It is evident that as a result of respondent's policy competitors were foreclosed from selling to over 7,500 established dealers in the replacement market.

As previously found, there are several reasons why dealers prefer to handle several lines or brands of tapered roller bearings. Because of respondent's policy, its dealers are not permitted to exercise any discretion as to the brands they will carry and sell. As a result, respondent's dealers are injured by not being able to take advantage of higher discounts offered by some competitors and lose substantial sales because they are unable to carry competitive bearings. This is illustrated by the statement of one of respondent's salesmen who, in reporting a conversation with an authorized jobber, stated:

> He further stated that he made a survey of some of these dealers (car and truck dealers) on the acceptance of Bower Bearings and he found out that they would accept Bower Bearings. He added that for that class of trade, he buys Bower but for his fleet trade and garage type of trade, he will buy Timken. He further added that he knows that we would not countenance that sort of dual buying * * *. (Commission Exhibit 29 A and B)

Under the foregoing circumstances, 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, conclusion and order to cease and desist in conformity with this opinion.

Commissioner Mills did not participate in the decision of this matter for the reason he did not hear oral argument.

IN THE MATTER OF

NICHOLS & COMPANY, INC., ET AL.*

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

Docket 7659. Complaint, Nov. 17, 1959—Decision, Jan. 24, 1961

Order requiring an individual engaged in garnetting wool stocks on commission for other firms, to cease violating the Wool Products Labeling Act by labeling as "80% Camel Hair, 20% Wool", wool stocks which contained in part reprocessed woolen fibers, and by failing in other respects to comply with labeling requirements.

*Settled as to all other respondents by consent order dated Mar. 25, 1960 (56 F.T.C. 1122).

Mr. Garland S. Ferguson for the Commission.
Mr. Harry Carr for himself.

INITIAL DECISION BY HARRY R. HINKES, HEARING EXAMINER

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, on November 17, 1959, issued and subsequently served its complaint in this proceeding upon the respondents, charging them with violation of the provisions of said Acts and the Rules and Regulations promulgated under the Wool Products Labeling Act. Thereafter, on February 1, 1960, all of the respondents with the exception of Harry Carr agreed with counsel supporting the complaint to a consent order to cease and desist, and on March 25, 1960 the initial decision of the hearing examiner accepting the consent agreement was adopted as the Decision of the Commission, disposing of this matter as to all of the respondents with the exception of Harry Carr.

Pursuant to notice, a hearing was held as to respondent Harry Carr on March 11, 1960, at which witnesses called by the Commission counsel were heard and a number of Commission exhibits received in evidence. Mr. Carr was afforded an opportunity to cross-examine the witnesses, to testify on his own behalf and to submit evidence. Proposed findings, conclusions and order were submitted by Commission counsel, and an opportunity was afforded respondent to do same. Several informal communications were received from the respondent which have been considered in the determination of this case as well as the formal record on file. Oral arguments on the proposed findings were held on June 13, 1960 as of which date the proceedings were closed.

Upon the whole record herein, including all exhibits received in evidence and the testimony of the witnesses as well as Mr. Carr, whose conduct and demeanor were under observation during the hearing, the examiner makes the following:

FINDINGS OF FACTS

1. Respondent Harry Carr is an individual trading and doing business as Harry Carr and as West First Processing Inc., erroneously named in the complaint as West First Processing Company. Respondent's office and principal place of business is located at 319 West First Street, South Boston 27, Massachusetts.

2. Respondent Harry Carr is engaged in the commission garnetting business, processing material belonging to others into cotton-batting-like material for further processing into cloth. In this

process, respondent's customers ship their material to him and provide labels which he affixes to the product after his processing operations are concluded. Thereafter, pursuant to the instructions of his customers, respondent ships the processed material to such mills as his customers designate.

3. Respondent is paid a stipulated price for his services. He does not purchase the stock which he processes nor does he sell same.

4. Respondent is engaged in the manufacture of wool products within the meaning of the Wool Products Labeling Act of 1939. Subsequent to the effective date of that Act and more particularly since January 11, 1958, respondent has manufactured for introduction into commerce and has transported, distributed, delivered for shipment and shipped in commerce, as "commerce" is defined in that Act, such wool product.

5. The wool products concerning which evidence was adduced at the hearing consists of two lots garnetted by the respondent upon the instructions of his customer, Nichols & Company, Inc. These lots were prepared for shipment and shipped by the respondent from his place of business in Boston, Massachusetts, to Lebanon Mills in Lebanon, New Hampshire.

6. The respondent, in the course and conduct of his business, was and is in competition in commerce with other individuals, firms and corporations likewise engaged in the manufacture of wool products.

7. Certain of said wool products garnetted and introduced into commerce by the respondent were misbranded by respondent within the intent and meaning of Section 4(a)(1) of the Wool Products Labeling Act in that they were falsely and deceptively labeled or tagged with respect to the character and amount of the constituent fibers contained therein.

Labels or tags attached by respondent to the lots of wool products, concerning which evidence was adduced in this proceeding, showed the fiber content to be "80% Camel Hair, 20% Wool." Tests of these lots made both by a Commission expert and another showed the camel hair content by weight to be between 19 and 24 percent and the wool content to be between 75 and 80 percent. Said products contained, in part, reprocessed wool as defined in the Wool Products Labeling Act.

