Both sides have appealed on this point, respondents contending that the finding is not supported by the evidence and counsel supporting the complaint arguing that the finding should be broadened.

² *Mitchell S. Mohr v. Federal Trade Commission*, 272 F. 2d 401 (9th Cir. 1959), cert. denied, 362 U.S. 920 (1960); *E. F. Drew & Co., Inc. v. Federal Trade Commission*, 235 F. 2d 735 (2d Cir. 1956).

It is undisputed that respondents represent that their maximum collection fee is fifty per cent. We agree with respondents that the evidence does not support a finding that respondents have charged a listing fee of fifty cents on the *same* account on which it has charged a fifty per cent commission. However, it is clear from the documentary evidence that respondents do charge a listing fee on accounts submitted to them for collection even though no collection was made thereon. Also, it is respondents' practice to deduct the listing fee for accounts on which no collections were effected from the proceeds obtained from those accounts which they have collected and on which they have charged a fifty per cent commission. In one instance of record, respondents remitted to the creditor only about twenty per cent of the amount collected on one account after deducting listing fees. Thus the evidence clearly supports a finding that respondents have engaged in the practice of misrepresenting the amount of their collection fees. Accordingly we do not find it necessary to rule on the request of counsel supporting the complaint for a finding that respondents have falsely represented the amount of the collection fees in certain other respects. The hearing examiner's order on this point, which we are adopting, is properly designed to prohibit future use of the illegal practice whether accomplished through listing fees or any other manner.

Respondents use and have caused the use of Skip-tracing forms designed to obtain information relating to delinquent debtors. The complaint alleges that through the use of such material, respondents have represented that it is to the addressee's financial advantage to respond to the questions asked on the form. It is further alleged that the amount of financial advantage given in return is insufficient to justify any reference to it and that the use of such forms has a tendency and capacity to mislead recipients into disclosing information they would not otherwise have supplied.

The evidence discloses that respondents used skip-tracing forms containing the alleged representation which they obtained from various skip-tracing organizations and that the financial advantage, if any, accruing to the addressee was insignificant. It is, of course, well settled that such forms are deceptive and the hearing examiner correctly ruled on this point. The record also discloses that in addition to such forms, respondents use forms which they themselves designed and prepared. The examiner found that respondents' forms do not represent that it is to the addressee's financial advantage to respond thereto, that therefore those forms are not covered by the complaint, and proceeded to rule that said forms are not in violation of the Federal Trade Commission Act.

Both sides have appealed. Respondents contend that since they did nothing more than purchase the services of professional skip-tracing organizations, they should not be subjected to a cease and desist order on the basis of those companies' forms. Also, they argue that their conduct with respect to the use of said forms does not constitute deceptive acts or practices in commerce. These same arguments were used by a collection agency in *National Clearance Bureau v. Federal Trade Commission*, 255 F. 2d 102 (3rd Cir. 1958) and were rejected by the court with the statement that they are so wholly lacking in merit as to require no detailed discussion.

Likewise, there is no substance in respondents' argument that they have discontinued the use of the professional forms. One such form was in use by respondents even after complaint issued. As found by the examiner, there are no unusual circumstances in connection with respondents' discontinuance of those forms nor is there any record basis for a conclusion that the practice charged has been surely stopped with no likelihood of resumption. Respondents' appeal on this issue is denied.

That respondents have used certain skip-tracer forms as alleged in the complaint in violation of the law is fully established. Thus, the hearing examiner's findings that other forms were not in violation of the Federal Trade Commission Act is beside the point. Moreover, the hearing examiner's order on this point obviously was fashioned to reflect his views as to the other forms. In our opinion, his order is not sufficiently broad to prevent the future use of the unfair practices in which respondents are found to have engaged, namely, obtaining information concerning delinquent debtors by deceit and inducing debtors and others to furnish information they would not otherwise have furnished had the true purpose of the request been disclosed. We have so indicated in the Matter of *Mitchell S. Mohr*, Docket No. 6236 (1958), and our modified order was sustained by the Court.³ The order to be issued herein will conform to the requirements of the modified order in that case.

Respondents have appealed from the hearing examiner's ruling that they falsely represent that personal calls are made on debtors. As we have previously stated, page 4 of a brochure used by respondents in soliciting accounts, bears a map of the United States with dots spotted in each state. The map is headed in large letters with the statement "Points From Which You Can Have Personal Service On Your Accounts Thru Bonded Collectors And Investigators". The obvious interpretation of this claim is that bonded

³ *Mitchell S. Mohr v. Federal Trade Commission*, *supra*.

collectors and investigators located in towns indicated by the dots would make personal calls on debtors to collect assigned accounts.

It is admitted by respondents that the dots represent nothing more than places where collection attorneys listed in various commercial law directories are located. The services of these attorneys are available to any creditor without the necessity of assigning accounts to respondents and respondents have no control over the attorneys to whom they refer accounts insofar as personal contacts are concerned. It is clearly established that respondents' efforts in collecting accounts are confined primarily to correspondence and that their use of the above claim is deceptive. Respondents' attempt to place a different interpretation on the claim avails them nothing. It is settled that where one of two meanings conveyed by an advertisement is false, the advertisement is misleading.⁴

As previously found, documentary evidence establishes that on certain accounts on which respondents made no collection, a filing fee of fifty cents each was charged which was deducted from the proceeds of an account which had been paid. On this basis, the hearing examiner found that respondents' claim "If There Are No Collections There Are No Charges" is deceptive. Respondents contend that the statement is true since if no collection is made on any of the accounts assigned by a particular creditor, no filing fees are charged. We think the claim may reasonably be interpreted as relating to each specific account assigned, regardless of respondents' action on any other of the creditor's accounts. We find that the claim is misleading and respondents' appeal is rejected.

Respondents' contention that certain parts of the hearing examiner's order to cease and desist are too broad is without substance. Those parts of the order with which respondents take issue go no further than to prevent the future use of those deceptive practices alleged in the complaint and shown by the record to have been engaged in by the respondents.

Counsel supporting the complaint has not appealed from the hearing examiner's dismissal of the allegation that respondents falsely represent that they furnish credit reports to parties who have assigned accounts to them. That respondents have made the alleged representation is not disputed.

The evidence shows that respondents are primarily engaged in collecting delinquent accounts and the only credit information they obtain is incidental and pursuant to their operation of that business. They are not an association of credit bureaus as their name

⁴ *Rhodes Pharmacal Co., Inc. v. Federal Trade Commission*, 208 F. 2d 382 (7th Cir. 1953).

Complaint

58 F.T.C.

implies and the evidence fully establishes that respondents do not and are not equipped to furnish credit reports as that term is normally understood. Having reviewed the record, we believe that the allegation is supported and that the order should contain a prohibition against such practice.

In view of the foregoing, respondents' appeal is denied and the appeal of counsel supporting the complaint is granted. The initial decision is set aside and we are entering our own findings as to the facts, conclusions and order to cease and desist in conformity with this opinion.

Commissioner Elman did not participate in the decision of this matter.

IN THE MATTER OF

SMITH GRAIN COMPANY, INC., ET AL.

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

Docket 7641. Complaint, Oct. 29, 1959—Decision, June 8, 1961

Consent order requiring wholesale distributors of a variety of products, including grain, animal feed ingredients, citrus fruit products, sugar, and phosphate, with office in Limestone, Tenn., to cease violating Sec. 2(c) of the Clayton Act by such practices as accepting illegal allowances on direct purchases of citrus fruit products from Southern Fruit Distributors, Inc., of Orlando, Fla., on which they received "trade discounts" or price reductions in lieu of brokerage of 2% to 3% or more and totaling over \$8,000; and requiring said wholesalers and their two controlled corporate brokers in Tampa, Fla., and Atlanta, Ga., respectively, to cease receiving from sellers commissions on transactions where said brokers were acting for the buyer respondents.

COMPLAINT

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

COUNT I

PARAGRAPH 1. Respondent Smith Grain Company, Inc., hereinafter sometimes referred to as buyer respondent, is a corporation organized, existing and doing business under and by virtue of the

laws of the State of Tennessee with its office and principal place of business located at Limestone, Tennessee. Since April 1, 1955, aforesaid buyer respondent has been engaged primarily in business as a wholesale distributor handling a variety of products and commodities, including grain, animal feed ingredients, citrus fruit products, sugar and phosphate.

PAR. 2. Respondent William F. Smith is, and has been, at all times mentioned herein, President and Treasurer of buyer respondent. Respondent James J. Smith, the brother of respondent William F. Smith, is and has been, at all times mentioned herein, Vice President and Secretary of buyer respondent. The capital stock of buyer respondent is owned as follows:

Respondent William F. Smith: 1,250 shares
Florence C. Smith,
wife of respondent
William F. Smith: 950 shares
Respondent James J. Smith: 1,250 shares

At all times mentioned herein the aforesaid individual respondents exercised substantial, if not complete, authority and control over the business conducted by respondent Smith Grain Company, Inc., including the formulation and direction of its purchase, sales and distribution policies hereinafter referred to. The individual respondents have their offices and principal places of business located at the same address as the buyer respondent.

PAR. 3. Respondent Alexander-Smith, Inc., hereinafter in Count I sometimes referred to as broker respondent, is a corporation organized, 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 915 South Water Street, Tampa 2, Florida. Since April 1, 1955, aforesaid broker respondent has been engaged in the brokerage business dealing primarily in sales of grain and animal feed ingredients.

PAR. 4. Respondent William F. Smith is and has been, at all times mentioned herein, President and Treasurer of broker respondent. The capital stock of broker respondent is owned as follows:

Respondent William F. Smith: 7½ shares
Florence C. Smith, wife of respondent William F. Smith: 7½ shares
Respondent James J. Smith: 15 shares
Robert K. Alexander: 15 shares
Marie S. Alexander: 15 shares

At all times mentioned herein, the aforesaid individual respondents exercised substantial, if not complete, authority and control over the business conducted by respondent Alexander-Smith, Inc.,

including the formulation and direction of policies relating to its transactions for or with respondent Smith Grain Company, Inc., as hereinafter referred to.

PAR. 5. During the period April 1, 1955, to the present, aforesaid individual respondents, through corporate respondents, and each of them, continuously made purchases of products and commodities from, or sales of products and commodities for, sellers located in various states of the United States. In the course of such transactions, said respondents, both individual and corporate, directly or indirectly, caused such products and commodities, so purchased or sold, to be transported from various states of the United States to various other states. There has been at all times mentioned herein a continuous course of trade in commerce, as "commerce" is defined in the Clayton Act, in such products and commodities, across state lines between individual respondents through corporate respondents, and each of them, and the sellers of such products and commodities.

PAR. 6. In the course and conduct of the businesses of the broker respondent and buyer respondent, as aforesaid, the buyer respondent, acting through the broker respondent, made numerous and substantial purchases of products and commodities, including purchases of grain and animal feed ingredients, from sellers. Aforesaid sellers paid and broker respondent, or the individual respondents herein, received commissions, brokerage, or other compensation, or allowances or discounts in lieu thereof, on transactions where the broker respondent was acting for or on behalf of the buyer respondent, or where the broker respondent was subject to the control of buyer respondent or the individual respondents herein. For example, during the period July 1957 to November 1958, buyer respondent purchased through broker respondent quantities of grain and animal feed ingredients from The Sherwin-Williams Company, on which sales aforesaid seller paid commissions to the broker respondent amounting to in excess of \$400.00, at least a part of which was received by the individual respondents in the form of salaries and dividends by virtue of employment and stock ownership as hereinbefore alleged.

PAR. 7. The acts and practices of respondents, and each of them, as hereinbefore alleged, are in violation of subsection (c) of Section 2 of the amended Clayton Act.

COUNT II

PAR. 8. The allegations of Paragraphs One and Two of Count I of this complaint are hereby adopted and incorporated herein by

reference and made a part of this Count II the same as if they were repeated herein verbatim.

PAR. 9. Respondent Heard-Kinard-Smith, Inc., hereinafter in Count II sometimes referred to as broker respondent, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Georgia with its office and principal place of business located at 3240 Peachtree Road, Northeast, Atlanta 5, Georgia. Since September 1, 1956, aforesaid broker respondent has been engaged in the brokerage business dealing primarily in sales of grain and animal feed ingredients.

PAR. 10. Respondent William F. Smith is and has been, at all times mentioned herein, President of broker respondent. The capital stock of broker respondent is held as follows:

Respondent William F. Smith: 15 shares
Respondent James J. Smith: 15 shares
Will I. Kinard: 30 shares
J. Luke Heard: 30 shares

At all times mentioned herein, the aforesaid individual respondents exercised substantial, if not complete, authority and control over the business conducted by respondent Heard-Kinard-Smith, Inc., including the formulation and direction of policies relating to its transactions for or with respondent Smith Grain Company, Inc., as hereinafter referred to.

PAR. 11. During the period September 1, 1956, to the present, aforesaid individual respondents, through corporate respondents, and each of them, continuously made purchases of products and commodities from, or sales of products and commodities for, sellers located in various states of the United States. In the course of such transactions, said respondents, both individual and corporate, directly or indirectly, caused such products and commodities, so purchased or sold, to be transported from various states of the United States to various other states. There has been at all times mentioned herein a continuous course of trade in commerce, as "commerce" is defined in the Clayton Act, in such products and commodities, across state lines between individual respondents through corporate respondents, and each of them, and the sellers of such products and commodities.

PAR. 12. In the course and conduct of the businesses of broker respondent and buyer respondent, as aforesaid, the buyer respondent, acting through the broker respondent, made numerous and substantial purchases of products and commodities, including purchases of grain and animal feed ingredients from sellers. Aforesaid sellers

Complaint

58 F.T.C.

paid and broker respondent, or the individual respondents herein, received commissions, brokerage, or other compensations or allowances or discounts in lieu thereof, on transactions where the broker respondent was acting for or on behalf of the buyer respondent, or where the broker respondent was subject to the control of the buyer respondent or the individual respondents herein. For example, during the period January 1958 to December 1958, buyer respondent purchased through broker respondent quantities of grain and animal feed ingredients from the Graham Grain Company, on which sales aforesaid seller paid commissions to the broker respondent amounting to in excess of \$450.00, at least a part of which was received by the individual respondents in the form of salaries and dividends by virtue of employment and stock ownership, as hereinbefore alleged.

PAR. 13. The acts and practices of respondents, and each of them, as hereinbefore alleged, are in violation of subsection (c) of Section 2 of the amended Clayton Act.

COUNT III

PAR. 14. The allegations of Paragraphs One and Two of Count I of this complaint are hereby adopted and incorporated herein by reference and made a part of this Count III the same as if they were repeated herein verbatim.

PAR. 15. During the period April 1, 1955, to the present, aforesaid individual respondents, through corporate respondents, and each of them, continuously made purchases of products and commodities from, or sales of products and commodities for, sellers located in various states of the United States. In the course of such transactions, said respondents, both individual and corporate, directly or indirectly, caused such products and commodities, so purchased or sold, to be transported from various states of the United States to various other states. There has been at all times mentioned herein a continuous course of trade in commerce, as "commerce" is defined in the Clayton Act, in such products and commodities, across state lines between individual respondents through corporate respondents, and each of them, and the sellers of such products and commodities.

PAR. 16. In the course and conduct of its business, as aforesaid, buyer respondent Smith Grain Company, Inc., and the individual respondents named herein, have made and are now making substantial direct purchases of citrus fruit juices, and other miscellaneous products and commodities, for their own account for resale from sellers, on which purchases said respondents have received and ac-

cepted, and are now receiving and accepting, directly or indirectly, from said sellers something of value as a commission, brokerage or other compensation or allowance or discount in lieu thereof, or have been given lower net prices which reflect the allowance of a commission or brokerage on said purchases.

For example, during the period January 1956 to December 1958, buyer respondent, and the individual respondents named herein, have purchased from, among others, Southern Fruit Distributors, Inc., of Orlando, Florida, substantial quantities of citrus fruit products. Aforesaid purchases have been made by respondents for their own account and in their own name and on these purchases respondents have received and are now receiving, a "trade discount," or other reductions in price, in lieu of brokerage. Aforesaid "trade discounts," or price reductions, range from 2% to 3% or more. From January 1956 through December 1958 respondent Smith Grain Company, Inc., received "trade discounts" in lieu of brokerage from Southern Fruit Distributors, Inc., in excess of \$8,000.00.

PAR. 17. The acts and practices of respondents, and each of them, as hereinbefore alleged, are in violation of subsection (c) of Section 2 of the amended Clayton Act.

Mr. Ross D. Young for the Commission.

Milligan, Silvers & Coleman, by *Mr. N. R. Coleman, Jr.*, of Greenville, Tenn., for respondents.

INITIAL DECISION BY WALTER R. JOHNSON, HEARING EXAMINER

In the complaint dated October 29, 1959, the respondents are charged with violating the provisions of subsection (c) of section 2 of the Clayton Act, as amended.

On March 8, 1961, the respondents and their attorney entered into an agreement with counsel in support of the complaint for a consent order.

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

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.

Respondent Heard-Kinard Sales Company, Inc., a corporation, consents that the service of a true copy of said complaint upon Heard-Kinard-Smith, Inc., shall have the same legal force and effect as though it were served upon said respondent; and said respondent will be, and is legally bound by said service upon corporate respondent Heard-Kinard-Smith, Inc., as though it were served upon it; and that Heard-Kinard Sales Company, Inc., be made a party respondent to this cause, so as to be fully and completely bound as respondent to the order as hereinafter set forth.