8. Certain of said wool products manufactured and shipped by respondent were misbranded in that they did not have affixed to them a stamp, tag, label or other means of identification showing each fiber other than wool contained in said wool stock in quantities of 5 percent or more by weight as required under the provisions of Section 4(a)(2) of the Wool Products Labeling Act. All thirteen

samples of one of the lots used by respondent in manufacturing the wool product which he shipped in commerce were tested by a Commission expert and found to contain more than 5 percent of non-wool **fibers.**

A — 84%	Wool,	16%	non-wool fibers
B — 75%	" ,	25%	" "
C — 86%	" ,	14%	Mohair
D — 52%	" ,	48%	non-wool fibers
E — 74%	" ,	26%	Mohair
F — 80%	" ,	20%	"
G — 91%	" ,	9%	"
H — 53%	" ,	47%	Camel hair
I — 93%	" ,	7%	non-wool fibers
J — 2%	" ,	98%	Camel hair
K — 2%	" ,	98%	" "
L — 42%	" ,	58%	" "
M — 85%	" ,	15%	non-wool fibers

OPINION

Harry Carr, the respondent in this proceeding, is a processor of wool stocks title to which remains in the name of his customer. The end result of his operations is not a finished product but a semi-finished product which he sends to a wool mill designated by his customer for further finishing into cloth. There is no denial, however, that the respondent performs some work upon the material and that it leaves his hands in a different state or condition from that in which it arrived. The Wool Products Labeling Act of 1939 makes unlawful and an unfair method of competition as well as an unfair or deceptive act or practice the "introduction, or manufacture for introduction, or manufacture for introduction, into commerce, or the sale, transportation, or distribution, in commerce, of any wool product which is misbranded . . ." It should be noted that the various acts are stated in the disjunctive. Coverage does not depend upon a sale but may be found merely upon transportation in commerce of the misbranded product. Respondent's delivery of the product to a trucker for interstate delivery is sufficient to constitute "introduction" into commerce. In fact, the Act, in apparent recognition of that comprehensive coverage, specifically exempts common carriers or contract carriers. The Act, however, contains no exception or exemption for the type of work respondent engages in other than the guaranty provisions of Section 9. There is nothing in the record, however, indicating any receipt by respondent of a Section 9 guaranty from his supplier.

Even without such introduction into commerce, Mr. Carr's activities would be covered under the Act as a manufacturer. See *United Felt Co., et al.*, FTC D. 7132, October 21, 1959, where the Commission stated:

Respondent United Felt Co. is engaged in the manufacture of wool batting by garnetting it from raw material supplied from sources in Illinois . . . respondents have manufactured from introduction into commerce . . . .

To the same effect see also *Bolger Brothers*, FTC D. 5378 August 26, 1946.

Since the respondent has admitted that he placed the labels upon the product shipped out of the state, the only issue to be decided is whether the product was misbranded within the meaning of the Act or the Rules and Regulations thereunder. In this respect, the evidence is quite clear and, for all practical purposes, undisputed. The label specified the fiber content to be 80 percent camel hair and 20 percent wool and made no mention of the presence of reprocessed wool. Tests made upon a number of samples taken from the wool stock in question before processing showed the presence of woven material. Under the Wool Products Labeling Act the term "reprocessed Wool" means the resulting fiber when wool has been woven or felted into a wool product which, without having been ever utilized in any way by the ultimate consumer, consequently has been made into a fibrous state. By definition, therefore, it would appear that the lots in question were made, at least in part, from reprocessed wool. The same is true of the camel hair clips found in the raw material of the lots in question. Failure to indicate the reprocessed wool origin of the lots in question, therefore, constitutes a misbranding.

In addition, tests made upon the lots after shipment from respondent's plant indicate that they did not contain anything near 80 percent camel hair as specified on the labels.

Finally, the labels made no mention of the presence of non-wool fibers. Tests made on a number of samples of one of the lots used by respondent in manufacturing the wool product which he shipped in commerce, showed the presence of substantial amounts of non-wool fibers ranging from 7 to 98 percent.

None of these expert findings were disputed by the respondent who asserted simply that he knew nothing about the fiber content. Respondent's defense that he merely labeled as instructed by his customers has already been considered by the Commission and deemed without merit. See *Modern Rug Company, Inc.*, FTC D. 7373, November 11, 1959.

Accordingly, upon due consideration of the foregoing, I make the following

CONCLUSIONS

1. Respondent has misbranded wool products within the intent of meaning of Section 4(a)(1) and 4(a)(2) of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder.

2. The acts and practices of the respondent, all to the prejudice and injury of the public and of respondent's competition, constitutes unfair and deceptive acts and practices and unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

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

ORDER

It is ordered, That respondent Harry Carr, trading and doing business as Harry Carr and as West First Processing Inc., erroneously named in the complaint as West First Processing Company, or under any other name, and respondent's representatives, agents, and employees, directly or through any corporate or other device, in connection with the introduction or manufacture for introduction into commerce, or the offering for sale, sale, transportation, or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, of woolen stocks 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 falsely 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.

OPINION OF THE COMMISSION

By ANDERSON, *Commissioner:*

The complaint in this matter charges respondents, Nichols & Company, Inc., a corporation, Arthur O. Wellman, Arthur O. Wellman, Jr., and John H. Nichols, Jr. (erroneously named in the complaint

as John N. Nichols, Jr.), individually and as officers of said corporation, Sumner E. Burdette, an employee of said corporate respondent, and Harry Carr, an individual trading and doing business as Harry Carr and as West First Processing, Inc. (erroneously named in the complaint as West First Processing Company), with misbranding wool products in violation of the Wool Products Labeling Act and the Rules and Regulations promulgated thereunder. The complaint also charges respondents, except Harry Carr, with falsely invoicing woolen stocks in violation of the Federal Trade Commission Act.

The corporate respondent, Nichols & Company, Inc., its officers and employee, named above, acting under §3.25 of the Commission's Rules of Practice, executed an agreement containing a consent order to cease and desist, and an initial decision as to these respondents was filed by the hearing examiner on February 5, 1960, and became the decision of the Commission on March 25, 1960. Respondent Harry Carr, hereinafter referred to as respondent, contested the charges against him, and the hearing examiner, in a separate initial decision, held that the allegations of the complaint with respect to this respondent were sustained by the evidence and included an order to cease and desist. The matter is now before the Commission on the appeal of respondent from this decision.