The agreement also provides that since respondent William F. Smith has disposed of all of his stock in Heard-Kinard-Smith, Inc. (now known as Heard-Kinard Sales Company, Inc.), the complaint be dismissed as to him as President of this corporation.

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. Corporate respondent Smith Grain Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Tennessee, with its office and principal place of business located at Limestone, Tennessee.

Corporate respondent Alexander-Smith, Inc., is a corporation organized, 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 915 South Water Street, Tampa 2, Florida.

The named corporate respondent, Heard-Kinard-Smith, Inc., was a corporation organized, existing and doing business under and by virtue of the laws of the State of Georgia, with its office and principal place of business formerly located at 3240 Peachtree Road, Atlanta 5, Georgia. (The address was incorrectly stated in the complaint as 3240 Peachtree Road, Northeast, Atlanta 5, Georgia.) Prior to August 22, 1959, individual respondent William F. Smith was President and a principal stockholder in this corporation. Prior to August 22, 1959, individual respondent James J. Smith was a principal stockholder in this corporation.

1058

Order

Attached to said agreement are affidavits attesting to the fact that on August 22, 1959, individual respondent William F. Smith transferred all of the shares of stock owned by him in Heard-Kinard-Smith, Inc., to that corporation and tendered his resignation as its President, said resignation being accepted; and on August 22, 1959, individual respondent James J. Smith transferred all of the shares of stock owned by him in Heard-Kinard-Smith, Inc., to that corporation.

Also attached to the agreement is an affidavit stating that on November 20, 1959, through an amendment of the corporate charter, the name of said corporation was changed from Heard-Kinard-Smith, Inc., to Heard-Kinard Sales Company, Inc., and J. Luke Heard was named as President of Heard-Kinard Sales Company, Inc. In the order contained in the agreement, Heard-Kinard Sales Company, Inc., is named as respondent, this being the correct present legal name of the corporation formerly known, before the amendment to its corporate charter, as Heard-Kinard-Smith, Inc.

Heard-Kinard Sales Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Georgia, with its office and principal place of business located at 3240 Peachtree Road, Atlanta 5, Georgia. Heard-Kinard Sales Company, Inc., agrees to stand in the place and assume all obligations and rights of corporate respondent Heard-Kinard-Smith, Inc., and to be bound by the order contained herein when and if said order is issued by the Commission and becomes final.

Individual respondent William F. Smith is President and Treasurer of Smith Grain Company, Inc., and president and Treasurer of Alexander-Smith, Inc. Individual respondent James J. Smith is Vice President and Secretary of Smith Grain Company, Inc. Individual respondents exercise substantial, if not complete, authority and control over the business conducted by said corporate respondents, including the formulation and direction of policies.

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

ORDER

It is ordered, That respondents, Smith Grain Company, Inc., a corporation, and its officers, agents, representatives and employees, and William F. Smith and James J. Smith, individually and as officers of said corporation, and their agents, representatives and employees, directly or through any corporate or other device, in connection with the purchase or sale of any products or commodities

Order

58 F.T.C.

in commerce, as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from:

Receiving or accepting, directly or indirectly from any seller anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, upon or in connection with the purchase of any product or commodities for their own account, or on purchases where the broker respondents, Alexander-Smith, Inc., or Heard-Kinard-Sales Company, Inc. (the name to which corporate respondent Heard-Kinard-Smith, Inc., has been changed by charter amendment); or any other brokerage concern, are the agents, representatives or other intermediaries acting for, or in behalf of, or subject to the direct or indirect control of the buyer respondents.

It is further ordered, That respondents Alexander-Smith, Inc., a corporation, and Heard-Kinard Sales Company, Inc., a corporation (the name to which corporate respondent Heard-Kinard-Smith, Inc., has been changed by charter amendment), and their officers, agents, representatives and employees, directly or through any corporate or other device; and William F. Smith, individually and as an officer of Alexander-Smith, Inc., and James J. Smith, individually, in connection with the purchase or sale of any products or commodities in commerce, as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from:

Receiving or accepting, directly or indirectly, from any seller anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, upon or in connection with any purchase of any products or commodities for their own account, or by or for the account of Smith Grain Company, Inc., so long as any relationship exists, either through ownership or control, between Smith Grain Company, Inc., or William F. Smith, or James J. Smith, as buyers; and Alexander-Smith, Inc., or Heard-Kinard Sales Company, Inc. (the name to which corporate respondent Heard-Kinard-Smith, Inc., has been changed by charter amendment), or William F. Smith or James J. Smith, as brokers; or receiving or accepting, directly or indirectly, from any seller, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, upon or in connection with any purchase of any products or any commodities made by any other buyer where the respondents are the agents, representatives or other intermediaries acting for, or in behalf of, or subject to the direct or indirect control of such buyer.

1058

Complaint

It is further ordered, That the complaint be, and it hereby is, dismissed as to William F. Smith as President of Heard-Kinard-Smith, Inc. (now known as Heard-Kinard Sales Company, Inc.).

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 8th day of June, 1961, become the decision of the Commission; and, accordingly:

It is ordered, That all of the respondents herein, except William F. Smith as President of Heard-Kinard-Smith, Inc. (now known as Heard-Kinard Sales Company, Inc.), 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
FELLER'S, INC., ET AL.

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

Docket 8266. Complaint, Dec. 30, 1960—Decision, June 8, 1961

Consent order requiring Harrisburg, Pa., furriers to cease violating the Fur Products Labeling Act by attaching to fur products labels bearing fictitious prices, represented thereby as the regular retail selling prices; by failing to make the disclosure "secondhand fur" on invoices where required; by advertising in newspapers which failed to disclose when fur products were composed of used or secondhand fur, represented prices as reduced from regular prices which were in fact fictitious, and represented fur products falsely as being fire merchandise; and by failing to maintain adequate records as a basis for pricing claims.

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 Feller's, Inc., a corporation, and Charles M. Feller, Mary M. Feller, and Oscar L. Feller, 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. Feller's, 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 Third and Market Streets, Harrisburg, Pennsylvania.

Charles M. Feller, Mary M. Feller and Oscar L. Feller are officers of the corporate respondent and control, direct and formulate the acts, practices and policies of the said corporate respondent, including the acts and practices hereafter set forth. Their address 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.

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 business, in violation of Section 4(1) of the Fur Products Labeling Act.

PAR. 4. 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 that the disclosure "secondhand fur" where required was not set forth on invoices in violation of Rule 23 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 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. 6. Among and included in the advertisements, as aforesaid, but not limited thereto, were advertisements of respondents which appeared in issues of the Sunday Patriot News and the Evening News, newspapers published in Harrisburg, 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) Failed to disclose that fur products were composed of used fur when such was the fact, in violation of Section 5(a)(2) of the Fur Products Labeling Act.

(b) Failed to disclose that fur products were composed of "secondhand fur" when such was the fact, in violation of Rule 23 of said Rules and Regulations.

(c) Represented prices of fur products as having been reduced from 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 merchandise was usually sold by respondents in the recent regular course of business, in violation of Section 5(a)(5) of the Fur Products Labeling Act and Rule 44(a) of said Rules and Regulations.

(d) Represented fur products as being merchandise damaged by smoke and water and as being fire merchandise when in fact such merchandise was received subsequent to the date of the fire, in violation of Section 5(a)(5) of the Fur Products Labeling Act.

PAR. 7. Respondents, in advertising fur products for sale, as aforesaid, made claims and representations respecting the prices and values of fur products, but 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. 8. 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.

Mr. Charles W. O'Connell and *Mr. Ernest D. Oakland* supporting the complaint.

Mr. Mitchell J. Cooper, of Washington, D.C., for respondents.

INITIAL DECISION OF JOHN LEWIS, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on December 30, 1960, charging them with having violated the Fur Products Labeling Act and the Rules and Regulations issued thereunder, and the Federal Trade Commission Act, through the misbranding and false and deceptive invoicing and advertising of certain fur products. After being served with said complaint, respondents appeared by counsel and thereafter entered into an agreement dated March 30, 1961, containing a consent order to cease and desist purporting to dispose of all of this proceeding as to all parties. Said agreement which has been signed by all respondents, by counsel for said respondents, and by counsel supporting the complaint, and approved by the Director and Assistant Director of the Commission's Bureau of Litigation, has been submitted to the above-named hearing examiner for his consideration, in accordance with Section 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings.

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

This proceeding having now come on for final consideration on the complaint and the aforesaid agreement containing consent order, and it appearing that the order provided for in said agreement covers all of the allegations of the complaint and provides for an appropriate disposition of this proceeding as to all parties,

1067

Order

said agreement is hereby accepted and is 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 Feller's, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its office and principal place of business located at Third and Market Streets, in the City of Harrisburg, State of Pennsylvania.

Respondents Charles M. Feller, Mary M. Feller and Oscar L. Feller are officers of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent. Their address is the same as that of the corporate respondent.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents 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 respondents Feller's, Inc., a corporation, and its officers, and Charles M. Feller, Mary M. Feller and Oscar L. Feller, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the sale, advertising, offering for sale, transportation or distribution in commerce, of fur products; or in connection with the sale, advertising, offering for sale, transportation, or distribution of fur products which are made in whole or in part of fur which has been shipped and received in commerce, as "commerce," "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

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

B. Falsely or deceptively invoicing fur products by failing to furnish invoices to purchasers of fur products showing that fur products contain or are composed of "secondhand fur," when such is the fact.

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

1. Fails to disclose that the fur product is composed of used fur, when such is the fact.

2. Fails to disclose that the fur product is composed of "second-hand fur," when such is the fact.

3. Represents, directly or by implication, that respondents' 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.

4. Represents, directly or by implication, that fur products have been damaged by smoke and water or are fire merchandise, when such is not the fact.

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

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 8th day of June, 1961, 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.

Commissioner Elman not participating.

IN THE MATTER OF

ROSENBLUM'S, INC., ET AL.

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

Docket 8248. Complaint, Dec. 28, 1960—Decision, June 10, 1961

Consent order requiring Cleveland, Ohio, furriers to cease violating the Fur Products Labeling Act by labeling fur products deceptively with respect to the animals producing the fur; by failing to set forth the term "Dyed Mouton processed Lamb" on labels where required; and by failing to comply in other respects with labeling and invoicing requirements.

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 Rosenblum's, Inc., a corporation, and Myron Rosenblum, Sidney Rosenblum, Joseph Amster, and Albert Amster, 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 I. Rosenblum's, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio with its office and principal place of business located at 321 Euclid Avenue, Cleveland, Ohio.

Myron Rosenblum, Sidney Rosenblum, Joseph Amster and Albert Amster are president, vice president, secretary and treasurer, respectively, of the said corporate respondent.

These individuals control, formulate and direct the acts, practices and policies of the said corporate respondent. Their offices and principal place of business are the same as that of the said 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 has been shipped and received in commerce; and have substituted labels on fur products which have been shipped and received in commerce; as the terms "commerce", "fur" and "fur product" are defined in the Fur Products Labeling Act.

PAR. 3. Certain of said fur products were misbranded in that they were falsely and deceptively labeled or otherwise falsely and deceptively identified with respect to the name or names of the animal or animals that produced the fur from which said fur products had been manufactured, in violation of Section 4(1) of the Fur Products Labeling Act.

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 "Dyed Mouton processed Lamb" was not set forth in the manner required where an election was made to use that term instead of Lamb, in violation of Rule 9 of said 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 not completely set out on one side of labels, in violation of Rule 29(a) of said Rules and Regulations.

(e) 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.

(f) Required item numbers were not set forth on labels, in violation of Rule 40 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. 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.

Charles S. Cox, Esq., for the Commission.

Ben Lewitt, Esq., of Cleveland, Ohio, for respondents.

INITIAL DECISION BY ROBERT L. PIPER, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on December 28, 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 invoicing their fur products. Respondents appeared and entered into an agreement, dated March 30, 1961, 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 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 Rosenblum's, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of

Ohio, with its office and principal place of business located at 321 Euclid Avenue, in the City of Cleveland, State of Ohio.

Respondents Myron Rosenblum, Sidney Rosenblum, Joseph Amster, and Albert Amster are individuals and officers of the corporate respondent. They control, formulate and direct the acts, practices and policies of the said corporate respondent. Their address is the same as that of the corporate respondent.

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

It is ordered, That Rosenblum's, Inc., a corporation and its officers, and Myron Rosenblum, Sidney Rosenblum, Joseph Amster and Albert Amster, 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 part of fur which has been shipped and received in commerce, or in connection with the substitution of labels on fur products which have been shipped and received in commerce, as "commerce", "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

1. Misbranding fur products by:

A. Falsely or deceptively labeling or otherwise identifying any such product as to the name or names of the animal or animals that produced the fur from which such product was manufactured;

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

C. Setting forth on labels affixed to fur products:

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

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

1072

Complaint

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

D. Failing to set forth the term "Dyed Mouton processed Lamb" where an election is made to use that term instead of Lamb;

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

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

2. Falsely or deceptively invoicing fur products by:

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

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 10th day of June 1961, 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

LEHRMAN FURS, INC., ET AL.

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

Docket 8272. Complaint, Dec. 30, 1960—Decision, June 10, 1961

Consent order requiring New York City furriers to cease violating the Fur Products Labeling Act by failing to disclose on labels and invoices when furs were dyed and by failing to comply in other respects with labeling and invoicing requirements.

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 Lehrman Furs, Inc., a corporation, and Louis Lehrman, individually and as an officer 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. Lehrman Furs, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its office and principal place of business located at 245 West 29th Street, New York, New York.

Louis Lehrman is president of the said corporate respondent and controls, directs and formulates the acts, practices and policies of the said corporate respondent. His office and principal place of business is the same as that of the said 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 "commerce", "fur" and "fur product" are defined in the Fur Products Labeling Act.

PAR. 3. Certain of said fur products were misbranded in that they carried labels showing the name of the fur, without disclosing that the product was dyed, thus implying that such fur was of natural color, when such was not the fact, 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 falsely and deceptively invoiced in that they were not invoiced as required under the provisions of 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. 6. Certain of said fur products were falsely and deceptively invoiced in that invoices pertaining to such products contained the

1077

Decision

name of the fur without disclosing that the product was dyed thus implying that such fur was of natural color, when such was not the fact in violation of Section 5(b)(2) of the Fur Products Labeling Act.

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.

Mr. Charles S. Cox for the Commission.

Mr. Charles Goldberg, of New York, N.Y., for respondents.

INITIAL DECISION BY EDGAR A. BUTTLE, HEARING EXAMINER

On December 30, 1960, the Federal Trade Commission issued its complaint against the above-named respondents charging them with violation of the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act and the Rules and Regulations promulgated under said Fur Products Labeling Act in connection with the introduction into commerce, and the sale, advertising and offering for sale, transportation and distribution of fur products.

On March 24, 1961, the respondents and counsel supporting the complaint entered into an agreement containing a consent order to cease and desist in accordance with section 3.25(a) of the Rules of Practice and Procedure of the Commission.

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

Order

58 F.T.C.

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 Lehrman Furs, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its office and principal place of business located at 245 West 29th Street, New York, New York.

Respondent Louis Lehrman is president of the said corporate respondent and controls, directs and formulates the acts, practices and policies of the said corporate respondent. His office and principal place of business is the same as that of the said corporate respondent.

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

ORDER

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

1. Misbranding fur products by:

A. Representing, directly or by implication on labels that furs or fur products are natural when such is not the fact.

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

2. Falsely or deceptively invoicing fur products by:

A. Representing directly or by implication on invoices that furs or fur products are natural when such is not the fact.

1077

Complaint

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

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 10th day of June, 1961, 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

BROOKFIELD HATS, INC., ET AL.

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

Docket 8289. Complaint, Feb. 13, 1961—Decision, June 10, 1961

Consent order requiring New York City furriers to cease violating the Fur Products Labeling Act by falsely identifying fur products on invoices with respect to animals producing the fur; stating falsely on invoices that continuing guaranty of compliance with the Act had been filed with the Commission; failing to set forth "Dyed Broadtail processed Lamb" on invoices where required; and failing in other respects to comply with invoicing and labeling requirements.

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 Brookfield Hats, Inc., a corporation, and Louis Rose and Anne Rose, 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 Brookfield Hats, Inc. is a corporation organized, existing and doing business under and by virtue of the

laws of the State of New York with its office and principal place of business located at 1040 Sixth Avenue, New York, New York.

Respondents Louis Rose and Anne Rose control, direct and formulate the acts, practices and policies of the corporate respondent. Their address 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 manufacture for introduction into commerce, and in the sale, advertising, and offering for sale, transportation and distribution, in commerce of fur products; and have manufactured for sale, sold, advertised, offered for sale, transported and distributed fur products which have been made in whole or in part of fur which had been shipped and received in commerce as the terms "commerce", "fur" and "fur product" are defined in the Fur Products Labeling Act.

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 that 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.

PAR. 5. 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. 6. Certain of said fur products were falsely and deceptively invoiced or otherwise falsely and deceptively identified with respect to the name or names of the animal or animals that produced the fur from which said fur products had been manufactured in violation of Section 5(b)(2) of the Fur Products Labeling Act.

PAR. 7. Certain of said fur products were falsely and deceptively invoiced in violation of Section 5(b)(2) of the Fur Products Labeling Act in that respondents set forth on invoices the statement "continuing guaranty of compliance with the Fur Products Labeling Act, covering the fur products specified herein, has been filed with the Federal Trade Commission" when in truth and in fact no continuing guaranty was filed with the Federal Trade Commission.

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 that the term "Dyed Broadtail processed Lamb" was not set forth where an election was made to use that term instead of Dyed Lamb in violation of Rule 10 of said Rules and Regulations.

PAR. 9. 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.

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

Finke, Jacobs & Hirsch, by *Mr. David Jacobs*, of New York, N.Y., for respondents.

INITIAL DECISION BY RAYMOND J. LYNCH, HEARING EXAMINER

The complaint in this proceeding, issued February 13, 1961, charges the above-named respondents with violation of the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act and the Rules and Regulations made pursuant thereto.

On April 17, 1961, there was submitted to the undersigned hearing examiner an agreement between respondents and counsel supporting the complaint providing for the entry of a consent order.

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

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

The hearing examiner having considered the agreement and proposed order, and being of the opinion that they provide an appropriate basis for settlement and disposition of this proceeding, the agreement is hereby accepted, and it is ordered that said agreement

Order

58 F.T.C.

shall not become a part of the official record unless and until it becomes a part of the decision of the Commission. The following jurisdictional findings are made and the following order issued.

1. Respondent Brookfield Hats, 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 1040 Sixth Avenue in the City of New York, State of New York.

Respondents Louis Rose and Ann Rose (erroneously named in the complaint as Anne Rose) control, direct and formulate the acts, practices and policies of the corporate respondent. Their address is the same as that of the corporate respondent.

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

ORDER

It is ordered, That Brookfield Hats, Inc., a corporation and its officers and Louis Rose and Ann Rose, 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, manufacture for introduction, or the sale, advertising or offering for sale in commerce, or the transportation or distribution, in commerce, of fur products or in connection with the sale, manufacture for sale, advertising, offering for sale, transportation or distribution of fur products which have been made in whole or in part of fur which has been shipped and received in commerce as "commerce", "fur" and "fur product" are defined in the Fur Products Labeling Act do forthwith cease and desist from:

A. Misbranding fur products by:

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

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

B. Falsely or deceptively invoicing fur products by:

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

2. Failing to set forth the term "Dyed Broadtail processed Lamb" where an election is made to use that term instead of Lamb.

1081

Complaint

C. Falsely or deceptively invoicing or otherwise identifying any such product as to the name or names of the animal or animals that produced the fur from which such product was manufactured.

D. Making statements on invoices or otherwise that a continuing guaranty under the Fur Products Labeling Act is on file with the Federal Trade Commission when such is not the fact.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 10th day of June, 1961, 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

MARCAL PAPER MILLS, INC.

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

Docket 8293. Complaint, Mar. 2, 1961—Decision, June 10, 1961

Consent order requiring a manufacturer of household paper products to cease violating Sec. 2(d) of the Clayton Act by paying some customers advertising allowances which were not made available on proportionally equal terms to all other competing customers, such as a payment of \$200 for advertising its products made to a retail grocery chain with headquarters in Jacksonville, Fla.

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, Marcal Paper Mills, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its office and principal place of business located at 1 Market Street, East Paterson, New Jersey.

PAR. 2. Respondent is now and has been engaged in the manufacture, sale and distribution of household paper products including waxed paper, paper towels, hankies, toilet tissue, napkins, freezer paper, sandwich bags and drinking straws. Respondent sells and distributes its products to wholesalers and retailers, including retail chain store organizations.

PAR. 3. Respondent sells and causes its products to be transported from its principal place of business in the State of New Jersey 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, 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 year 1960 respondent contracted to pay and did pay to Winn-Dixie Stores, Inc., a retail grocery chain with headquarters in Jacksonville, Florida, the amount of \$200.00 as compensation or as an allowance for advertising or other services or facilities furnished by or through Winn-Dixie Stores, Inc., in connection with its offering for sale or sale of products sold to it by respondent. Such compensation or allowance was not made available on proportionally equal terms to all other customers competing with Winn-Dixie Stores, Inc., 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. Robert G. Cutler for the Commission.

Mr. Frank T. Dierson, of New York, N.Y., for respondent.

INITIAL DECISION BY RAYMOND J. LYNCH, HEARING EXAMINER

The complaint in this proceeding, issued March 2, 1961, charges the above-named respondent with violation of the provisions of subsection (d) of section 2 of the Clayton Act, as amended.

On April 13, 1961, there was submitted to the undersigned hearing examiner an agreement between respondent and counsel supporting the complaint providing for the entry of a consent order.

1085

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, and that the complaint may be used in construing the terms of the order.

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

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

1. Respondent Marcal Paper Mills, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of New Jersey, with its office and principal place of business located at 1 Market Street, in the City of East Paterson, State of New Jersey.

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

ORDER

It is ordered, That respondent, Marcal Paper Mills, Inc., a corporation, its officers, employees, agents, and representatives, directly or through any corporate or other device, in or in connection with the sale of household paper products in commerce, as "commerce" is defined in the aforesaid Clayton Act, as amended, do forthwith cease and desist from:

Making or contracting to make, to or for the benefit of any customer, any payment of anything of value as compensation or in consideration for any advertising or other services or facilities furnished by or through such customer, in connection with the handling, offering for sale, or sale of respondent's products, unless such payment or consideration is offered and otherwise made avail-

Complaint

58 F.T.C.

able on proportionally equal terms to all other customers competing in the distribution or resale 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 10th day of June, 1961, 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

CONTAINER STAPLING CORPORATION ET AL.

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

Docket 8082. Complaint, Aug. 19, 1960—Decision, June 13, 1961

Consent order requiring one of the nation's largest manufacturers of carton closing staples, stapling machines, parts, and accessories, to cease violating Sec. 3 of the Clayton Act by selling its products on the condition that purchasers not use or deal in similar products sold by its competitors, and that purchasers of its staplers and parts buy its staples for use therein.

COMPLAINT

The Federal Trade Commission having reason to believe that Container Stapling Corporation, a corporation, and Dr. Blanche Schafroth, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of Section 3 of the Clayton Act (15 U.S.C.A. Sec. 14), and the provisions of Section 5 of the Federal Trade Commission Act (15 U.S.C.A. Sec. 45), and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, the Commission hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Container Stapling Corporation, hereinafter referred to as Container, is a corporation organized and existing under the laws of the State of Nevada with its principal place of business located at Herrin, Illinois.

Respondent Dr. Blanche Schafroth, an individual, is vice president and secretary of respondent Container and has controlled and directed the sales policies and practices of the corporate respondent, including the methods, acts and practices mentioned herein. The address of individual respondent Dr. Blanche Schafroth is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and have been for some years, engaged in the manufacture, distribution and sale of industrial carton-closing staples, staplers, parts and accessories. Respondents now sell, and for some years have been selling, such products to independent distributors and dealers located throughout the United States who in turn make sales directly to users. Respondents' industrial carton-closing staples, staplers, parts and accessories, enjoy wide sales throughout the United States and respondent Container is one of the largest manufacturers and distributors of such equipment in the industry. In the past, prior to the advent of staples for this purpose, such closing operation was usually done by means of glue or gummed paper, or similar means not here involved. Respondent Container's annual sales of its industrial carton-closing staples, staplers, parts and accessories are substantial, being \$1,894,000 in 1958.

PAR. 3. Respondents are now, and have been engaged in commerce, as "commerce" is defined in the Clayton Act and the Federal Trade Commission Act. Respondents cause carton-closing staples, staplers, parts and accessories, manufactured by respondent Container to be transported from the manufacturing plant located at Herrin, Illinois, to independent distributors and customers located throughout the several states of the United States, and there is now, and has been for some years, a constant current of trade in commerce in said products between and among the various states of the United States, and the District of Columbia.

PAR. 4. In the course and conduct of their business, as herein described, respondents are and have been in substantial competition in the sale and distribution of industrial carton-closing staples, staplers, parts and accessories, in commerce between and among the various states of the United States and the District of Columbia, with other persons and corporations.

PAR. 5. In the course and conduct of their business of manufacturing and selling carton-closing staples, staplers, parts and accessories, respondents have made sales and contracts for the sale of such products, and are now making such sales and contracts for the sale of such products on the condition, agreement or understanding that the purchasers thereof shall not sell, deal or distribute

carton-closing staples, staplers, parts and accessories, sold or supplied by a competitor, or competitors, of respondents. Respondents have followed a consistent policy of requiring the independent distributors and dealers to whom they sell their carton-closing staples, staplers, parts and accessories, to discontinue handling like or similar products supplied or sold by any competitor, or competitors, of respondents and not to handle any such products except those sold to such distributors and dealers by respondents.

PAR. 6. In the course and conduct of their business as hereinabove described, respondents have sold, and attempted to sell, staplers, parts and accessories on the condition, agreement or understanding, that the purchasers thereof would buy the carton-closing staples for use, or for resale for use, in the operation of respondents' carton-closing staplers from respondents.

PAR. 7. Competitors of respondents have been, and now are, unable to make sales of carton-closing staples, staplers, parts and accessories, because of the conditions, agreements, and understandings and practices described above in Paragraphs Five and Six. The distributors and dealers of respondents who purchase and sell respondents' carton-closing staples, staplers, parts and accessories, constitute a large and substantial market for such products, and sales by respondents to such distributors and dealers have been, and are now, substantial.

PAR. 8. The effects of the sales and contracts of sale upon such conditions, agreements and understandings, and pursuant to the practices of respondents, as herein described, may be to substantially lessen competition with respondents in such line of commerce, and may tend to create a monopoly in respondents in such line of commerce, in which respondents have been, and are now, engaged.

PAR. 9. The aforesaid acts and practices of respondents constitute a violation of the provisions of Section 3 of the Clayton Act and Section 5 of the Federal Trade Commission Act.

Mr. Daniel H. Hanscom supporting the complaint.
Winters, Powless & Morgan, of Marion, Ill., by *Mr. Charles D. Winters*, for respondents.

INITIAL DECISION BY EDWARD CREEL, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on August 19, 1960, charging them with violation of Section 3 of the Clayton Act and Section 5 of the Federal Trade Commission Act in connection with the distribution and

1088

Order

sale of industrial carton closing staples, staplers, parts and accessories.

On March 20, 1961, there was submitted to the hearing examiner an agreement between respondents, their counsel, and counsel supporting the complaint, providing for the entry of a consent order. Attached to and made a part of the agreement is an affidavit stating that respondent Dr. Blanche Schafroth has not resided in the United States since September 1959 and has not been active in the sales and distribution activities of corporate respondent in the United States since that date.

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

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

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

1. Respondent Container Stapling Corporation is a Nevada corporation with its office and principal place of business located in Herrin, Illinois. Respondent Dr. Blanche Schafroth is an officer of respondent Container Stapling Corporation and her address is the same as that of the corporate respondent.

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

ORDER

It is ordered. That Container Stapling Corporation, a corporation, and its officers, directors, agents, representatives and employees, and Dr. Blanche Schafroth, as an officer of corporate respondent, directly or indirectly, or through any corporate, partnership or

other device, in connection with the offering for sale, sale or distribution of carton closing staples, stapling machines, parts or accessories, in commerce, as "commerce" is defined in the Clayton Act and in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Selling or making any contract or agreement for the sale of any such products on the condition, agreement or understanding that the purchaser thereof shall not use, deal in or distribute similar products supplied by any competitor or competitors of respondents.

2. Selling or making any contract or agreement for the sale of stapling machines, parts or accessories on the condition that the purchasers thereof will buy the carton closing staples for use, or for resale for use, in the operation of respondents' carton closing stapling machines from respondents only.

It is further ordered, That the complaint herein be, and the same hereby is, dismissed as to respondent Dr. Blanche Schafroth individually only but not in her capacity as an officer of corporate respondent.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 13th day of June, 1961, become the decision of the Commission; and, accordingly:

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

IN THE MATTER OF

MONUMENTAL ENGINEERING INC., ET AL.

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

Docket 8253. Complaint, Dec. 29, 1960—Decision, June 13, 1961

Consent order requiring two associated concerns in Glen Burnie, Md., and Norfolk, Va., engaged in selling prefabricated shell houses consisting only of foundation, exterior walls, roof, and studs for interior partitions, to cease representing falsely in newspaper advertising and in illustrated

1092 .

Complaint

promotional literature that their said homes were finished and inhabitable by purchasers.

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 Monumental Engineering Inc., a corporation, and Richard A. Brown, Thomas A. Brown and James D. Brown, individually and as officers of said corporation, and Monumental Homes Corporation, a 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 Monumental Engineering Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland, with its principal office and place of business located at the Mewshaw Building, 2 Crain Highway, NW, in the City of Glen Burnie, State of Maryland.

Respondents Richard A. Brown, Thomas A. Brown and James D. Brown are individuals and are officers of the said Monumental Engineering Inc. They formulate, direct and control the acts and practices of the said corporate respondent, including the acts and practices hereinafter set forth. Their address is the same as that of the said Monumental Engineering Inc.

Respondent Monumental Homes Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Virginia, with its principal office and place of business located at 991 South Military Highway in the City of Norfolk, State of Virginia.

Respondent Monumental Homes Corporation is the wholly-owned subsidiary of the said Monumental Engineering Inc.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of prefabricated shell homes to the public.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said product, when sold, to be shipped from their place of business and factory in the State of Maryland 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 products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business, and for the purpose of inducing the sale of their said homes, respondents have made certain statements and pictorial representations with respect to the extent or degree to which said homes are completed, in newspaper advertisements and in promotional literature mailed to prospective purchasers.

The following statements and representations are illustrative and typical of those contained in said newspaper advertisements:

(a) Lot Owners! . . . Only \$3995 for a Three Bedroom Rancher . . . If you are tired of renting—don't want to live in crowded conditions, and you own your own lot or can acquire one, call or write us today!!!! And with no red tape you start owning and living in your own home now! . . . constructed including foundation . . . your home paid for in 7 yrs. or less . . .

Pictured in said advertisement is an attractive, fully constructed house of ample proportions.

(b) Lot Owners buy now! Begin to enjoy your home this summer stop paying rent . . .! Only \$3,995 for a 48 ft. Rancher completely erected including foundation . . .

Pictured in said advertisement is an attractive, fully constructed house of ample proportions.

(c) Message to all lot owners! . . . buy a Monumental Home . . . Only \$3,995 constructed including foundation as shown. A 48 foot Rancher constructed including foundation. *ALL THIS FOR NO MONEY DOWN!* And your home is completely paid for in 7 yrs. or less! . . .

Pictured in said advertisement is an attractive, fully constructed house of ample proportions.

In the promotional literature sent by respondents to prospective purchasers who make inquiry pursuant to the foregoing and other advertisements, there are cutaway pictures of homes and pictures of completed homes and various representations such as the following:

. . . Foundation installed . . . Homes completely erected . . . Homes meet all building codes . . . Brass Hardware throughout . . . From Maine to the Carolinas! Hundreds of magnificent Monumental Homes are providing gracious family living comfort and security to discriminating property owners like yourselves!

PAR. 5. Through the use of the aforesaid statements, representations and pictures, respondents represent that their said homes, as offered at the aforestated prices, are constructed, completed and finished to such an extent or degree as to be inhabitable by the purchasers thereof.

PAR. 6. Said statements, representations and pictures are false, misleading and deceptive. In truth and in fact said homes, as offered at the aforestated prices, are not constructed, completed and finished to such an extent or degree as to be inhabitable by the purchasers thereof. Said houses are only shells and consist of little more than the foundation, exterior walls, roof and studs for inte-

rior partitions. They do not include flooring, sub-flooring, wiring, plumbing, heating, interior trim and finish and various other requisite and expensive components necessary to make the houses inhabitable.

PAR. 7. In the conduct of their business, at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of prefabricated houses of the same general kind and nature as those sold by respondents.

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

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

Mr. Terral A. Jordan for the Commission.

Rollins, Smalkin, Weston & Andrew, by *Mr. Edward C. Mackie*, of Baltimore, Md., for respondents.

INITIAL DECISION BY EDGAR A. BUTTLE, HEARING EXAMINER

On December 29, 1960, the Federal Trade Commission issued its complaint against the above-named respondents charging them with violating the provisions of the Federal Trade Commission Act in connection with the advertising, offering for sale, sale and distribution of prefabricated shell homes. On February 9, 1961, the respondents and counsel supporting the complaint entered into an agreement containing a consent order to cease and desist in accordance with section 3.25(a) of the Rules of Practice and Procedure of the Commission. On March 6, 1961, the parties entered into a supplemental agreement.

Under the foregoing agreements, the respondents admit the jurisdictional facts alleged in the complaint and agree, among other

things, that the cease and desist order there set forth may be entered without further notice and shall have the same force and effect as if entered after a full hearing. The agreements include a waiver by the respondents of all rights to challenge or contest the validity of the order issuing in accordance therewith; and recites that the said agreements shall not become a part of the official record unless and until they become a part of the decision of the Commission, and that they are for settlement purposes only, do not constitute an admission by the respondents that they have violated the law as alleged in the complaint, and that said complaint may be used in construing the terms of the order. The hearing examiner finds that the content of the said agreements 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 agreements for consent order, and it appearing that said agreements provide for an appropriate disposition of this proceeding, the aforesaid agreements are hereby accepted and are 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 agreements, the hearing examiner makes the following jurisdictional findings and order:

1. Respondent Monumental Engineering Inc., 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 Mewshaw Building, 2 Crain Highway, N.W., in the City of Glen Burnie, State of Maryland.

Respondents Richard A. Brown, Thomas A. Brown and James D. Brown are individuals and are officers of the said Monumental Engineering Inc. They formulate, direct and control the acts and practices of the said corporate respondent. Their address is the same as that of the said Monumental Engineering Inc.