The record discloses that respondent is engaged in the commission garnetting business. Wool stocks owned by other firms are sent to respondent for garnetting, a process whereby the material is reduced into a fibrous state. After this operation has been performed, respondent labels the garnetted material with tags supplied by the owner and thereafter ships it pursuant to the owner's instructions. Certain wool stocks owned by Nichols & Company, Inc., were garnetted by respondent, labeled by him as "80% camel hair, 20% wool", and shipped by him from his place of business in Boston, Massachusetts, to a woolen mill in Lebanon, New Hampshire. The complaint alleges and the hearing examiner found that the garnetted material was misbranded in violation of Section 4(a)(1) of the Wool Products Labeling Act in that it was falsely and deceptively labeled with respect to the character and amount of the constituent fibers contained therein, and that it was further misbranded in that it was not stamped, tagged or labeled as required under the provisions of Section 4(a)(2) of the Act.

Tests of two lots of the garnetted material conducted independently by two experts disclosed the camel hair content to be between 19% and 24% and the other wool content to be between 75% and 80%. Although respondent concedes that the tags attached to the garnetted material misstated the percentage of camel hair, he contends that

the evidence does not support the hearing examiner's finding that this material contained reprocessed wool. "Reprocessed wool" is defined in the Act as "the resulting fiber when wool has been woven or felted into a wool product which, without ever having been utilized in any way by the ultimate consumer, subsequently has been made into a fibrous state." Respondent argues that the only evidence to support the finding that the material in question contained reprocessed wool are samples of woven cloth taken by the Commission's investigator from hoppers containing stock being processed by respondent. He attempts to explain the presence of these woven clips by stating that a clip sorter may have made a misthrow allowing a few pieces of woven material to get into the wool stock; that these pieces would have been thrown out by the shredder and, at the end of a lot, would have been recovered from the floor and placed into the hoppers so that all stock received from the customer could be returned. We do not believe that this is what occurred, however. The record shows that the investigator obtained the woven clips from containers that receive the wool stock from a picking machine and feed it into the garnetting machine. Moreover, according to the investigator's testimony, with which respondent agreed, the samples were obtained, not at the end of a lot, but while a lot was "going through the machinery." In view of this evidence, it appears that woven material was being processed by respondent.

We agree with respondent, however, that there is no record support for the finding in the initial decision that the material which he garnetted contained more than 5% of non-wool fibers. It appears that the test report relied upon by the hearing examiner in making this finding classifies mohair and camel hair as "non-wool fibers." Such classification is obviously incorrect since both of these fibers are "wool" as that word is defined in Section 2 of the Act. The initial decision will be modified to correct this finding.

The aforementioned finding was the sole basis for the conclusion in the initial decision that respondent had misbranded wool products within the meaning of Section 4(a)(2). Although this finding was in error, there is other evidence of record to support such a conclusion. As stated above, certain of the wool products manufactured by respondent contained reprocessed wool. The percentage by weight of this fiber was not disclosed on labels affixed to such products, nor did such labels show the true percentage by weight of the wool content, as distinguished from the reprocessed wool content, of such products. Consequently, products manufactured and shipped in commerce by respondent did not have affixed to them labels or other means of identification setting forth information required to be disclosed by Section 4(a)(2) of the Act.

It is also contended by respondent that the hearing examiner erred in concluding that he manufactures wool products. Respondent's argument seems to be that since the garnetted material is not a completely manufactured article such as a blanket, the operation which he performs is not a manufacturing process and the product resulting from this operation is not a wool product. This argument must be rejected. See *United Felt Company, et al.*, Docket No. 7132 (1959). The garnetting operation performed by respondent is a stage in the process of converting wool stocks into cloth. As pointed out by the Supreme Court in *Tide Water Oil Company* v. *United States*, 171 U.S. 210 (1898), "Raw materials may be and often are subjected to successive processes of manufacture, each one of which is complete in itself, but several of which may be required to make the final product." The Court further stated that "The material of which each manufacture is formed . . . is not necessarily the original raw material . . . but the product of a prior manufacture; the finished product of one manufacture thus becoming the material of the next in rank." The garnett in this case is the finished product of the manufacturing process performed by respondent and is in turn the raw material to be used by the woolen mill in making cloth. Since it contains wool and reprocessed wool, it is a "wool product" within the meaning of that term.

We must also reject respondent's argument that he was not required to affix labels to the garnetts which he processed. As found by the hearing examiner, respondent manufactured wool products for introduction into commerce and shipped such products in commerce. He is, therefore, subject to the requirements of the Act. In the Matter of *Bolger Brothers*, Docket No. 5378 (1946).

Respondent's final exception to the initial decision is that there is no public interest in a proceeding against a person who merely acts as a bailee of wool products owned by another. He argues in this connection that even though he is technically required to comply with the provisions of the Wool Products Labeling Act, the Act should be construed by the Commission so as to exempt him from this requirement. This argument, however, goes to the wisdom of the legislation and should be directed to Congress and not the Commission. We are charged with administering the Act as written and are without authority to create an exemption therefrom which Congress did not see fit to make.

To the extent indicated herein the appeal of respondent is granted; in all other respects it is denied. The initial decision, modified to conform with this opinion, will be adopted as the decision of the Commission.

FINAL ORDER

This matter having been heard by the Commission upon the appeal of respondent Harry Carr from the hearing examiner's initial decision, and upon briefs and oral argument in support thereof and in opposition thereto; and the Commission having rendered its decision granting in part and denying in part the aforementioned appeal and directing modification of the initial decision:

It is ordered, That the initial decision be modified by substituting for Paragraph 8 the following:

8. Certain of said wool products manufactured and shipped by respondent contained quantities of reprocessed wool. Such products were misbranded in that they did not have affixed to them a stamp, tag, label or other means of identification showing the percentage of the total fiber weight of the wool product of wool and reprocessed wool as required under the provisions of Section 4(a)(2) of the Wool Products Labeling Act.