Respondent Monumental Homes Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Virginia, with its principal office and place of business located at 991 South Military Highway in the City of Norfolk, State of Virginia. Respondent Monumental Homes Corporation is the wholly-owned subsidiary of the said Monumental Engineering Inc.

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 un-

1092

Complaint

der the Federal Trade Commission Act, and this proceeding is in the interest of the public.

ORDER

It is ordered, That respondents Monumental Engineering Inc., a corporation, and its officers, and Richard A. Brown, Thomas A. Brown and James D. Brown, individually and as officers of said Monumental Engineering Inc., and Monumental Homes Corporation, a corporation, and its officers, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of houses or other buildings or structures in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or indirectly, that said products are constructed, finished or completed to any degree or extent greater than is the fact or include any parts of components not actually included therein.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 13th day of June, 1961, 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

ROBERT M. BENT CO., INC.

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

Docket 8282. Complaint, Jan. 27, 1961—Decision, June 13, 1961

Consent order requiring a Boston, Mass., manufacturer to cease violating the Wool Products Labeling Act by labeling and invoicing as "85% cashmere, 15% wool", woolen stocks which contained a substantial quantity of other fibers than cashmere and wool, and by failing to label certain wool products as required.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and by virtue of the

authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Robert M. Bent Co., Inc., a corporation, hereinafter referred to as respondent, has 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 Robert M. Bent Co., Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts, with its principal office and place of business located at 326 Congress Street, Boston, Massachusetts.

PAR. 2. Subsequent to the effective date of the Wool Products Labeling Act of 1939, and more especially since 1954, respondent has manufactured for introduction into commerce, offered for sale in commerce, sold, transported, distributed, delivered for shipment, and introduced into 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 respondent within the intent and meaning of Section 4(a)(1) of the Wool Products Labeling Act and the Rules and Regulations promulgated thereunder in that they were falsely and deceptively labeled or tagged with respect to the character and amount of the constituent fibers contained therein.

Among such misbranded wool products were woolen stocks, labeled or tagged by respondent as "85% cashmere, 15% wool," whereas in truth and in fact said products contained a substantial quantity of fibers other than cashmere and wool.

PAR. 4. Certain of said wool products were further misbranded by respondent 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. Respondent, in the course and conduct of its business, as aforesaid, was and is in competition in commerce with other individuals, corporations, and firms likewise engaged in the manufacture and sale of wool products.

PAR. 6. The acts and practices, as set forth herein 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.

PAR. 7. In the course and conduct of its business, as aforesaid, respondent has made various statements concerning its products in sales invoices. Among and typical of said statements were the following:

85% cashmere, 15% wool.

PAR. 8. The aforesaid representations and statements set out in Paragraph Seven were and are false, misleading and deceptive. In truth and in fact, respondent's said products were not composed of "85% cashmere, 15% wool," but contained substantial amounts of fibers other than cashmere and wool.

PAR. 9. The acts and practices of respondent, as set out in Paragraph Seven, of falsely identifying the constituent fibers of its wool stocks, have had and now have the tendency and capacity to mislead and deceive the purchaser of said products as to the true fiber content thereof, and to misbrand products manufactured by it in which said materials were used.

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

Mr. Harry E. Middleton, Jr., for the Commission.

Mr. Benjamin Brown, of Boston, Mass., for respondent.

INITIAL DECISION BY RAYMOND J. LYNCH, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act and the Rules and Regulations made pursuant thereto, the Federal Trade Commission on January 27, 1961, issued and subsequently served its complaint in this proceeding against the above-named respondent.

On March 22, 1961, there was submitted to the undersigned hearing examiner an agreement between respondent and counsel supporting the complaint providing for the entry of 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

Order

58 F.T.C.

recites that it is for settlement by the respondent that it has violated the law as alleged in the complaint, and that the complaint may be used in construing the terms of the order.

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

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

1. Respondent Robert M. Bent Co., Inc., is a corporation existing and doing business under and by virtue of the laws of the State of Massachusetts, with its office and principal place of business located at 326 Congress Street, in the City of Boston, State of Massachusetts.

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

ORDER

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

1. Falsely or deceptively stamping, tagging, labeling or identifying such products as to the character or amount of the constituent fibers contained 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 Robert M. Bent Co., Inc., a corporation, and its officers, and respondent's representatives, agents and employees, directly or through any corporate or other

1097

Complaint

device, in connection with the offering for sale, sale or distribution of wool fibers or other merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from, directly or indirectly:

Misrepresenting in sales invoices, shipping memoranda, or in any other manner, the fiber content of said 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 13th day of June, 1961, 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

VALMELINE IMPORTS, LTD., ET AL.

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

Docket 8314. Complaint, Mar. 14, 1961—Decision, June 13, 1961

Consent order requiring New York City distributors to cease violating the Wool Products Labeling Act by tagging as "1 side 100% Wool", ladies' and men's reversible coats which contained substantially less wool than was thus represented; and by failing in other respects to comply with labeling requirements.

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 Valmeline Imports, Ltd., a corporation, and Walter Bauer, Curt Speer, Eugene J. Nelkens and Werner Gelleski, 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 Wool Products Labeling Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest,

Complaint

58 F.T.C.

hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Valmeline Imports, Ltd., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York. Respondents Walter Bauer, Curt Speer, Eugene J. Nelkens and Werner Gelleski are officers of the corporate respondent. They formulate, direct and control the acts, policies and practices of the corporate respondents, including the acts and practices hereinafter referred to. All respondents have their office and principal place of business at 512 Seventh Avenue, New York 18, New York.

PAR. 2. Subsequent to the effective date of the Wool Products Labeling Act of 1939, and more especially since January 1, 1959, respondents have introduced into commerce, sold, transported, distributed, delivered for shipment and offered for sale in commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939, wool products as "wool products" are defined therein.

PAR. 3. Certain of said wool products were misbranded by respondents, within the intent and meaning of Section 4(a)(1) of the Wool Products Labeling Act and the Rules and Regulations promulgated thereunder, in that they were falsely and deceptively labeled or tagged with respect to the character and amount of the constituent fibers contained therein.

Among such misbranded wool products were ladies' and men's reversible cloth coats labeled or tagged by respondents a "1 side 100% Wool", whereas, in truth and in fact, said products contained substantially less wool than was represented.

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

PAR. 5. Respondents, in the course and conduct of their business as aforesaid, were and are in substantial competition in commerce with corporations, firms and individuals likewise engaged in the sale of products of the same general kind and nature as those sold by respondents.

PAR. 6. The acts and practices of respondents, as set forth in Paragraphs Three and Four 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

1101

Decision

competition, in commerce, within the intent and meaning of the Federal Trade Commission Act.

Mr. Charles W. O'Connell supporting the complaint.

Mr. Werner Gallecki, of New York, N.Y., for respondents.

INITIAL DECISION OF JOHN LEWIS, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on March 14, 1961, charging them with having violated the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, and the Federal Trade Commission Act, through the misbranding of certain wool products. After being served with said complaint, respondents appeared by counsel and entered into an agreement containing consent order to cease and desist dated April 12, 1961, purporting to dispose of all of this proceeding as to all parties. Said agreement, which has been signed by all respondents, by counsel for said respondents and by counsel supporting the complaint, and approved by the Director and Assistant Director of the Commission's Bureau of Litigation, has been submitted to the above-named hearing examiner for his consideration, in accordance with Section 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings.

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

This proceeding having now come on for final consideration on the complaint and the aforesaid agreement containing consent order, and it appearing that the order provided for in said agreement covers all of the allegations of the complaint and provides for an

Order

58 F.T.C.

appropriate disposition of this proceeding as to all parties, said agreement is hereby accepted and is ordered filed upon this decision's becoming the decision of the Commission pursuant to 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 Valmeline Imports, Ltd. 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 512 Seventh Avenue, in the City of New York, State of New York.

Respondents Walter Bauer, Curt Speer, Eugene J. Nelkens and Werner Galleski are officers of the corporate respondent. They formulate, direct and control the acts, policies and practices of the corporate respondent. Their address is the same as that of the corporate respondent.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents hereinabove named. The complaint states a cause of action against said respondents under the Wool Products Labeling Act of 1939 and the Federal Trade Commission Act, and this proceeding is in the interest of the public.

ORDER

It is ordered, That Valmeline Imports, Ltd., a corporation, and its officers, and Walter Bauer, Curt Speer, Eugene J. Nelkens and Werner Galleski, 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 offering for sale, sale, transportation, distribution, or delivery for shipment in commerce, as "commerce" is defined in the Federal Trade Commission Act and in the Wool Products Labeling Act of 1939, of woolen coats or other "wool products," as such products are defined in and subject to said Wool Products Labeling Act, do forthwith cease and desist from misbranding such products by:

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

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

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 13th day of June 1961, 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

AMERICAN CONTACT LENS LABORATORIES, INC., ET AL.

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

Docket 7954. Complaint, June 16, 1960—Decision, June 14, 1961

Consent order requiring sellers of contact lenses in Detroit, Mich., to cease representing falsely in advertising in newspapers, by television, and otherwise, that their contact lenses could be worn all day without discomfort by anyone needing visual correction, that they would correct all defects of vision, and that eyeglasses could be discarded upon their purchase.

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 American Contact Lens Laboratories, Inc., a corporation, and Eli Shapiro, Earl W. Bartlett, Philip Nolish, and Arthur Shapiro, individually and as officers of said corporation, hereinafter referred to as respondents, are in violation 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 American Contact Lens Laboratories, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Michigan with its main office and principal place of business located at 1710 Book Building, Washington Boulevard at Grand River in the City of Detroit, State of Michigan.

Complaint

58 F.T.C.

Eli Shapiro, Earl W. Bartlett, Philip Nolish and Arthur Shapiro are officers of the corporate respondent. These individuals direct, formulate and control the acts, practices and policies of the corporate respondent. Their business address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising and in the sale to the public of corneal contact lenses known as "Natura" contact lenses. Contact lenses are designed to correct errors and deficiencies in the vision of the wearer and are devices, as "device" is defined in the Federal Trade Commission Act.

PAR. 3. In the course and conduct of their aforesaid business, respondents have disseminated, and have caused the dissemination of, advertisements concerning their said device, by the United States mail 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 by means of circulars and pamphlets and television broadcasts, for the purpose of inducing, and which were likely to induce, the purchase of the said devices; and respondents have also disseminated, and caused the dissemination of, advertisements concerning their products by various means, including but not restricted to the aforesaid media, for the purpose of inducing and which were and are likely to induce, directly and indirectly, the purchase of their said devices in commerce, as "commerce" is defined in the Federal Trade Commission Act.

Among and typical, but not all inclusive, of the statements contained in advertisements, disseminated and caused to be disseminated as aforesaid, are the following:

Ideal For All Age Groups.

The answer for active youngsters, athletes and people on the go who have to tolerate the burden or the unsightliness of thick heavy lenses. Wonderful for older folks who require bi-focals.

At last a contact lens has been perfected with you in mind. It's invisible comfortable * * *

All day comfort and an exciting new life for you without glasses.

* * * Cancel out of your life all of the discomforts, embarrassments, and inconveniences of wearing glasses. * * * Broken or lost glasses right at the time when you need them most.

PAR. 4. By and through the statements made in said advertisements, and others of a similar import not specifically set out herein, respondents represent and have represented, directly and by implication, that:

1. All persons in need of visual correction can successfully wear their contact lenses.

2. Their contact lenses will correct all defects of vision, including those which require the use of bifocal lenses.
3. There is no discomfort in wearing their contact lenses.
4. Said contact lenses can be worn all day without discomfort.
5. Eyeglasses can be discarded upon the purchase of their contact lenses.

PAR. 5. The statements contained in the aforesaid advertisements are misleading in material respects and constitute "false advertisements", as that term is defined in the Federal Trade Commission Act. In truth and in fact:

1. A significant number of persons cannot successfully wear respondents' contact lenses.
2. Respondents' contact lenses will not correct all defects in vision.
3. Respondents' contact lenses will not correct defects in vision in all cases requiring bifocal lenses.
4. Practically all persons will experience some discomfort when first wearing respondents' contact lenses. In a significant number of cases discomfort will be prolonged and in some cases will never be overcome.
5. Many persons cannot wear respondents' contact lenses all day without discomfort, and no person can wear said lenses all day in complete comfort until he or she has become fully adjusted thereto.
6. Eyeglasses cannot always be discarded upon the purchase of respondents' contact lenses.

PAR. 6. 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.

Mr. Frederick McManus for the Commission.

Mr. Frank M. Polasky, of Saginaw, Mich., for respondents.

INITIAL DECISION BY HERMAN TOCKER, HEARING EXAMINER

The complaint in this proceeding, issued June 16, 1960, charged the respondents, American Contact Lens Laboratories, Inc., a corporation located at 1710 Book Building, Washington Boulevard at Grand River, Detroit, Michigan, and Earl W. Bartlett, Philip Nolish, Eli Shapiro and Arthur Shapiro, individually and as officers of said corporation, with disseminating and causing to be disseminated in commerce misleading and false advertisements as to

the uses, performance, effects and benefits of, by, and to be derived from, corneal contact lenses sold by them in commerce, all in contravention of the Federal Trade Commission Act. Earl W. Bartlett's business address is the same as that of the corporate respondent, but Philip Nolish is now located at 116 South Washington Avenue, in Saginaw, Michigan, and Eli Shapiro and Arthur Shapiro are now located at 118 Kearsley Street, Flint, Michigan.

After the issuance of the complaint, respondents (with the advice of their attorney) and counsel in support of the complaint entered into an agreement containing a consent order to cease and desist, disposing of all the issues as to all parties in this proceeding. It appears from said agreement and from papers submitted therewith, that respondents Philip Nolish, Eli Shapiro and Arthur Shapiro are no longer officers or stockholders of the corporate respondent, they having severed their connections therewith and sold all their stock therein to Earl W. Bartlett on or about August 5, 1959. It appears also from said agreement that Eli Shapiro and Arthur Shapiro are the same persons as are named in a cease and desist order heretofore issued against them in a prior case before the Commission, which order prohibits all the practices set forth in the complaint herein except those for which provision is made against them in the consent order herein. The agreement provides, therefore, that the complaint be dismissed as to Philip Nolish, Eli Shapiro, and Arthur Shapiro as officers of the corporate respondent and as to Eli Shapiro and Arthur Shapiro as to all parts thereof except that for which such provision is made in the said consent order.

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

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

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

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

ORDER

It is ordered, That respondents American Contact Lens Laboratories, Inc., a corporation, and its officers, and Earl W. Bartlett, individually and as an officer of said corporation, and Philip Nolish, individually, and said respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of contact lenses, 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 by implication, that:

(a) All persons in need of visual correction can successfully wear respondents' contact lenses.

(b) Their contact lenses will correct all defects in vision.

(c) Their contact lenses will correct defects in vision in all cases which require bifocal lenses.

(d) There is no discomfort in wearing said lenses.

(e) All persons can wear said lenses all day without discomfort; or that any person can wear said lenses all day without discomfort except after that person has become fully adjusted thereto.

(f) Eyeglasses can always be discarded upon the purchase of respondents' lenses.

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

It is further ordered, That respondents Eli Shapiro and Arthur Shapiro, individually, and their representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of contact lenses, 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 by implication, that their contact lenses will correct defects in vision in all cases which require bifocal lenses.

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

It is further ordered, That the complaint, except as to Paragraph Four 2, as it relates to respondents Eli Shapiro and Arthur Shapiro, individually and as officers of the corporate respondent and as to Paragraph Four 2, as officers of the corporate respondent, be and the same hereby is, dismissed and that the complaint insofar as it relates to respondent Philip Nolish as an officer of the corporate respondent, be, and the same hereby is, dismissed.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the Hearing Examiner shall, on the 14th day of June, 1961, 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

MONTGOMERY WARD & CO., INC.

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

Docket 8200. Complaint, Dec. 6, 1960—Decision, June 14, 1961

Consent order requiring a large Chicago mail order retailer, to cease making deceptive price and savings claims for its automobile tires, parts, and accessories, through such practices as setting out as "list prices" in newspaper advertisements, amounts substantially in excess of actual retail prices, and representing the difference between such "list" prices and the advertised sale prices as savings for the buyer.

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 Montgomery Ward & Co., Inc., a corporation, hereinafter referred to as respondent, has violated the provisions of said Act, and it appearing 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 Montgomery Ward & Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal place of business located at 619 West Chicago Avenue, Chicago, Illinois.

PAR. 2. Respondent is now, and for some years last past has been, engaged in the advertising, offering for sale and sale of many articles of merchandise, including automobile tires.

PAR. 3. In the course and conduct of its business, respondent now causes, and for some time last past has caused, said merchandise, including its automobile tires, when sold, to be shipped from its place of business in Chicago, Illinois to purchasers thereof located in other States of the United States and in the District of Columbia. Respondent also maintains retail stores in various States of the United States, including the States of Maryland and Virginia. Respondent in some instances causes said automobile tires to be shipped from the manufacturer thereof to these retail stores, while in other instances respondent causes said tires to be shipped from its warehouses located in various states to said retail stores located in other states, and maintains, and at all times mentioned herein has maintained, a substantial course of trade in said tires in com-

Complaint

58 F.T.C.

merce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of its business as aforesaid and for the purpose of inducing the purchase of its said tires in commerce, respondent has engaged in the practice of using fictitious retail prices in advertisements published in various newspapers. Among and typical of such practice, but not all inclusive thereof, are the following statements:

Nylon 64 Blackwalls—tubeless			Tube-type	
Size	List price each before trade-in plus excise tax	Sale price with trade-in plus excise tax	List price each before trade-in plus excise tax	Sale price with trade-in plus excise tax
6.70-15.....	27.10	20.88	25.25	17.88
7.10-15.....	29.50	22.88	27.75	20.88
7.60-15.....	31.95	23.88	29.75	22.28
7.50-14.....	27.10	20.88		
8.00-14.....	29.50	22.88		
Only \$3.00 more buys a whitewall in your size.				
Air cushion tubeless black			Tube-type—black	
Size	List price each before trade-in plus excise tax	Sale price with trade-in plus excise tax	List price each before trade-in plus excise tax	Sale price with trade-in plus excise tax
6.70-15.....	22.15	16.88	19.95	12.88
7.10-15.....	26.95	18.88	23.95	16.48
7.60-15.....	29.95	20.88	26.65	18.88
7.50-14.....	22.15	16.88		
8.00-14.....	26.95	18.88		
\$3.00 more buys a whitewall in your size.				

PAR. 5. Through the use of the aforesaid statements, and others similar thereto but not included herein, respondent represented, directly or by implication:

1. That the amounts set out under "list prices" were the prices at which the merchandise advertised had been usually and customarily sold at retail by respondent in the recent regular course of business.
2. That purchasers of the tires advertised were afforded savings of the differences between higher "list prices" and the advertised sales prices.

PAR. 6. The aforesaid statements and representations were, and are, false, misleading and deceptive.

1. The amounts set out under "list prices" were substantially in excess of the prices at which the advertised merchandise had been usually and customarily sold at retail by respondent in the recent regular course of business.

2. Purchasers of the advertised tires were not afforded savings of the differences between the "list prices" and the advertised sales prices.

PAR. 7. In the conduct of its business, at all times mentioned herein, respondent has been in substantial competition, in commerce, with corporations, firms and individuals in the sale of automobile tires.

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

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

Mr. John W. Brookfield, Jr. for the Commission.

Mr. D. L. Dickson of Chicago, Ill., for respondent.

INITIAL DECISION BY WALTER R. JOHNSON, HEARING EXAMINER

In the complaint dated December 6, 1960, the respondent is charged with violating the provisions of the Federal Trade Commission Act.

On April 7, 1961, the respondent 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 effects 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, does not constitute an admission by the respondent that it has violated

Order

58 F.T.C.

the law as alleged in the complaint, and that said complaint may be used in construing the terms of the order.

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

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

1. Respondent Montgomery Ward & Co., Inc. 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 619 West Chicago Avenue, in the City of Chicago, State of Illinois.

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

ORDER

It is ordered, That respondent Montgomery Ward & Co., Inc., a corporation, and its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of automobile tires, automotive parts and automotive accessories in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that any amount is respondent's usual and customary retail price of said products when such amount is in excess of the price at which said products have been usually and customarily sold at retail by respondent in the recent regular course of its business.

2. Representing, directly or by implication, that any saving is afforded in the purchase of said products unless the price at which they are offered constitutes a reduction from the price at which such products have been usually and customarily sold by respondent in the recent regular course of its business.

3. Misrepresenting in any manner the amount of savings available to purchasers of respondent's said products, or the amount by which the price of said products is reduced from the price at

1111

Complaint

which said products have been regularly and customarily sold by respondent in the recent regular course of business.

4. Using the word "list" in connection with the price of said products unless it is the price at which said products have been usually and customarily sold by respondent in the recent regular course of its business.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 14th day of June 1961, 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

ACME SPARKLER & SPECIALTY COMPANY ET AL.

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

Docket 8288. Complaint, Feb. 13, 1961—Decision, June 14, 1961

Consent order requiring a River Grove, Ill., distributor of fireworks to cease representing falsely that foreign-made products were domestic, through such practices as packaging a Japanese import known as "Black Python Snake" in cartons either printed with the words "Made in U. S. A." or not adequately marked to inform purchasers of its foreign origin.

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 Acme Sparkler & Specialty Company, a corporation, and Harry Callen and Lawrence Callen, individually and as officers of said corporation, also doing business as Acme Specialties 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 Acme Sparkler & Specialty Company is a corporation organized, existing and doing business under and

by virtue of the laws of the State of Illinois. Respondents Harry Callen and Lawrence Callen are individuals and are officers of said corporate respondent. The said individual respondents also do business as Acme Specialties Corporation. The individual respondents formulate, direct and control the policies, acts and practices of the corporate respondent, including the acts and practices herein-after set forth.

Respondents' office and principal place of business is located at 2000 North River Road, River Grove, Illinois.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of celebration fireworks and other products to jobbers and retailers, one of which, known as "Black Python Snake", is imported from Japan.

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

PAR. 4. In the course and conduct of their business, respondents sell and distribute, to jobbers and retailers, their "Black Python Snake", which is imported from Japan. When said product is offered for sale or sold it has been packaged in cartons which have printed thereon "Made in U.S.A." or in cartons which are not sufficiently labeled or adequately marked to inform the purchasing public that such product is of foreign origin.

PAR. 5. When imported products are offered for sale and sold in the channels of trade in commerce throughout the United States, they are purchased and accepted as and for, and are taken to be, products of domestic manufacture and origin, unless the same are labeled and marked in a manner which informs the purchasers that said products are of foreign origin.

A substantial portion of the purchasing public has a preference for products, including fireworks, which are wholly of domestic manufacture or origin, as distinguished from products of foreign manufacture or origin.

PAR. 6. Respondents, by placing their said products in the hands of jobbers and retailers, provide said jobbers and retailers a means and instrumentality whereby they may mislead and deceive the purchasing public as to the place of origin of said products.

PAR. 7. Respondents, in the course and conduct of their business, are in substantial competition, in commerce, with corporations, firms and individuals engaged in the sale of products of the same kind and nature as those sold by respondents, including products of both domestic and foreign origin.

PAR. 8. The practice of respondents, as aforesaid, in offering for sale, selling and distributing their said product without marking the product or the cartons in which it is packed to indicate to purchasers that said product is of Japanese or other foreign origin, has had, and now has, the tendency and capacity to mislead and deceive purchasers or members of the buying and consuming public into the false and erroneous belief that said product is wholly of domestic manufacture and origin and into the purchase of substantial quantities of such product in reliance upon such erroneous belief. As a result thereof, substantial trade in commerce has been unfairly diverted to respondents from their competitors and substantial injury has been, and is being, done to competition in commerce.

PAR. 9. 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 constitute unfair methods of competition and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

Mr. William A. Somers for the Commission.

Mr. Lawrence Callen, of River Grove, Ill., for respondents.

INITIAL DECISION BY HERMAN TOCKER, HEARING EXAMINER

The complaint in this proceeding, issued February 13, 1961, charged the respondents, Acme Sparkler & Specialty Company (a corporation organized under the laws of the State of Illinois), and its officers Harry Callen and Lawrence Callen, individually and as officers thereof, and also as doing business under the firm name of Acme Specialties Corporation, all of 2000 North River Road, River Grove, Illinois, with violation of the Federal Trade Commission Act by misdescribing and failing to disclose and identify the country of origin of goods advertised and offered for sale and sold and distributed by them in commerce.

After the issuance of the complaint, respondents (with the advice of their attorney), and counsel supporting the complaint entered into an agreement, containing consent order to cease and desist, disposing of all the issues as to all parties to this proceeding.

Order

58 F.T.C.

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 rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance therewith.

Respondents agreed further 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 provide for an appropriate disposition of this proceeding, the same is hereby accepted and, upon becoming part of the Commission's decision in accordance with Sections 3.21 and 3.25 of the Rules of Practice, shall be filed; and, in consonance with the terms thereof, the hearing examiner finds that the Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents named herein, and that this proceeding is in the interest of the public, and issues the following order:

ORDER

It is ordered, That respondents Acme Sparkler & Specialty Company, a corporation, trading and doing business under its own name or under the name of Acme Specialties Corporation, or under any other name, and its officers, and Harry Callen and Lawrence Callen, individually and as officers of said Acme Sparkler & Specialty Company, and respondents' representatives, agents and employees, directly or through any corporate or other devices, in connection with the offering for sale, sale or distribution of fireworks,

1115

Syllabus

or of any other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or indirectly, in advertising or in labeling that products manufactured in Japan or in any other foreign country are manufactured in the United States.

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

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

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 14th day of June, 1961, 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

JACK M. RAWLINGS, JR., TRADING AS
MEREDITH MILLING COMPANY, ETC.

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

Docket 8142. Complaint, Oct. 13, 1960—Decision, June 15, 1961

Consent order requiring an individual proprietor of a feed mill at McComb, Miss., a substantial factor in the animal feed business in Mississippi and Louisiana, and also engaged as a broker in the sale of cottonseed meal and hulls, soybean meal, and related products, to cease receiving illegal brokerage fees in violation of Sec. 2(c) of the Clayton Act by making, in his milling capacity, substantial purchases of said products on which he received, as broker, a percentage of the net sales price as commission.

Complaint

58 F.T.C.

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(c) of Section 2 of the Clayton Act as amended (U.S.C., Title 15, Section 13), hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent Jack M. Rawlings, Jr., is an individual, trading as Meredith Milling Company and as J. M. Rawlings, Jr., Broker, with principal office and place of business located at McComb, Mississippi. For some years past respondent has been sole proprietor of Meredith Milling Company, a feed mill engaged in the sale of animal feed to customers in Mississippi and Louisiana. Meredith Milling Company is a substantial factor in the animal feed business, with a sales volume of approximately \$280,000 annually. Since 1959 respondent has also been trading as J. M. Rawlings, Jr., Broker, in which capacity respondent negotiates the sale of cottonseed meal, cottonseed hulls, soybean meal and related products for and on behalf of various seller-principals and in connection therewith receives a commission or brokerage fee paid by said seller-principals.

PAR. 2. In the course and conduct of his business for several years past, respondent has purchased and is now purchasing cottonseed meal, cottonseed hulls, soybean meal and related products in commerce, as "commerce" is defined in the aforesaid Clayton Act, from sellers located in states of the United States other than the state in which respondent is located and has resold substantial quantities of such products to customers likewise located in states other than the state in which respondent is located. Said respondent transports or causes such products, when purchased or resold, to be transported from the places of business of his respective suppliers to his own place of business, or from his own place of business to the places of business of his customers, located in various other states of the United States. Thus there has been at all times mentioned herein a continuous course of trade in commerce, in said products, across state lines between respondent and his suppliers, and between respondent and his customers.

PAR. 3. In the course and conduct of his business in commerce, as aforesaid, respondent, trading as Meredith Milling Company, has made and is now making substantial purchases of cottonseed meal, cottonseed hulls, soybean meal and related products from various suppliers and sellers, on which purchases respondent, trading as

1119

Decision

J. M. Rawlings, Jr., Broker, has received and accepted, and is now receiving and accepting, directly or indirectly, something of value as a commission, or an allowance or discount in lieu thereof, from said suppliers and sellers. These rates of commission, brokerage fees, or allowances or discounts in lieu thereof are a certain percentage of the net sales price of said products, as agreed upon between respondent and the sellers and suppliers of said products.

PAR. 4. The acts and practices of respondent in making substantial purchases for his own account and receiving and accepting in connection therewith commissions, brokerage fees, or allowances or discounts in lieu thereof, as alleged herein, are in violation of subsection (c) of Section 2 of the Clayton Act, as amended (U.S.C. Title 15, Section 13).

Mr. John Perry supporting the complaint.

Mr. Jack M. Rawlings, Jr., Pro Se.

INITIAL DECISION BY WALTER K. BENNETT, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondent on October 13, 1960 charging him with violation of subsection (c) of Section 2 of the Clayton Act in accepting commissions or allowances in lieu thereof on purchases in commerce of cottonseed meal, cottonseed hulls, soybean meal and related products.

On March 27, 1961 counsel submitted to the undersigned hearing examiner an agreement dated March 18, 1961, between respondent and counsel supporting the complaint, providing for the entry without further notice of a consent order. The agreement was duly approved by the Director of the Bureau of Litigation.

The hearing examiner finds that said agreement includes all of the provisions required by Section 3.25(b) of the Rules of the Commission, that is:

A. An admission by respondent of all jurisdictional facts alleged in the complaint.

B. Provisions that:

1) The complaint may be used in construing the terms of the order;

2) The order shall have the same force and effect as if entered after a full hearing;

3) 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;

Order

58 F.T.C.

- 4) The entire record on which any cease and desist order may be based shall consist solely of the complaint and the agreement;
- 5) The order may be altered, modified, or set aside in the manner provided by statute for other orders.

C. Waivers of:

- 1) The requirement that the decision must contain a statement of findings of fact and conclusion of law;
- 2) Further procedural steps before the hearing examiner and the Commission.

In addition the agreement contains the following permissive provisions: A waiver by the respondent of any right to challenge or contest the validity of the order entered in accordance with the agreement, and a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that he has violated the law as alleged in the complaint.

Having considered said agreement including the proposed order and being of the opinion that it provides an appropriate basis for settlement and disposition of this proceeding, the hearing examiner hereby accepts the agreement but orders that it shall not become a part of the official record unless and until it becomes a part of the decision of the Commission.

The following jurisdictional findings are made and the following order issued:

1. Respondent Jack M. Rawlings, Jr., is an individual, trading as Meredith Milling Company and as J. M. Rawlings, Jr., Broker, with principal office and place of business located at McComb, Mississippi.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent.

ORDER

It is ordered, That respondent Jack M. Rawlings, Jr., an individual trading as Meredith Milling Company and as J. M. Rawlings, Jr., Broker, or under any other name or names, and respondent's agents, representatives and employees, directly or through any corporate or other device, in connection with the purchase of cottonseed meal, cottonseed hulls, soybean meal, or any other products, in commerce, as "commerce" is defined in the Clayton Act, as amended, do forthwith cease and desist from:

Receiving or accepting, directly or indirectly, from any seller, anything of value as a commission, brokerage or other compensation, or any allowance or discount in lieu thereof, upon or in connection

1119

Syllabus

with any purchase or such products for respondent's own account, or where respondent is the agent, representative or other intermediary acting for or in behalf, or is subject to the direct or indirect control, of any buyer.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

The Commission having considered the initial decision of the hearing examiner filed April 7, 1961, wherein he accepted an agreement containing a consent order to cease and desist theretofore executed by respondent and counsel in support of the complaint; and

It appearing that the initial decision erroneously characterizes one of the provisions of the consent agreement which is made mandatory by §3.25 of the Commission's Rules of Practice as "permissive"; and the Commission being of the opinion that the error should be corrected:

It is ordered, That the initial decision be, and it hereby is, modified by striking therefrom the word "permissive" as it appears in the first line of the last paragraph on page 2.

It is further ordered, That the initial decision, as so modified, shall, on the 15th day of June, 1961, become the decision of the Commission.

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

IN THE MATTER OF

RICHARD C. PRATT, INC., DOING BUSINESS AS
PRATT FURNITURE COMPANY ET AL.CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket 8329. Complaint, Mar. 16, 1961—Decision, June 15, 1961

Consent order requiring a Spokane, Wash., furniture dealer to cease advertising falsely in newspapers and on attached labels that excessive amounts were their usual retail prices and the customary prices in their trade area for mattresses and that the sale price afforded substantial savings; that the mattresses were guaranteed for 15 years, and were "Custom crafted".

Complaint

58 F.T.C.

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 Richard C. Pratt, Inc., a corporation, doing business as Pratt Furniture Company, and Richard C. Pratt, individually and as an officer 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 Richard C. Pratt, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Washington. Respondent Richard C. Pratt is an individual and is President of said corporation. Said individual formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Both respondents' principal office and place of business is located at 215 North Post Street, Spokane, Washington.

PAR. 2. Respondents are now, and for some time last past have been, engaged in advertising, offering for sale, selling and distributing furniture products, including mattresses and bedding, at retail to members of the purchasing public. Their volume of business is substantial.

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

PAR. 4. At all times mentioned herein respondents have been, and are now, in direct and substantial competition with other corporations, firms and individuals engaged in the offering for sale, sale and distribution of like merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. In the course and conduct of their business, as aforesaid, and for the purpose of inducing the purchase of their merchandise by members of the purchasing public, respondents have made various statements in newspapers of general interstate circulation.

1123

Complaint

Among and typical of such statements, but not limited thereto, are the following:

In the Spokane "Spokesman-Review" issue of April 26, 1959:

A famous maker! A sensational purchase! 600 pieces at terrific reductions for Pratt's bedding spectacular . . . (Followed by depictions of four mattresses and springs, with the following amplifying statements:)

\$20 saving on The Duchess . . . \$29.98. (This mattress and spring as depicted bears a label showing a pre-ticketed price that is partly obliterated.)

\$25 saved on Contour Sleeper . . . \$39.98. (This mattress and spring as depicted also bears a label setting forth a partially obliterated pre-ticketed price.)

\$33 saved on Sleeping Beauty . . . \$49.98. (This mattress and spring as depicted bears a label setting forth the name Sleeping Beauty and a pre-ticketed price of \$99.50.)

\$39 saved on Super Rest DeLuxe . . . \$59.98. (This mattress and spring as depicted bears a label setting forth: "Super Rest DeLuxe \$119.50", and also bears a ribbon or streamer setting forth: "15 year guarantee".)