It is further ordered, That the initial decision be further modified by striking therefrom the paragraph on page 5 beginning with the words "Finally, the labels made no mention" and ending with the words "ranging from 7 to 98 percent."

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

It is further ordered, That respondent Harry Carr 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

ALBERT VITOFF AND JOSEPH DANZER TRADING AS VITOFF & DANZER

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

Docket 7984. Complaint, June 24, 1960—Decision, Jan. 24, 1961

Consent order requiring New York City furriers to cease violating the Fur Products Labeling Act by failing to set forth separately on labels information concerning different animal furs in a fur product; falsely invoicing fur products with respect to names of animals producing certain furs; failing to set forth properly on invoices the term "Dyed Mouton processed Lamb" where used; and failing in other respects to comply 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 Albert Vitoff and Joseph Danzer, individually and as copartners trading at Vitoff & Danzer, 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. Joseph Danzer and Albert Vitoff are individuals and copartners trading as Vitoff & Danzer with their office and principal place of business located at 129 West 29th Street, New York, New York.

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, in commerce, and in the transportation and distribution, in commerce, of fur products, and have manufactured for sale, sold, advertised, offered for sale, transported and distributed fur products which have been made in whole or in part of fur which had been shipped and received in commerce as the terms "commerce", "fur" and "fur product" are defined in the Fur Products Labeling Act.

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

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

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

(b) Required item numbers were not set forth on labels, in violation of Rule 40 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 not set forth separately on labels with respect to each section of fur products composed of two or more sections containing different animal furs, in violation of Rule 36 of said Rules and Regulations.

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

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

(b) The term "Dyed Mouton processed Lamb" was not set forth in the manner required where an election was made to use that term instead of Dyed Lamb in violation of Rule 9 of said Rules and Regulations.

(c) Required item numbers were not set forth on invoices in violation of Rule 40 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.

DeWitt T. Puckett, Esq., supporting the complaint.

Charles Goldberg, Esq., of New York 1, N.Y., for respondents.

INITIAL DECISION BY LEON R. GROSS, HEARING EXAMINER

On June 24, 1960, the Federal Trade Commission issued a complaint against the above-named respondents, in which they were charged with violating the Federal Trade Commission Act, and the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder by, among other things, misbranding, putting

required information on labels in handwriting, omitting required item numbers from labels, omitting information from labels, falsely and deceptively invoicing, falsely and deceptively identifying, and failing to give information concerning respondents' fur products sold by said respondents in interstate commerce. A true and correct copy of the complaint was served upon the respondents and each and all of them, as required by law. Thereafter respondents appeared by counsel and agreed to dispose of this proceeding without a formal hearing pursuant to the terms of an agreement dated September 15, 1960, containing consent order to cease and desist. The agreement was submitted to the undersigned hearing examiner on September 28, 1960, in accordance with §3.25 of the Commission's Rules of Practice for Adjudicative Proceedings. The agreement purports to dispose of this proceeding as to the respondents and each and all of them and contains the form of a consent cease-and-desist order which the parties have represented is dispositive of the issues involved in this proceeding. The agreement has been signed by the respondents individually and as copartners trading as Vitoff & Danzer, by the attorney for the respondents, by counsel supporting the complaint, and has been approved by the Assistant Director, Associate Director and Acting Director of the Bureau of Litigation of the Federal Trade Commission. In said agreement of September 15, 1960, respondents admit all of the jurisdictional facts alleged in the complaint and agree that the record may be taken as if findings of jurisdictional facts had been made in accordance with such allegations. In the agreement the respondents waive: (a) any further procedural steps before the hearing examiner and the Commission; (b) the making of findings of fact or conclusions of law; and (c) all rights respondents may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement.

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

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

This proceeding having now come on for final consideration on the complaint and the aforesaid agreement of September 15, 1960, containing consent order, and it appearing that the order which is approved in and by said agreement disposes of all the issues presented by the complaint as to all of the parties involved, said agreement of September 15, 1960, is hereby accepted and approved as complying with §3.21 and §3.25 of the Commission's Rules of Practice for Adjudicative Proceedings. The undersigned hearing examiner, having considered the agreement and proposed order and being of the opinion that the acceptance thereof will be in the public interest, makes the following findings and issues the following order:

FINDINGS

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

2. Respondents Albert Vitoff and Joseph Danzer are copartners trading as Vitoff & Danzer, with their office and principal place of business located at 129 West 29th Street, New York, New York;

3. Respondents are engaged in commerce as "commerce" is defined in the Federal Trade Commission Act and the Fur Products Labeling Act;

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

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

1. Misbranding fur products by:

A. 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;

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

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

D. Failing to set forth on labels affixed to fur products 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;

B. Falsely or deceptively invoicing or otherwise falsely or deceptively 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;

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

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

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

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 24th day of January, 1961, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Albert Vitoff and Joseph Danzer, individually and as copartners trading as Vitoff & Danzer, 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

ROOTES MOTORS INCORPORATED, ET AL.

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

Docket 8071. Complaint, Aug. 9, 1960—Decision, Feb. 2, 1961

Consent order requiring Long Island City, N.Y., distributors of imported cars to cease representing falsely in advertising in newspapers and periodicals that parts and services were immediately available to purchasers of their automobiles in all areas of the United States.

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 Rootes Motors Incorporated, a corporation, and John T. Panks and Peter Lloyd-Owen, 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 Rootes Motors Incorporated is a corporation organized, existing and doing business and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 42-32 21st Street, Long Island City, New York.