Sleep twice as well—for half the price. Four all-time favorites! Custom crafted! . . .

In the Spokane "Spokesman-Review" issue of November 8, 1959:

Your old bedding is worth plenty to us. Spectacular trade-in sale! Pratt's give \$30 for your old mattress & spring regardless of condition. (There is also set forth a depiction of a mattress and spring bearing a ribbon or streamer containing the following: 15 year guarantee.)

Said advertisement also sets forth what purports to be a manufacturer's label with the following:

Englander	\$109.95
Sleep Products	DeLuxe

Your old set makes full down payment.
\$79.95.

PAR. 6. Through use of the aforesaid statements and others of similar import not specifically set forth herein respondents represented, directly or indirectly, that:

(a) The specified amounts set forth in such advertisements are the usual and customary retail prices charged by respondents for such mattresses in the recent regular course of their business.

(b) Certain specified savings will be afforded to purchasers of such mattresses.

(c) Such mattresses are fully and unconditionally guaranteed for 15 years (or for other designated periods of time).

(d) Such mattresses were custom crafted or were manufactured pursuant to specifications and designs furnished to the manufacturers thereof by respondents or their customers.

(e) The amounts set forth in such advertisements are the usual and customary prices at which said merchandise is usually and

customarily sold at retail in the trade area or areas where such representations are made.

PAR. 7. The aforesaid statements and representations hereinabove set forth, as well as others of similar import not specifically referred to herein, are false, misleading and deceptive. In truth and in fact:

(a) The amounts set forth in such advertisements were in excess of the price at which respondents usually and customarily sold such mattresses in the recent regular course of their business.

(b) The specified savings will not be afforded to purchasers of respondents' mattresses since the price at which such mattresses were offered did not constitute a reduction, to the extent indicated, from the price at which respondents usually and customarily sold such mattresses in the recent regular course of their business.

(c) Respondents' guarantees are limited and conditioned in several respects, which limits and conditions are not set forth in respondents' said statements and representations. Furthermore, neither the name of the guarantor nor the manner in which he will perform under such guarantee is set forth in such statements.

(d) Respondents' mattresses were not custom crafted for many, if not all, of such mattresses were from the regular stock of certain manufacturers and suppliers and were not manufactured pursuant to specifications and designs furnished to said manufacturers and suppliers by respondents or their customers.

(e) The amounts set forth in such advertisements were substantially in excess of the prices at which the advertised products were usually and customarily sold in retail in the trade area or areas where the representations were made.

PAR. 8. In the course and conduct of their business as aforesaid, respondents have offered for sale and sold mattresses to which were affixed woven labels which set forth certain amounts or prices, thereby representing that such amounts and prices were the usual and customary prices charged by respondents for such mattresses in the recent regular course of their business.

PAR. 9. In truth and in fact, the amounts and prices set forth on such woven labels affixed to many of the said mattresses offered for sale and sold by respondents were greatly in excess of the usual and customary prices charged by respondents for such mattresses in the recent regular course of their business.

PAR. 10. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the tendency and capacity to mislead and deceive members of the purchasing public into the erroneous and mistaken

belief that said statements and representations were and are true and into the purchase of substantial quantities of respondents' products including mattresses and bedding by reason of such erroneous and mistaken belief. As a consequence thereof, substantial trade in commerce has been, and is being, unfairly diverted to respondents from their competitors and substantial injury has thereby been, and is being, done to competition in commerce.

PAR. 11. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair and deceptive acts and practices and unfair methods of competition, in commerce, within the intent and meaning of the Federal Trade Commission Act.

Mr. John J. McNally supporting the complaint.
No appearance for the respondents.

INITIAL DECISION BY WALTER K. BENNETT, HEARING EXAMINER

The complaint in this matter was issued by the Federal Trade Commission on March 16, 1961 and duly served on respondents. It charged respondents, a corporation and its president, with unfair and deceptive acts and practices and unfair methods of competition in commerce in the advertising, offering for sale, selling and distributing of furniture products including mattresses and bedding. The alleged practices included advertising of fictitious prices and savings and the issuance of misleading guarantees.

On April 14, 1961, Counsel supporting the complaint presented an agreement dated April 10, 1961 and executed by Richard C. Pratt Inc., Richard C. Pratt individually and himself which would dispose of this matter by the entry of a consent order to cease and desist the practices alleged. Said agreement and order were duly approved by the Director and the Assistant Director of the Bureau of Litigation.

The hearing examiner finds that said agreement includes all of the provisions required by Section 3.25(b) of the Rules of the Commission, that is:

A. An admission by all the respondent parties thereto of jurisdictional facts;

B. Provisions that:

1) The complaint may be used in construing the terms of the order;

2) The order shall have the same force and effect as if entered after a full hearing;

Order

58 F.T.C.

3) 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;

4) The entire record on which any cease and desist order may be based shall consist solely of the complaint and the agreement;

5) The order may be altered, modified, or set aside in the manner provided by statute for other orders;

C. Waivers of:

1) The requirement that the decision must contain a statement of findings of fact and conclusions of law;

2) Further procedural steps before the hearing examiner and the Commission.

3) Any right to challenge or contest the validity of the order entered in accordance with the agreement.

In addition the agreement contains the following permissive provision: A statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

Having considered said agreement, including the proposed order, and being of the opinion that they provide an appropriate basis for settlement and disposition of this proceeding; the hearing examiner hereby accepts the agreement but orders that it shall not become a part of the official record unless and until it becomes a part of the decision of the Commission.

The following jurisdictional findings are made and the following order issued:

1. Respondent Richard C. Pratt, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Washington, trading and doing business as Pratt Furniture Company. Respondent Richard C. Pratt is an individual and is President of said corporation. Both respondents' principal office and place of business is located at 215 North Post Street in the City of Spokane, State of Washington.

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

ORDER

It is ordered, That Richard C. Pratt, Inc., a corporation, and its officers, doing business as Pratt Furniture Company or under any other trade name or names, and Richard C. Pratt, individually or as an officer of said corporation, and respondents' representatives, agents or employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution

in commerce, as "commerce" is defined in the Federal Trade Commission Act, of furniture products including mattresses and bedding, do forthwith cease and desist from:

1. Representing, directly or by implication, that:

(a) Any amount is respondents' usual or regular retail price of merchandise when it is in excess of the price at which said merchandise has been usually or regularly sold by respondents in the recent regular course of their business.

(b) Any amount is the price of merchandise in respondents' trade area when it is in excess of the price at which said merchandise has been usually or regularly sold in said trade area.

(c) Any amount set forth in labels or price tickets attached to merchandise, or in depictions of such merchandise, or set forth in any other manner, is the usual or regular retail price of such merchandise, when such amount is in excess of the price at which such merchandise has been usually or regularly sold at retail in the trade area or areas where the representations are made.

(d) Any savings will be afforded, to purchasers of such merchandise, from respondents' advertised price unless such price constitutes a reduction from the price at which such merchandise has been usually or regularly sold by respondents in the recent regular course of their business.

(e) Any saving is afforded in the purchase of merchandise from the price in respondents' trade area unless the price at which such merchandise is offered constitutes a reduction from the price at which such merchandise has been usually or regularly sold in said trade area.

2. Representing, directly or by implication, that guarantees are unlimited or unconditional, or from utilizing the term "guarantee" or words of similar import, unless there are set forth conspicuously and in immediate conjunction therewith the nature and extent of the guarantee, the name of the guarantor, and the manner of the guarantor's performance thereunder.

3. Representing, through the use of the term "custom crafted" or other terms of similar import, that such products were manufactured pursuant to specifications and designs furnished by respondents or their customers to the manufacturer thereof prior to manufacture.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 15th day

Complaint

58 F.T.C.

of June, 1961, 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

NATIONAL TUBE CORPORATION ET AL.

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

Docket 8126. Complaint, Sept. 26, 1960—Decision, June 16, 1961

Consent order requiring South Norwalk, Conn., distributors to cease selling to dealers television tubes which were reactivated, reconditioned, or rebuilt containing used parts, without disclosing clearly on the tubes, on the carton containers, and on invoices that such was the case.

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 National Tube Corporation, a corporation, and Ernest Kochies, Frank Cooke and Milton Mitchell, 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 National Tube Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Connecticut, with its office and principal place of business located at 7 Lexington Avenue, South Norwalk, Connecticut.

Respondents Ernest Kochies, Frank Cooke and Milton Mitchell are individuals and officers of said corporation. They formulate, control and direct the policies, acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the manufacture, offering for sale, sale and distribution of television picture tubes which have been reactivated or

reconditioned, and which have been rebuilt containing used parts, to distributors for resale to the public.

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

PAR. 4. Respondents do not disclose on the tubes, on the cartons in which they are packed, on invoices, or in any other manner, that said television picture tubes are reactivated or reconditioned, or rebuilt containing previously used parts.

PAR. 5. When television tubes are reactivated or reconditioned, or rebuilt containing previously used parts, in the absence of a disclosure to the contrary, such tubes are understood to be and are readily accepted by the public as new tubes.

PAR. 6. By failing to disclose the facts as set out in Paragraph Four, respondents place in the hands of uninformed or unscrupulous dealers means and instrumentalities whereby they may mislead and deceive the public as to the nature of their said television picture tubes.

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

PAR. 8. The failure of respondents to disclose on their television picture tubes, on the cartons in which they are packed, on invoices or in any other manner, that they are reactivated or reconditioned, or rebuilt containing used parts, has had, and now has the tendency and capacity to mislead members of the purchasing public into the erroneous and mistaken belief that said picture tubes are new in their entirety and into the purchase of substantial quantities of respondents' said tubes by reason of such erroneous and mistaken belief. As a consequence thereof, substantial trade in commerce has been, and is being, unfairly diverted to respondents from their competitors and substantial injury has thereby been, and is being, done to competition in commerce.

PAR. 9. The aforesaid acts and practices of respondents, as herein alleged, were, and are, all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair and deceptive acts and practices and unfair methods of com-

petition, in commerce, within the intent and meaning of the Federal Trade Commission Act.

Mr. Michael J. Vitale supporting the complaint.

Mr. Sidney Vogel, of Norwalk, Conn., for respondents.

INITIAL DECISION OF JOHN LEWIS, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on September 26, 1960, charging them with the use of unfair and deceptive acts and practices and unfair methods of competition, in commerce, in violation of the Federal Trade Commission Act, by failing to disclose that television picture tubes manufactured and sold by them are reactivated or reconditioned, or rebuilt containing previously used parts. After being served with said complaint, respondents appeared by counsel and entered into an agreement dated February 24, 1961, containing a consent order to cease and desist purporting to dispose of all of this proceeding as to all parties. Said agreement, which has been signed by all respondents, by counsel for said respondents and by counsel supporting the complaint, and approved by the Director, Associate Director, and Assistant Director of the Commission's Bureau of Litigation, has been submitted to the above-named hearing examiner for his consideration, in accordance with Section 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings.

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

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

1130

Order

and it appearing that the order provided for in said agreement covers all of the allegations of the complaint and provides for an appropriate disposition of this proceeding as to all parties, said agreement is hereby accepted and is ordered filed upon this decision's becoming the decision of the Commission pursuant to 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 National Tube Corporation is a corporation existing and doing business under and by virtue of the laws of the State of Connecticut, with its office and principal place of business located at 7 Lexington Avenue, in the City of South Norwalk, State of Connecticut.

Respondents Ernest Kochies, Frank Cooke and Milton Mitchell are individuals and officers of said corporation. They formulate, control and direct the policies, acts and practices of the corporate respondent. Their address is the same as that of the corporate respondent.

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

ORDER

It is ordered, That respondents, National Tube Corporation, a corporation, and its officers, and Ernest Kochies, Frank Cooke and Milton Mitchell, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of television picture tubes which have been reactivated or reconditioned, or rebuilt containing used parts, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Failing to clearly disclose on the tubes, on the cartons in which they are packed, on invoices, and in advertising, that said tubes are reactivated or reconditioned, or rebuilt and contain used parts, as the case may be.

2. Placing any means or instrumentality in the hands of others whereby they may mislead the public as to the nature and condition of their television picture tubes.

Decision

58 F.T.C.

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 16th day of June 1961, 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

PLUMROSE, INC.

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

Docket 7753. Complaint, Jan. 25, 1960—Order, June 19, 1961

Order dismissing for lack of jurisdiction—because, as the wholly owned subsidiary of a Copenhagen, Denmark, packer, respondent wholesaler was a packer as defined in the Packers and Stockyards Act of 1921—complaint charging a New York City importer of Danish canned meats with granting discriminatory promotional allowances to customers in violation of Section 2(d) of the Clayton Act.

Mr. Fredric T. Suss, Mr. Timothy J. Cronin, Jr., Mr. Philip F. Zeidman and Mr. Lynn C. Paulson for the Commission.

Moynihan & Wachsmith, by Mr. Arthur Moynihan and Mr. Nicholas S. Vazzana, of New York, N.Y., for respondent.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

The complaint herein was issued on January 25, 1960, charging the Respondent with violating §2(d) of the Clayton Act as amended by the Robinson-Patman Act, by paying to favored customers promotional or advertising allowances which were not made available to all other customers on proportionally equal terms.

After counsel supporting the complaint had presented evidence at several hearings and had rested their case, counsel for the Respondent, at the hearing held on Respondent's behalf in Washing-

ton, D.C. on February 8, 1961, moved for the dismissal of the complaint herein on the ground that the Respondent is a packer, over whose alleged activities the Commission does not have jurisdiction. The motion was taken under consideration, and briefs were submitted by opposing counsel.

The evidence shows that the Respondent is a New York corporation and a wholly-owned subsidiary of P. & S. Plum, Ltd., of Copenhagen, Denmark. The evidence shows further that the parent corporation operates, in Denmark, a packing plant engaged in the canning of meat, and, through an affiliate, also operates a slaughterhouse.

The Packers and Stockyards Act, 1921, as amended, insofar as it is applicable to P. & S. Plum, Ltd., Respondent's parent corporation, defines a packer as:

* * any person engaged in the business * * * (b) of manufacturing or preparing meat or meat food products for sale or shipment in commerce * * *.

In the light of this definition, the parent corporation of the Respondent is clearly a packer.

The Respondent herein, the wholly-owned subsidiary of the Danish corporation, is, however, not engaged in the packing of meats, but is engaged in the sale and distribution at wholesale of the meats canned by its principal in Denmark and shipped to the Respondent in New York for such sale and distribution. Because of these facts and the Respondent's motion, two questions arise:

1. Is the Respondent corporation a packer within the meaning of the Packers and Stockyards Act, 1921, as amended?

2. If the Respondent corporation is a packer, does the Federal Trade Commission have jurisdiction over its acts and practices as alleged in the complaint?

The Packers and Stockyards Act, U.S.C. Title 7, § 201, sets forth definitions of various persons who are classified as packers for the purposes of that Act. The portion of § 201 applicable here is as follows:

When used in this Act—The term "packer" means any person engaged in the business * * * (d) of marketing meats, meat food products, * * in commerce; * * [if] * * (3) Any interest in such * * marketing business is owned or controlled, * * by any person engaged in any business referred to in clause * * (b) above; * *.

As we have seen hereinabove, clause (b) of the Act quoted is clearly applicable to the Respondent's parent corporation.

Order

58 F.T.C.

Since the Respondent is the wholly-owned subsidiary of a packer, according to the above definition the Respondent must itself be classified as a packer.

In 1958 the Packers and Stockyards Act and the Federal Trade Commission Act were amended to extend the jurisdiction of the Federal Trade Commission:

(3) Over all transactions in commerce in margarine or oleomargarine and over *retail* sales of meat, meat food products, livestock products in unmanufactured form, and poultry products (emphasis supplied).

The Commission interpreted the above amendments, in the Matter of Renaire Corporation (Pennsylvania), et al., Docket No. 6555, as conferring:

* * * on the Commission jurisdiction over unfair practices in commerce, in connection with all transactions by packers involving (1) commodities other than livestock, meats, meat food products, livestock products in unmanufactured form, poultry or poultry products and (2) with exceptions not here material, *retail sales* by packers of all products (emphasis supplied).

Within the meaning of this interpretation, the applicable amendment of the Federal Trade Commission Act clearly limits the Commission's jurisdiction over packers to "retail sales".

The evidence shows that the Respondent herein is not engaged in selling at retail, but is engaged exclusively in the business of selling and distributing meats at wholesale.

We must therefore conclude that the Federal Trade Commission does not have jurisdiction over the acts and practices of this Respondent as alleged in the complaint. Accordingly,

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

FINAL ORDER

The date on which the hearing examiner's initial decision would have become the decision of the Commission having been extended by order issued May 9, 1961, until further order of the Commission; and

The Commission having now determined that said initial decision is appropriate:

It is ordered, That the initial decision of the hearing examiner providing for dismissal of this proceeding for lack of jurisdiction be, and it hereby is, adopted as the decision of the Commission.

1137

Complaint

IN THE MATTER OF

REVILLON WHOLESALE, INC., ET AL.

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

Docket 8265. Complaint, Dec. 30, 1960—Decision, June 27, 1961

Consent order requiring New York City furriers to cease violating the Fur Products Labeling Act by setting forth on invoices and in advertising fictitious prices for fur products; by failing to keep adequate records on which pricing and value claims were based; by failing in other respects to comply with invoicing and advertising requirements; and by furnishing false guaranties that certain of their fur products were not misbranded, falsely invoiced, and falsely advertised.