Respondent John T. Panks is Director and Vice President of said corporation and respondent Peter Lloyd-Owen is Secretary-Treasurer of said corporation. Their addresses are the same as that of the corporate respondent. The individual respondents formulate, direct and control the acts and practices of said corporate respondent, including those hereinafter alleged.

PAR. 2. Respondents are now, and for more than two years last past have been, engaged in the sale and distribution of imported automobiles.

In the regular and usual course and conduct of their business respondents now cause, and for more than two years last past have caused, said automobiles when sold to be transported from the ports of entry in various States of the United States to dealer-purchasers thereof, located in various other States of the United States and in the District of Columbia for resale to the purchasing public.

Respondents maintain, and at all times mentioned herein, have maintained, a substantial course of trade in said automobiles in

commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. 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 sale and distribution of automobiles in commerce.

PAR. 4. In the course and conduct of their business as aforesaid and for the purpose of inducing the sale of their automobiles in commerce, respondents have caused, and now cause, the publication and dissemination of certain statements and representations in newspapers and periodicals having general circulation. Typical, but not all inclusive, of said statements are the following:

Service and parts readily available.

You can buy a Hillman, Sunbeam, Singer or Humber (and get parts and service for it) in over 700 U.S. towns—Hawaii and Alaska too.

They are backed by factory parts depots right here in the States, supplying a large truly reputable dealer organization that provides superior service close at hand.

* * * They know they can depend on Rootes coast to coast facilities for prompt and courteous service.

PAR. 5. By means of the aforesaid statements and representations respondents have represented, and do represent, directly or by implication, that parts and service are immediately available to purchasers of their automobiles in all areas of the United States.

PAR. 6. The aforesaid statements and representations are false, misleading and deceptive in that in many instances respondents and their dealers do not have available the parts for the repair of the automobiles sold by them, and in many instances such parts cannot be obtained for substantial periods of time and, therefore, prompt service cannot be rendered by respondents' dealers.

PAR. 7. The use by respondents of the aforesaid false, misleading and deceptive statements and representations has had, and now has, the capacity and tendency to, and does, 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 a substantial quantity of respondents' automobiles because of such erroneous and mistaken belief. As a result thereof, substantial trade has been, and is being, unfairly diverted to respondents from their competitors and substantial injury has been, and is being, done thereby to competition in commerce.

PAR. 8. The aforesaid acts and practies 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 compe-

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

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

Mr. Nathan Shapiro and *Mr. Berthold H. Hoeniger*, of New York, N.Y., for respondents.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

The complaint herein was issued on August 9, 1960, charging Respondents with violation of the Federal Trade Commission Act by the dissemination of false, misleading and deceptive statements and representations that parts and service are immediately available to purchasers of their automobiles in all areas of the United States.

Thereafter, on November 7, 1960, Respondents, their counsel, and counsel supporting the complaint herein entered into an Agreement Containing Consent Order To Cease And Desist, which was approved by the Director, Acting Associate Director and Assistant Director of the Commission's Bureau of Litigation, and thereafter, on December 5, 1960, submitted to the Hearing Examiner for consideration.

The agreement identifies Respondent Rootes Motors Incorporated as a Delaware corporation, with its office and principal place of business located at 42-32 21st Street, Long Island City, New York, and Respondents John T. Panks and Peter Lloyd-Owen as Director and Vice President, and as Secretary-Treasurer, respectively, of said corporation, their addresses being the same as that of the corporate respondent.

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.

Respondents waive any further procedure before the Hearing Examiner and the Commission; the making of findings of fact and conclusions of law; and all of the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement. All parties agree that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and the agreement; that the order to cease and desist, as contained in the agreement, when it shall have become a part of the decision of the Commission, 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; that the complaint herein may be used in construing the terms of said order; and that the agreement is for settlement purposes only and does not constitute an admission by Respondents that they have violated the law as alleged in the complaint.

After consideration of the allegations of the complaint, and the provisions of the agreement and the proposed order, the Hearing Examiner is of the opinion that such order constitutes a satisfactory disposition of this proceeding. Accordingly, in consonance with the terms of the aforesaid agreement, the Hearing Examiner accepts the Agreement Containing Consent Order To Cease And Desist; finds that the Commission has jurisdiction over the Respondents and over their acts and practices as alleged in the complaint; and finds that this proceeding is in the public interest. Therefore,

It is ordered, That Respondent Rootes Motor Incorporated, a corporation, and its officers and Respondents John T. Panks and Peter Lloyd-Owen, individually and as officers of said corporation, and Respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale and sale of automobiles in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that parts and service for said automobiles are immediately available in any area of the United States where such parts and service are not in fact so available.

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 2nd day of February, 1961, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Rootes Motors Incorporated, a corporation, and John T. Panks and Peter Lloyd-Owens, individually and as officers of said corporation, shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist.

IN THE MATTER OF

RITZ THRIFT SHOP, INC., ET AL.

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

Docket 7980. Complaint, June 24, 1960—Decision, Feb. 3, 1961

Consent order requiring New York City furriers to cease violating the Fur Products Labeling Act by failing to set forth the term "Persian Lamb" properly, misusing the term "blended", and failing in other respects to comply 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 Ritz Thrift Shop, Inc., a corporation, and Raphael Kaye, Daniel Kaye, and Milton Kosof, 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. Ritz Thrift Shop, 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 107 West 57th Street, New York, New York.

Raphael Kaye, Daniel Kaye and Milton Kosof are president, vice president and 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 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 the following respects:

(a) The term "Persian 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 8 of the said Rules and Regulations.

(b) The term "blended" was used as part of the information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder to describe the pointing, bleaching, dyeing or tip-dyeing of furs, in violation of Rule 19(e) 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.

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 in violation of the Fur Products Labeling Act in that they were not invoiced in accordance with the Rules and Regulations promulgated thereunder in the following respects:

(a) The term Persian 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 8 of the said Rules and Regulations.