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 Revillon Wholesale, Inc., a corporation, and Emil Wendling, Abraham Grauer, Herman Grauer, Jacques Haran, Marty Weinstein and Peter Wenzel, 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. Revillon Wholesale, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 352-354 Seventh Avenue, New York, New York.

Emil Wendling, Abraham Grauer, Herman Grauer, Jacques Haran, Marty Weinstein, and Peter Wenzel are officers of the said corporate respondent. These individuals 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.

PAR. 3. 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. 4. Certain of said fur products were falsely and deceptively invoiced in that the respondents set out on invoices certain prices of fur products which were in fact fictitious in violation of Section 5(b)(2) of the Fur Products Labeling Act.

PAR. 5. Certain of said fur products were falsely and deceptively advertised in that the respondents made representations and gave notices concerning said fur products, which representations and notices were not in accordance with the provisions of Section 5(a) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder; and which representations and notices were intended to aid, promote and assist, directly or indirectly, in the sale, and offering for sale of said fur products.

By means of said representations and notices and by means of other representations and notices of similar import and meaning not specifically referred to herein, respondents falsely and deceptively advertised fur products in that respondents thereby made representations as to the prices of fur products which prices were in fact fictitious in violation of Section 5(a)(5) of the Fur Products Labeling Act.

PAR. 6. 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. 7. Respondents furnished false guaranties that certain of their fur products were not misbranded, falsely invoiced and falsely advertised when respondents in furnishing such guaranties had reason to believe the fur products so falsely guaranteed would be introduced, sold, transported or distributed in commerce, in violation of Section 10(b) of the Fur Products Labeling Act.

PAR. 8. 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.

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

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

The Federal Trade Commission (sometimes also hereinafter referred to as the Commission) on December 30, 1960, issued its complaint herein, charging the above-named respondents with having violated the provisions of the Federal Trade Commission Act, and of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder, in certain particulars, and respondents were duly served with process.

On April 21, 1961, there was submitted to the undersigned hearing examiner of the Commission, for his consideration and approval, an "Agreement Containing Consent Order To Cease and Desist", which had been entered into by and between respondents and counsel supporting the complaint, under date of April 17, 1961, 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 Revillon Wholesale, 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 352-354 Seventh Avenue, New York, New York. Respondents Abraham Grauer, Herman Grauer, Jacques Haran, Marty Weinstein and Peter Wensel, erroneously named in the complaint as Peter Wenzel, are officers of the corporate respondent. They control, formulate and direct the acts, practices and policies of the corporate respondent. 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. It is recommended that the complaint be dismissed as to

respondent Emil Wendling, individually and as an officer of said corporation, for the reason that he is no longer an officer of said corporation and has retired from business, as is more fully set forth in the affidavit which is attached hereto and made part hereof.

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 hearing examiner approves and accepts this agreement, and finds that the Commission has jurisdiction of the subject-matter of this proceeding and of the respondents herein; that the complaint states a legal cause for complaint under the Federal Trade Commission Act, and under the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder, against all respondents except Emil Wendling, both generally and in each of the particulars alleged therein; that as to respondent Emil Wendling, the complaint herein should be dismissed, as provided for in the agreement; that this proceeding is in the interest of the public; that the order 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 Revillon Wholesale, Inc., a corporation, and its officers, and Abraham Grauer, Herman Grauer,

1137

Decision

Jacques Haran, Marty Weinstein, and Peter Wensel, 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, transportation or distribution in commerce of fur products; or in connection with the sale, advertising, offering for sale, transportation or distribution of fur products which have been made in whole or in part of fur which has been shipped and received in commerce, as "commerce", "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

A. Falsely or deceptively invoicing fur products by:

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

2. Representing, directly or by implication, on invoices that the former or regular price of any fur product is any amount which is in excess of the price at which respondents have formerly, usually or customarily sold such products in the recent regular course of business;

B. Furnishing a false guaranty that any fur or fur product is not misbranded, falsely invoiced, or falsely advertised, when the respondents have reason to believe that such fur or fur product may be introduced, sold, transported or distributed in commerce;

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

1. Represents, directly or by implication, that respondents' usual and customary 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;

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

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

It is further ordered, That the complaint herein be, and the same hereby is, dismissed as to respondent Emil Wendling, individually and as an officer of said corporation.

Complaint

58 F.T.C.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 27th day of June, 1961, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Revillon Wholesale, Inc., a corporation, and Abraham Grauer, Herman Grauer, Jacques Haran, Marty Weinstein, and Peter Wensel, erroneously named in the complaint as Peter Wenzel, 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

ILLINOIS MEN'S APPAREL CLUB, INC., ET AL.

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

Docket 8115. Complaint, Sept. 15, 1960—Decision, June 28, 1961

Consent order requiring an association of over 300 sales representatives of manufacturers and distributors, and more than 300 retailers, of men's and boys' clothing, and a second nationwide association of over 2000 retailers of the same products, to cease their planned common course of action to discourage sales of branded products to catalog and discount houses, in pursuance of which they held meetings to discuss ways and means; maintained surveillance of all catalog and discount houses to detect the appearance of branded products; reported and publicized to the membership names of manufacturers or distributors whose branded products were thus detected; sent letters to said manufacturers or distributors requesting information as to their policy regarding such sales; and urged retailer members to threaten such manufacturers and distributors with discontinuance of their patronage unless the sales were discontinued; with the result that the manufacturers and distributors discontinued sales of branded products to catalog and discount houses and competition was unreasonably lessened.

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 the parties named in the caption, and as more fully described in PARAGRAPHS ONE to SEVEN, hereof, hereinafter referred to as respondents, have violated the provisions of Section 5 of said Act, and it appear-

1142

Complaint

ing 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 Illinois Men's Apparel Club, Inc., hereinafter referred to as Illinois MAC, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois and has its office and principal place of business at 14 East Jackson Boulevard, Chicago, Illinois.

Illinois MAC is an association composed of sales representatives of manufacturers or distributors of men's and boys' clothing and furnishings and retailers engaged in the sale at retail of said products. The association, originally incorporated in Illinois on January 29, 1913, as the Illinois Retail Clothiers' Association, changed its name to that shown above by Articles of Amendment filed on April 27, 1944.

The principal purpose of the association is "to promote in every way possible, the interests of the men's and boys' clothing and furnishings business in the State of Illinois." Its membership, as of 1957, consisted of more than 300 retailers registered in their own firm names and more than 300 sales representatives, registered in their own individual names.

Respondent Pauline Day, individually and as Executive Secretary of Illinois MAC, has her place of business in the corporate offices located at 14 East Jackson Boulevard, Chicago, Illinois, and is responsible for the administration of the association's affairs including the dissemination to members, and others, of bulletins, notices and other information relative to the activities initiated, adopted or approved by the officers and directors of said association.

PAR. 2. The parties respondent, named in the caption hereof individually and as officers and directors of Illinois MAC served in those capacities during 1957 and they, as well as their predecessors and successors, directed, controlled and were responsible for the policies, acts and practices of said corporate respondent including those hereinafter alleged as subject of this complaint.

The membership of Illinois MAC consisting of retailers and sales representatives was, and is, so large, as hereinbefore alleged, as to make it impracticable to specifically name each member as a party respondent herein. The officers and directors of the corporate respondent consist of retailers and sales representatives and as such their interests are and have been co-extensive with the interests of the other members of the respective classes. The entire membership can be adequately represented by those named as representatives and,

Complaint

58 F.T.C.

therefore, those members not named specifically are made parties respondent herein as though they had been made individually.

PAR. 3. The parties respondent named in the caption hereof individually, as officers, directors and representatives of the entire membership of Illinois MAC, were, during 1957, and are now, variously located as follows:

Joseph D. Grundwag, Champion Pants Mfg. Co., Inc., 832 Merchandise Mart, Chicago 54, Ill.
Nathan Jonas, Morris B. Sachs, Inc., 6638 S. Halsted St., Chicago 21, Ill.
Jack M. Dreyfus, Lubell Bros., 1431 Lytton Bldg., Chicago 4, Ill.
Myles Spaulding, Spaulding's, 110 N. Marion, Oak Park, Ill. [Officer and Lifetime Director]
William J. Bork, The Frank H. Lee Co., Disney Hats, Inc., 914 Palmer House, Chicago 90, Ill. [Officer and Lifetime Director]
Ed Freeman, Benson Rixon Co., 230 S. State St., Chicago, Ill.
George Benson, Benson Rixon Co., 230 S. State St., Chicago, Ill.
Morley Bernhardt, Bernhardt, Inc., 202 S. Main St., Rockford, Ill.
Henry W. Bolt, Capper, 1 N. Wabash Ave., Chicago, Ill.
Jimmy Finkel, Majestic Stores, Inc., 4701 N. Broadway, Chicago 40, Ill.
Frank A. Herbert, Herbert's, 18 Public Square, Macomb, Ill.
Jack Hodnett, Al Baskin, Cass & Ottawa, Joliet, Ill.
Leo Hyman, M. Hyman & Son, 215 N. Clark St., Chicago 1, Ill.
Joe Miller, Boynton, Richards Co., 107 First St., Dixon, Ill.
David Peppercorn, Mandel Bros., State & Madison, Chicago, Ill.
Ernest O. Reaugh, Toggery, Inc., 209 W. 2nd St., Kewanee, Ill.
Dick Roberts, Roberts Brothers, 523 E. Washington, Springfield, Ill.
Stanley Salzenstein, The Schradzki Co., 213 S. Adams, Peoria 15, Ill.
Joseph J. Farber, Campus Sweater & Sportswear Co., 2231 E. 67th St., Apt. 12D, Chicago, Ill.
Perry Franks, Thomson Tailored Slacks, 5036 Conrad St., Skokie, Ill.
Herbert Johnson, Happ Bros. Co., Inc., 7022 N. Medford, Chicago 30, Ill.
John Paul Jones, Esquire Socks, 2532 W. Gunnison, Chicago 25, Ill.
Gene Judd, Anson Men's Jewelry, 904 Lytton Bldg., Chicago 4, Ill.
Wally Koranda, Cricketeer, 6618 S. Hermitage, Chicago 36, Ill.
Mac Lewis, Esquire Sportswear Co., 200 5th Ave., New York 10, New York.
Vince McDonald, H. A. Seinsheimer Co., 1101 Lytton Bldg., Chicago 4, Ill.
Robert D. Newell, Nunn Bush Shoe Co., 1321 Elmwood Ave., Deerfield, Ill.
Irving Rosenthal, Wembley, Inc., 866 Merchandise Mart, Chicago 54, Ill.
Al Sobel, Lido Shirt Corp., 29570 Gilchrist, Farmington, Mich.
Jerry Solomon, Petrocelli Clothes, 1406 Lytton Bldg., Chicago 4, Ill.
Bill Doran, W. B. Doran Co., 109 N. Main St., Rockford, Ill.
Ed Farrell, Mallory Hat Co., 6422 N. Magnolia, Chicago, Ill.
Michael G. Gottlieb, Merrill-Sharpe, Ltd., 16 Island Ave., Belle Isle, Miami Beach, Fla.
A. E. Kerger, Plant-Kerger Co., 175 E. Court Street, Kankakee, Ill.
Albert Myers, Myers Brothers, 5th & Washington, Springfield, Ill.
"Deke" Ridenour, Baskin Clothing, 137 S. State St., Chicago, Ill.
Ed Ryan, E. J. Ryan, 2368 E. 71st St., Chicago 49, Ill.
Frank Scharfenberg, Scharfenberg Brothers, 201 Main St., Streator, Ill.

1142

Complaint

Sol S. Schneider, The Joseph & Feiss Co., Season Skipper, Inc., 1603 Lytton Bldg., Chicago 4, Ill.

Harry J. Tickner, Botany Brands, Inc., 892 Merchandise Mart, Chicago 54, Ill.

PAR. 4. Respondent National Association of Retail Clothiers and Furnishers, hereinafter referred to as N.A.R.C.F., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Iowa and has its office and principal place of business at 1257 Munsey Trust Building, Washington 4, D.C.

N.A.R.C.F. is an association of retailers, registered in their own firm names, with places of business located throughout the United States. During 1957 the association had more than 2,000 members. The principal purpose of the association is, and has been, the advancement of the interests of its members in the men's and boys' retail clothing and furnishing goods business.

Respondent Louis Rothschild, individually and as Executive Director of N.A.R.C.F. has his place of business in the corporate office located at 1257 Munsey Trust Building, Washington 4, D.C., and is responsible for the administration of the association's affairs, including the dissemination to members, and others, of bulletins, notices and other information relative to the activities initiated, adopted or approved by the officers and directors of said association.

PAR. 5. The parties respondent, named in the caption hereof, individually, as officers and directors, as representative of all officers and directors and as representative members of the entire membership of N.A.R.C.F. served in those capacities during 1957 and they, as well as their predecessors and successors, directed, controlled and are responsible for the policies, acts and practices of said corporate respondent including those hereinafter alleged as subject of this complaint.

The membership of N.A.R.C.F. is, and during 1957 was, so large, as hereinbefore alleged, as to make it impracticable to specifically name each member as a party respondent herein. The officers and directors of said corporate respondent are, and, during the entire period of time mentioned herein, were retailers of men's and boys' clothing and furnishings and as such their interests are and have been co-extensive with the interests of the other officers, directors and members. The entire membership can be adequately represented by those named as representatives and therefore those officers, directors and members not specifically named are made parties respondent herein as though they had been named individually.

PAR. 6. The parties respondent named in the caption hereof, individually, as officers and directors, as representative of all officers and directors, and as representative members of the entire membership

of N.A.R.C.F., were, during 1957, and are now, variously located as follows:

Harry Clarke, Clarke's, 317 S. Main, Tulsa, Okla.
 Herman Rapoport, The Quality Shop, 309 High, Portsmouth, Va.
 John W. Swanson, Nebraska Clothing Co., 1416 Farnam, Omaha, Nebr.
 Gerald D. Grosner, 4545 Connecticut Ave., N.W., Washington, D. C.
 Harry C. O'Brien, Thos. O'Brien & Sons, 23 Riverdale Ave., Medford, Mass.
 B. C. Stephany, K. Katz & Sons, 7 E. Baltimore, Baltimore, Md.
 Will H. Melet, Will H. Melet Co., 120 S. 3d, Clarksburg, W. Va.
 Mervin A. Blach, Blach's, 1928 3rd Ave. N., Birmingham, Ala.
 John P. Heavenrich, Whaling's, 520 Woodward, Detroit, Mich.
 Henry S. Loeb, Alex Loeb, 2115 5th, Meridian, Miss.
 H. M. Bacon, W. M. Bacon & Co., Bridgeton, N. J.
 Oby T. Brewer, George Muse Clothing Co., 52 Peachtree, N.W., Atlanta, Ga.
 Robert Brill, Brill's, 712 N. 5th, Milwaukee, Wis.
 R. E. Collons, Collons, The Store for Men, 419 Madison, Jefferson City, Mo.
 Albert N. Elmer, M. Levy Co., 429 Milam, Shreveport, La.
 George M. Epstein, Bell Clothing House, 5600 6th Ave., Kenosha, Wis.
 Robert E. Feineman, Feineman Brothers, 1 S. Main, Rochester, N. H.
 Jerome K. Harris, Frank Brothers, 113 Alamo Plaza, San Antonio, Tex.
 Samuel B. Hirshowitz, The Hub, 26 S. Main, Wilkes-Barre, Pa.
 Otis C. Johnston, Jr., Wright-Johnston, Inc., 1330 Main, Columbia, S.C.
 Samuel Levy, David Richard, 3059 M Street, N.W., Washington, D. C.
 Charles R. Linville, Hine-Bagby Co., 412 N. Trade, Winston-Salem, N. C.
 Robert Margolis, The Metropolitan, 126 N. Main, Dayton, Ohio.
 Albert M. Myers, Myers Brothers, 101 S. 5th St., Springfield, Ill.
 Lawson H. Riley, M. McInerny, Ltd., Corner of Fort & Merchant, Honolulu, Hawaii.
 Herman Stern, Straus Clothing Co., Valley City, N. D.
 Richard Stockton, N.A.R.C.F. Young Men's Group, 854 Sylvan Rd., Winston-Salem, N. C.
 Jackson C. Stromberg, Stromberg's, 224 Central Ave., S.W., Albuquerque, N. M.
 Robert B. Underwood, Berry Burk Co., 525 E. Grace St., Richmond, Va.
 Bernard Wien, Juster Brothers, 37 S. 6th St., Minneapolis, Minn.
 James K. Wilson, Jr., J. K. Wilson Co., 1513 Main Street, Dallas, Tex.

PAR. 7. Respondent Larry J. Piras, individually and as Secretary and Manager of N.W. Buyers and Jobbers, Incorporated, during 1957, had his principal office and place of business located at 186 East Fourth Street, Saint Paul 1, Minnesota.

N.W. Buyers and Jobbers, Incorporated, during 1957 was an association with a membership of 200 leading clothiers of Minnesota, North and South Dakota, Iowa and Wisconsin. Larry J. Piras was responsible for adopting, assisting, aiding and abetting the respondents Illinois MAC and N.A.R.C.F., their officers, directors and members in the acts and practices hereinafter described.

PAR. 8. The said respondents hereinbefore named and described, and each of them, and others not specifically named herein, during the period of time, to wit, from on or about January 1, 1957 to the

1142

Complaint

date of this complaint, have entered into an agreement or common understanding, combination and conspiracy with each other and with other persons, to hinder and suppress the interstate sale and distribution of men's and boys' clothing and furnishings by manufacturers or distributors of said products, with places of business located in many states of the United States, to customers located, or engaged in the sale of said products to consumers, located in the State of Illinois and other states.