(b) The term Persian Broadtail 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 8 of the said Rules and Regulations.

(c) The term "blended" was used as part of the information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder to describe the pointing, bleaching, dyeing or tip-dyeing of furs, in violation of Rule 19(e) of said Rules and Regulations.

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

DeWitt T. Puckett, Esq., supporting the complaint.

Arthur Steinberg, Esq., of New York 17, N.Y. for respondents.

INITIAL DECISION BY LEON R. GROSS, HEARING EXAMINER

On June 24, 1960, The Federal Trade Commission issued a complaint against the above-named respondents, in which they were charged with violating the Federal Trade Commission Act, and the Fur Products Labeling Act and the Rules and Regulations promul-

gated thereunder by, among other things, misbranding in that they were not labeled as required, and falsely and deceptively invoicing fur products sold by respondents in interstate commerce. A true and correct copy of the complaint was served upon the respondents and each and all of them, as required by law. Thereafter respondents appeared by counsel and agreed to dispose of this proceeding without a formal hearing pursuant to the terms of an agreement dated November 17, 1960, containing consent order to cease and desist. The agreement was submitted to the undersigned hearing examiner on December 7, 1960, in accordance with §3.25 of the Commission's Rules of Practice for Adjudicative Proceedings. The agreement purports to dispose of this proceeding as to the respondents and each and all of them and contains the form of a consent cease-and-desist order which the parties have represented is dispositive of the issues involved in this proceeding. The agreement has been signed by the corporate respondent by its president, by the individual respondents individually and as officers of said corporation, by the attorneys for the parties, and has been approved by the Assistant Director, Associate Director and Director of the Bureau of Litigation of the Federal Trade Commission. In said agreement, respondents admit all of the jurisdictional facts alleged in the complaint and agree that the record may be taken as if findings of jurisdictional facts had been made in accordance with such allegations. In the agreement the respondents waive: (a) any further procedural steps before the hearing examiner and the Commission; (b) the making of findings of fact or conclusions of law; and (c) all rights respondents may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement.

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

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

The proceeding having now come on for final consideration on the complaint and the aforesaid agreement containing consent order, and it appearing that the order which is approved in and by said agreement disposes of all the issues presented by the complaint as to all of the parties involved, said agreement of November 17, 1960, is hereby accepted and approved as complying with §§3.21 and 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings. The undersigned hearing examiner, having considered the agreement and proposed order and being of the opinion that the acceptance thereof will be in the public interest, makes the following findings and issues the following order:

FINDINGS

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

2. Respondent Ritz Thrift Shop, 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 107 West 57th Street, New York, N.Y.

3. Raphael Kaye, Daniel Kaye and Milton Kosof are officers of said corporate respondent. These individuals control, formulate and direct the acts, practices and policies of the said corporate respondent. Their offices are the same as that of said corporate respondent.

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

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

It is ordered, That Ritz Thrift Shop, Inc., a corporation and its officers, and Raphael Kaye, Daniel Kaye and Milton Kosof, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the sale, advertising, or offering for sale in commerce, or the transportation or distribution in commerce of fur products, or in connection with the sale, advertising, offering for sale, 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 "com-

merce," "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

1. Misbranding fur products by:

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

B. Failing to set forth the term Persian Lamb where an election is made to use that term instead of lamb.

C. Setting forth on labels affixed to fur products:

1. The term "blended" as part of the information required under §4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder to describe the pointing, bleaching, dyeing or tip-dyeing of furs;

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

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;

B. Failing to set forth the term Persian Lamb where an election is made to use that term instead of Lamb;

C. Failing to set forth the term Persian Broadtail Lamb where an election is made to use that term instead of Lamb;

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

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 3rd day of February 1961, become the decision of the Commission; and, accordingly:

It is ordered, That Ritz Thrift Shop, Inc., a corporation and its officers, and Raphael Kaye, Daniel Kaye and Milton Kosof, individually and as officers of said corporation, shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist.

IN THE MATTER OF

G. & M., INC., TRADING AS GABBY'S AUTO DISCOUNT, ET AL.

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

Docket 7910. Complaint, June 3, 1960—Decision, Feb. 8, 1961

Order requiring used automobile dealers in Washington, D.C., to cease advertising falsely in newspapers and otherwise that used automobiles could be purchased from them on credit for as little as $1 down and terms as low as $8.69 per week, could be financed at bank rate terms, and were fully warranted up to 10,000 miles.

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

Mr. John T. Bonner, of Washington, D. C., for respondents.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The complaint charges that G. & M., Inc., a corporation trading as Gabby's Auto Discount and Gabriel Bobrow, alias Gabby McCoy, have violated the Federal Trade Commission Act, by the use of false, misleading and deceptive statements and representations in connection with their business of selling used automobiles.

The facts are as follows:

1. G. & M., Inc. (in all of respondents' pleading the name so appears) is a corporation organized and doing business under the laws of the District of Columbia, trading as Gabby's Auto Discount, with offices at 12th and I Streets, N.W., Washington, D. C. Gabriel Bobrow, of the same address, known also as Gabby McCoy, is an officer of said corporation and, during the period covered by the complaint herein, formulated, directed and controlled its business activities, including the acts and practices referred to in the complaint.

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

3. In the course and conduct of their business and for the purpose of promoting the sale of their used automobiles, respondents have made certain statements and representations in newspaper advertisements published in the District of Columbia.

4. Representative of such advertising statements are the following:

A. From the Washington Daily News of Wednesday, August 5, 1959, page 55 (CX 1):

DRIVE NOW!
PAY LATER!
$1
DOWN
On Any Car You Want!
on approved credit.

B. From the Washington Daily News of Tuesday, January 12, 1960, page 60 (CX 2):

$ 1 D O W N
on approved credit
* * * * *
(5 cars listed with prices
ranging from $350 to $1,746)
Many More to Choose From

Terms as
low as
$8.69
Per Wk.

* * * * *
Military Personnel Financed.

C. From the Washington Daily News of Monday, January 18, 1960, page 34 (CX 3):

GUARANTEE OF
SATISFACTION

* * * * * *
5. Bank rate terms available!
6. Up to 10,000-mile warranty available on all cars!

D. From the Washington Post of Tuesday, January 12, 1960 (CX 4):

DRIVE NOW!
PAY LATER!
(5 cars listed with prices
ranging from $464 to $1,820)
Many more hardtops, convertibles and sedans to
choose from!
* * * * * *

Terms as
low as
$8.69
Per
Wk.

5. Through such statements respondents conveyed the impression to prospective purchasers and represented that any of the automobiles offered in the respective advertisements could be purchased from respondents on credit for as little as $1 down and terms as low as $8.69 per week; that they could be financed at bank rate terms and fully warranted up to 10,000 miles.

6. These representations were and are false, misleading and deceptive.

Respondent Bobrow testified that there were three or four types of dollar-down contracts. One such contract, dated 1/21/60 (CX 5) shows sale of a $950 car to purchaser Golden of Ft. Meade, Md., with a down payment of $1, but on the margin are the notations "Payment of $299.00 due 1-22-60" and "Payment of $50.00 due 2-3-60". The contract lists "total cash price balance—$949.00", to which is added $70 for $100 deductible collision 12-months insurance, $32.03 for 21-month life-insurance, and a finance charge of $212.97, making "total time price balance due from purchaser—$1,264.00". Terms of payment were to be: 3 payments of $35.00 each, payable on the fifth day of each month beginning March 5, 1960, and 18 payments of $45.00 each. The two marginal payments were described by witness Bobrow as "pick-up payments", which he defined as "payment that's paid after the original downpayment has been made to supplement the downpayment to bring the payments down lower to accommodate the customer. It depends on what payment the customer wanted".

The amount due for the car and insurance on the day following the day of purchase, after the $299 pick-up payment, was approximately $750.00. The financing charge of $212.97 amounted to 28.40% of this sum, which is far in excess of "bank rate terms". The $1 down payment is a figment of the imagination. To all intents and purposes the down payment in this instance was $300.00.

7. The respondent Bobrow testified further that he could sell any used car "up to a value between say around $700 or a little over $700" for weekly payments of $8.69 per week, but beyond that price payments would necessarily have to be higher. As an example of a contract calling for payments as low as $20 per month, respondent presented a conditional sales contract (RX 1) dated 3/31/59, showing sale of a 1953 Chevrolet to Henrietta Boswell of Silver Spring, Md., for $790, with cash down payment of $125; "irregular installments" of $295.00 due 4/2/59 and $75 due 4/10/59; 11 payments of $20 per month beginning 5/5/59; and a final payment of $221. The financing

charges were $126.00. There was no insurance. If the payments were made as scheduled on the conditional sales contract, the purchaser paid, within less than two weeks from the date of purchase of the $790 car, the sum of $495, and was then obligated to pay within one year $441 more. On this contract the total car cost, including $126 for financing, amounts to $916, the payments to $936. No explanation was offered for the $20 discrepancy, and the payments on the time balance, shown as $791, averaged more than $60 per month.

8. As an example of an $8-per-week payment contract, respondent presented another conditional sales contract (RX 2) dated 4/20/59 showing sale of a 1949 Chevrolet sedan to Thomas L. Bittle of Washington, D. C., for $310 with $115 down. Financing charges in this case were $50.00, leaving a time balance of $245. Payments on this contract were shown to be due as follows:

$25 due 4/24/59,
$20 due 5/1/59,
25 payments of $8 due on Friday of each week beginning 5/8/59.

Within less than 28 weeks the purchaser would have paid out $360 for his $310 car. The deferred payments on the $245 amounted to approximately $8.75 per week. The financing charges were in excess of "bank rate terms". As to bank rate terms, one witness testified that his bank only financed 1958, 1959 and 1960 cars, that the rate was 5% discount, that older cars were not financed as such but that personal loans were made available to eligible customers at 6% discount rate.

9. Without attempting to belabor the issues, but to show enough examples of respondents' practices to remove any doubt as to their methods of operation, further examples have been selected at random from exhibits of record.

A. By a car order (CX 10), dated 1/25/60, a 1957 Buick was sold to James R. Johnson of Washington, D.C., for $1895. Additional charges were:

$ 67 for 12 months' $100 deductible collision insurance;
78.68 for 24 months' life insurance;
471.32 financing charge:

Total car cost $2,512, time price balance due $2,362.

Payments were:

Balance for trade-in	$ 150
1/26/60	295
1/29/60	50
2/27/60	50
Beginning 3/12/60, 52 bi-weekly payments of $34 each	1,768
Final payment	199
	$2,512

Within five days of the order the purchaser had paid $495 on his car, but was charged $471.32 for financing $2,362—a charge much above "bank rate terms."

B. Another car order (CX 12) dated 9/19/59 is for a 1956 Ford sold to Robert E. Geluz of the District for $1,295. Additional charges were:

$ 97 for 12 months' $100 deductible collision insurance;
79.80 for 18 months' life, health and accident insurance;
253.20 for financing;

Total car cost $1,725.

Payments were:

9/19/59 down payment	$ 210
9/25/59 pick-up payment	100
10/2/59 pick-up payment	45
10/16/59 pick-up payment	40
Beginning 11/2/59, 37 bi-weekly payments of $35 each	1,295
Final payment	35
	$1,725

Total time price balance due from purchaser is shown on the order as $1,515, taking no account of the "pick-up" payments.