The articles of men's and boys' clothing and furnishings are so numerous that for convenience they will hereinafter be referred to as "products." Said products are variously referred to as "branded", "private brand" or "unbranded."

A "branded" product is one which is identified with the trade name of the manufacturer or distributor and has gained general recognition by reason of extensive institutional and other type advertising sponsored by the manufacturer or distributor.

A "private brand" product is one which bears the trade name of the customer.

An "unbranded" product is one which, although sold by the manufacturer of a similar "branded" product, is unidentified as to source of manufacture.

"Branded" products are generally preferred by those who sell to consumers since such merchandise is recognized and more readily accepted by greater numbers of the consuming public.

PAR. 9. Prior to the time mentioned herein, to wit, on or about January 1, 1957, many manufacturers or distributors of the aforesaid products sold and shipped, or caused to be shipped, said products in interstate commerce to various classes of customers including the retailer members of Illinois MAC and N.A.R.C.F. and to catalog and discount houses located in the State of Illinois and other states.

A "catalog house" is one which solicits the sale of products depicted in a catalog periodically published and disseminated to consumers and others by mail or otherwise. In some instances, products depicted are offered for sale at or about the usual retail price and in some instances sales are made through such medium at less than the usual retail price. The latter class is sometimes referred to as a "discount catalog."

"Discount houses" are retailers engaged in the sale of products to customers, usually consumers, at prices which are less than the usual retail price.

Many of the catalog and discount houses during all times mentioned herein were, or except for the acts and practices hereinafter

Complaint

58 F.T.C.

alleged would have been, in competition with the retailer members of Illinois MAC and N.A.R.C.F. in the sale of branded products to consumers located in the State of Illinois and other states.

PAR. 10. Commencing sometime prior to January 21, 1957, the retailer members of Illinois MAC became aware of, and alarmed at, the increasing sales of branded products to and through catalog and discount houses by manufacturers or distributors from whom said retailer members purchased their products.

During the course of a meeting of the Board of Directors of Illinois MAC, on January 21, 1957, "the urgency of action by the Illinois Men's Apparel Club to confront the problem of men's and boys' apparel being sold through catalog houses . . ." was brought to the attention of the Board. After discussion it was determined that "the matter of selling of branded merchandise through catalog houses be brought to the attention of the National Association of Men's Apparel Clubs [hereinafter referred to as NAMAC] and the National Association of Retail Clothiers and Furnishers [respondent N.A.R.C.F.] in the form of a formal resolution."

NAMAC is an affiliated group of clubs or associations of traveling salesmen. It is comprised of 28 regional and state clubs, including Illinois MAC, located throughout the United States.

Individually and collectively the membership of NAMAC and N.A.R.C.F. constitute a large, important and influential segment of the industry engaged in the manufacture, sale and distribution and ultimate sale at retail, of men's and boys' clothing and furnishings.

PAR. 11. A committee, chosen for the purpose, adopted the following resolution to be presented to NAMAC and N.A.R.C.F.:

Whereas, it has been called to the attention of the respective members of the Illinois Men's Apparel Club; and

Whereas, subsequent investigation by individual members has indicated that many branded men's and boys' ware lines are being offered through catalog houses without the observance of selling through established retail stores; and

Whereas, that situation is becoming more aggravated almost daily, and, therefore, detrimental to our individual independent retailers and sales representatives; and

We deem it advisable and in fact necessary that attention should be focused on this matter and that a course of procedure be recommended and adopted for the protection and preservation of our independent individual retailers and representative wholesale salesmen.

The resolution was presented to, and unanimously adopted by, the Board of Directors of NAMAC on February 16, 1957.

PAR. 12. In furtherance of the objective of their resolution in regard to sales of branded products to catalog houses, the members of Illinois MAC were encouraged by their officers and directors

1142

Complaint

to, and did, maintain constant surveillance of catalogs and to report to respondent Pauline Day the names and dates of catalogs, together with the brand names of products appearing therein.

Respondent Day compiled the information thus received in bulletins which were disseminated to the members of Illinois MAC and others.

The Board of Directors of N.A.R.C.F. approved the activities of Illinois MAC and pledged its full support. Thereafter N.A.R.C.F. through its executive director, respondent Louis Rothschild, by means of bulletins to its members and others, including respondent Larry J. Piras, and direct mail to manufacturers or distributors of branded products appearing in catalogs, aided and abetted respondent Illinois MAC in its efforts to discourage sales of branded products to catalog houses.

Respondent Larry J. Piras adopted and joined in the activities of respondents Illinois MAC and N.A.R.C.F. by furnishing the names and copies of catalogs wherein branded products appeared and by dissemination of bulletins to the members of N. W. Buyers and Jobbers, Inc. and others wherein the aims and objectives of the concerted action of Illinois MAC and N.A.R.C.F. were disseminated.

PAR. 13. The respondents, pursuant to their understanding, agreement and combination to cause manufacturers or distributors of branded products to discontinue sales of said branded products to catalog and discount houses, have engaged in a common course of action designed to effectuate said purpose.

Illustrative of the acts and practices engaged in by the respondents, or some of them with the approval of all others, were the following:

1. Meetings were held to discuss ways and means to force manufacturers or distributors to discontinue such sales;
2. Respondents, including those not specifically named, and others were urged to, and did, maintain constant surveillance of all catalog and discount houses to detect the appearance of branded products;
3. Names of manufacturers or distributors whose branded products were detected in catalogs and in discount houses were reported and publicized by bulletin or otherwise to the entire membership of the corporate associations, their affiliates and others;
4. Letters were sent, by the corporate respondents, to said manufacturers or distributors requesting information as to their policy regarding such sales;
5. Retailer members of the corporate respondents and others were urged and encouraged to, and did, write to the manufacturers

or distributors threatening to discontinue their purchases unless such sales were discontinued.

PAR. 14. The retailer members of Illinois MAC and N.A.R.C.F. as customers or prospective customers of manufacturers or distributors of branded products generally and those specifically contacted as related in Paragraph Thirteen and the respondent associations, together with their affiliates and others, represented a large and influential segment of the men's and boys' clothing and furnishings industry.

The result of said agreement or understanding, combination and conspiracy and the acts and practices performed thereunder pursuant to a common course of action by the respondents as hereinbefore set forth, has been, and now is:

- 1) To cause manufacturers or distributors to discontinue sales of branded products to catalog and discount houses;
- 2) To prevent and hinder manufacturers or distributors of said products from selling or attempting to sell their products in interstate commerce to catalog and discount houses;
- 3) To prevent the operators of catalog and discount houses from purchasing their requirements of branded products in interstate commerce from the manufacturers or distributors thereof;
- 4) To eliminate competition between operators of catalog and discount houses and retailers, including members of the corporate respondents, in the sale at retail of branded products;
- 5) To deprive consumers of the opportunity of purchasing branded products from catalog or discount houses;
- 6) To place, in the hands of respondents, control over the business practices of manufacturers or distributors of branded products;
- 7) To deprive manufacturers or distributors of branded products their right to choose their own customers;
- 8) To unreasonably lessen, eliminate and suppress competition in the sale, at retail, of branded products in the State of Illinois and elsewhere; and
- 9) To obstruct the natural flow of commerce in the channels of interstate trade in branded products and to place an undue burden upon such commerce.

PAR. 15. The agreement or understanding, combination and conspiracy and concerted acts and practices performed pursuant thereto by said respondents, or some of them, with the knowledge and acquiescence of all others as hereinbefore alleged, are all to the prejudice of the public 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.

1142

Complaint

Mr. Peter J. Dias supporting the complaint.

Winston, Strawn, Smith & Patterson, of Chicago, Ill., by *Mr. John Donovan Bixler*, for Illinois Men's Apparel Club, Inc.

Mr. Louis Rothschild, of Washington, D.C., for National Association of Retail Clothiers and Furnishers, and others.

INITIAL DECISION BY EDWARD CREEL, HEARING EXAMINER

The complaint in this proceeding issued September 15, 1960, charges respondents Illinois Men's Apparel Club, Inc., a corporation, Pauline Day, individually and as Executive Secretary of Illinois Men's Apparel Club, Inc., and Joseph D. Grundwag, Nathan Jonas, Jack M. Dreyfus, Myles Spaulding, William J. Bork, Ed Freeman, George Benson, Morley Bernhardt, Henry W. Bolt, Jimmy Finkel, Frank A. Herbert, Jack Hodnett, Leo Hyman, Joe Miller, David Peppercorn, Ernest O. Reaugh, Dick Roberts, Stanley Salzenstein, Joseph J. Farber, Perry Franks, Herbert Johnson, John Paul Jones, Gene Judd, Wally Koranda, Mac Lewis, Vince McDonald, Robert D. Newell, Irving Rosenthal, Al Sobel, Jerry Solomon, Bill Doran, Ed Farrell, Michael G. Gottlieb, A. E. Kerger, Albert Myers, "Deke" Ridenour, Ed Ryan, Frank Scharfenberg, Sol S. Schneider, and Harry J. Tickner, individually, as officers, directors and representatives of the entire membership of Illinois Men's Apparel Club, Inc.; National Association of Retail Clothiers and Furnishers, a corporation, Louis Rothschild, individually and as Executive Director of National Association of Retail Clothiers and Furnishers, and Harry Clarke, Herman Rapoport, John W. Swanson, Gerald D. Grosner, Harry C. O'Brien, B. C. Stephany, Will H. Melet, Mervin A. Blach, John P. Heavenrich, Henry S. Loeb, H. M. Bacon, Oby T. Brewer, Robert Brill, R. E. Collons, Albert N. Elmer, George M. Epstein, Robert E. Feineman, Jerome K. Harris, Samuel B. Hirshowitz, Otis C. Johnston, Jr., Samuel Levy, Charles R. Linville, Robert Margolis, Albert M. Myers, Lawson H. Riley, Herman Stern, Richard Stockton, Jackson C. Stromberg, Robert B. Underwood, Bernard Wien, and James K. Wilson, Jr., individually, as officers and directors, as representative of all officers and directors, and as representative members of the entire membership of National Association of Retail Clothiers and Furnishers; and Larry J. Piras, individually and as Secretary and Manager of N. W. Buyers and Jobbers, Incorporated, with conspiring to boycott sellers who sell men's and boys' clothing and furnishings to catalog and discount houses, in violation of Section 5 of the Federal Trade Commission Act.

Order

58 F.T.C.

By order of March 17, 1961, the complaint herein was dismissed against individual respondent, A. E. Kerger (deceased). The word "respondents" as hereinafter used does not include A. E. Kerger. Respondent Illinois Men's Apparel Club, Inc., is referred to in the complaint and hereinafter as Illinois MAC, and respondent National Association of Retail Clothiers and Furnishers is referred to in the complaint and hereinafter as N.A.R.C.F.

On March 16, 1961, there was submitted to the hearing examiner an agreement between the above-named respondents and counsel supporting the complaint providing for the entry of a consent order.

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

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

The hearing examiner having considered the agreement and proposed order, and being of the opinion that they provide an appropriate basis for settlement and disposition of this proceeding, the agreement is hereby accepted, and it is ordered that said agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission. In consonance with the terms of said agreement, the hearing examiner finds that the Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents named herein and issues the following order:

ORDER

It is ordered, That respondent Illinois Men's Apparel Club, Inc., a corporation, its officers, representatives, agents, employees, successors and assigns; respondent Pauline Day, individually and as Executive Secretary of Illinois MAC, her successors and assigns; and respondents:

Officers: Joseph D. Grundwag, President; Nathan Jonas, Retail Vice President; Jack M. Dreyfus, Salesman Vice President; Myles

1142

Order

Spaulding, Treasurer; William J. Bork, Secretary, and Ed Freeman, Chairman of the Board;

Directors: George Benson; Morley Bernhardt; Henry W. Bolt; Jimmy Finkel; Frank A. Herbert; Jack Hodnett; Leo Hyman; Joe Miller; David Peppercorn; Ernest O. Reaugh; Dick Roberts; Stanley Salzenstein; Joseph J. Farber; Perry Franks; Herbert Johnson; John Paul Jones; Gene Judd; Wally Koranda; Mac Lewis; Vince McDonald; Robert D. Newell; Irving Rosenthal; Al Sobel; Jerry Solomon; William J. Bork; Bill Doran; Ed Farrell; Michael G. Gottlieb; Albert Myers; "Deke" Ridenour; Ed Ryan; Frank Scharfenberg; Sol S. Schneider; Miles Spaulding, and Harry J. Tickner, acting in their individual capacities, or as members, officers or directors of Illinois MAC, their successors and assigns, or each and all of them, acting by or through officers, agents, employees or members of Illinois MAC; respondent National Association of Retail Clothiers and Furnishers, a corporation, its officers, representatives, agents, employees, successor and assigns; respondent Louis Rothschild, individually and as Executive Director of National Association of Retail Clothiers and Furnishers, his successors and assigns; and respondents:

Officers: Harry Clarke, President; Herman Rapoport, Vice President; John W. Swanson, Vice President; Gerald D. Grosner, Treasurer; Harry C. O'Brien, Regional Vice President; B. C. Stephany, Regional Vice President; Will H. Melet, Regional Vice President; Mervin A. Blach, Regional Vice President; John P. Heavenrich, Regional Vice President, and Henry S. Loeb, Regional Vice President;

Directors: H. M. Bacon; Oby T. Brewer; Robert Brill; R. E. Collons; Albert N. Elmer; George M. Epstein; Robert E. Feineman; Jerome K. Harris; Samuel B. Hirshowitz; Otis C. Johnston, Jr.; Samuel Levy; Charles R. Linville; Robert Margolis; Albert M. Myers; Lawson H. Riley; Herman Stern; Richard Stockton; Jackson C. Stromberg; Robert B. Underwood; Bernard Wien, and James K. Wilson, Jr., acting in their individual capacities, or as members, officers or directors of N.A.R.C.F., their successors and assigns, or each and all of them acting by or through officers, agents, employees or members of N.A.R.C.F. and respondent Larry J. Piras, individually and as Secretary and Manager, N. W. Buyers and Jobbers, Incorporated, his successors and assigns, directly or indirectly, or through any corporate or other device, in or in connection with the offering for sale, sale and distribution by sellers to catalog houses

Order

58 F.T.C.

or to any other customer or class of customers of products, branded or otherwise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from, directly or indirectly, doing, performing, continuing, cooperating, participating or engaging in or carrying out any understanding, agreement, or combination to restrain trade, competition and interstate commerce, or a planned common course of action between or among any two or more of said respondents, or between any one or more of them and another or others not parties hereto, to do or perform any of the following acts or practices:

1. Holding meetings to discuss ways and means to force sellers to discontinue sales of branded or any products to catalog houses or any other customer or class of customers specified by respondents.

2. Policing the selling practices of sellers by maintaining surveillance of the places of business, catalogs or other literature, of customers of said sellers, or in any other manner, for the purpose or with the effect of boycotting or threatening to boycott those sellers who offer to sell, sell, or refuse to discontinue sales to catalog houses, or any other customer or class of customers specified by the respondents.

3. Recording, publishing, or disseminating or causing the recording, publication or dissemination to members of the respondent associations or other retailers, wholesalers or manufacturers, the names of sellers who sell branded or any other products to catalog houses, or any other customer or class of customers not approved by the respondents, for the purpose or with with the effect of blacklisting said sellers.

4. Influencing, or attempting to influence, sellers of branded or any other products in their sales to, attempts to sell to, or other business negotiations with, catalog houses, or any other customer or class of customers specified by respondents.

5. Boycotting, or threatening to boycott, sellers of branded or other products who sell, or fail or refuse to cease selling, to catalog houses or to any other customer or class of customers, or who fail or refuse to adhere to sales policies recommended, urged or dictated by respondents.

6. Preventing, or attempting to prevent, catalog houses or any other customer or class of customers from purchasing their requirements of branded or other products in interstate commerce from sellers thereof.

7. Eliminating, lessening, suppressing, or attempting to eliminate, lessen or suppress, competition between the retailer members of re-

1142

Decision

spondent associations and catalog houses, or any other customer or class of customers, in the sale at retail, or otherwise, of branded or other products, of said sellers.

8. Engaging in any act or practice which deprives a seller of its right to independently choose to sell to, or otherwise negotiate with, catalog houses, or any other customer or class of customers, prospective or otherwise, or to form its own sales policies.

9. Depriving or attempting to deprive consumers of their choice of source of supply of branded or other products by foreclosing or attempting to foreclose catalog houses, or any other customer or class of customers, from purchasing their supplies from sellers thereof.

It is further ordered, That the complaint be dismissed as to the individual respondents in their alleged capacities as representatives of the entire membership and as representatives of other officers and directors of the respective corporate respondents.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

The Commission having considered the hearing examiner's initial decision herein, filed March 22, 1961, accepting an agreement containing a consent order theretofore executed by respondents and counsel in support of the complaint; and

It appearing that the first name of respondent Myles Spaulding is erroneously spelled "Miles" in the order to cease and desist contained in the initial decision; and

The Commission being of the opinion that this departure from the agreement of the parties should be corrected:

It is ordered, That the initial decision of the hearing examiner be, and it hereby is, modified by striking the name "Miles" from the twelfth line on page four of the initial decision and substituting therefor the name "Myles".

It is further ordered, That the initial decision, as so modified, shall, on the 28th day of June, 1961, become the decision of the Commission.

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