C. One more transaction evidenced by a conditional sales contract (RX 9A) dated 8/31/59 involves sale of a 1957 Ford for $2,460. Additional charges were:

$ 73 for 12 months' fire, theft, $100 deductible collision insurance;
74.24 for 24 months' life insurance;
312.76 financing charges;

Total car cost $2,920.

Payments were:

8/31/59 cash down	$ 50
9/1/59 "irregular installment"	800
9/18/59 "irregular installment"	100
10/2/59 "irregular installment"	50
Beginning 10/16/59, 23 monthly payments of $65 each	1,495
Final payment	425
	$2,920

Total time balance is shown as $2,870, although within less than twenty days from purchase date $950 had been paid in on a $2,460 sale. The financing charge of $312.76 is far in excess of "bank rate terms", even assuming the insurance charges totaling $147.24 are accurate and reasonable.

10. The record contains documentary evidence of eleven of respondents' used-car transactions, a tabulation of which, excluding the three mentioned in the preceding paragraph, follows:

Ex. No.	Car selling price	Down payment	Additional payments within 30 days	Insurance charge	Finance charge	Time balance	Credit term (years)
CX 5	$950	$1	$349	$102.03	$212.97	$1,264	2
CX 7	1,800	140	330	176.20	403.80	2,240	2⅓
CX 9	850	250	None	118.31	47.50 197.94	963.75	1¾
CX 11	1,295	250	95	116.25	350.49	1,512	2
CX 13	2,095	545	100	224.15	470.85	2,245	2
RX 1	790	125	370	None	126.00	791	1
RX 2	310	115	45	None	50.00	245	⅔
RX 10A	2,725	1,000	None	*95.00 211.15	577.80	2,608.95	2

*GAD warranty charge.

Cash selling price plus insurance and finance charges minus the down payment equals time balance. The amounts of the pick-up payments made almost immediately (always within 30 days) were never deducted before determining the time balance. As to warranties, Commission's Exhibits 5, 7, 10 and 12 show "Gabby's Gold Star Warranty"; Commission's Exhibits 8, 9, 11 and 13 show "This car is purchased as is."; Respondents' Exhibits 1 and 2 make no reference to seller's warranty; and Respondents' Exhibit 10 shows a charge of $95 for G.A.D. warranty.

11. Respondents' warranty form (CX 6) provides that Gabby's Auto Discount agrees under certain conditions to protect the purchaser "from -----% of the cost" of certain specified parts and labor "for a period of ------ days". If a 10,000-mile or any other war-

ranty was given, the terms had to be written in. The evidence warrants the conclusion that in many cases no warranty was given or offered, and that the warranties, where given, were not uniform, varying with the amount paid for the warranty and the demands made by the individual customers. There was no standard warranty.

12. Seven of the eleven exhibits of record show that financing was through United Securities Corporation, at rates which respondent Bobrow admitted were not bank financing rates. One exhibit shows financing through Franklin Discount Company; three do not disclose the financing company's name. (Respondents' rates were uniformly much higher than bank rates.)

CONCLUSIONS

The charges set forth in the complaint have been established by substantial, reliable, probative evidence.

The acts and practices of respondents so established were and are all to the prejudice and injury of the public and of respondents' competitors, and constitute unfair and deceptive acts and practices and unfair methods of competition in commerce, within the intent and meaning of the Federal Trade Commission Act.

The Federal Trade Commission has jurisdiction in this proceeding, which is in the public interest.

Accordingly,

It is ordered, That respondents G. & M., Inc., a corporation doing business under its own name or trading as Gabby's Auto Discount, or under any other name, and its officers, and Gabriel Bobrow, alias Gabby McCoy, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of used automobiles in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that:

1. Used automobiles will be delivered to purchasers upon the payment of one dollar or any other amount, or without a payment, unless after purchaser makes such payment, or the sale is made without a down payment, the automobile is in fact put into the purchaser's unrestricted possession;

2. They offer or make available bank rate financing, or that the financing rate under which used automobiles are sold is any rate not in accordance with the facts;

3. Terms as low as $8.69, or any other amount, per week, month, or any other period, are available to purchasers, unless such is the fact;

4. Used automobiles are warranted unless the nature and extent of the warranty and the manner in which the warrantor will perform are clearly set forth, and, if a charge is made for the warranty, such fact and the amount of the service charge are clearly disclosed.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall on the 8th day of February, 1961, become the decision of the Commission; and, accordingly:

It is ordered, That respondents G. & M., Inc., a corporation, trading as Gabby's Auto Discount and Gabriel Bobrow, alias Gabby McCoy, individually and as an officer of said corporation, shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist.

IN THE MATTER OF

JOSEPH LURIA TRADING AS LURIA'S

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

Docket 8048. Complaint, July 18, 1960—Decision, Feb. 9, 1961

Consent order requiring Philadelphia furriers to cease violating the Fur Products Labeling Act by affixing to fur products labels containing fictitious prices, represented falsely thereby as the regular retail selling price, and by failing to comply in other respects with advertising, 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 Joseph Luria, an individual trading as Luria's, hereinafter referred to as respondent, has 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. Joseph Luria is an individual trading as Luria's, with his office and principal place of business located at 5724 North Broad Street, in the City of Philadelphia, State of Pennsylvania.

PAR. 2. Subsequent to the effective date of the Fur Products Labeling Act on August 9, 1952, respondent has been, and is 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 has 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 respondent usually and regularly sold such fur products in the recent regular course of its business, in violation of Section 4(1) of the Fur Products Labeling Act.

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

PAR. 5. Certain of said fur products were misbranded in violation of the Fur Products Labeling Act in that they were not labeled in accordance with the Rules and Regulations promulgated thereunder in that information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was not set forth in the required sequence in violation of Rule 30 of said Rules and Regulations.

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

PAR. 7. Certain of said fur products were falsely and deceptively invoiced in violation of the Fur Products Labeling Act in that they were not invoiced in accordance with the Rules and Regulations

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

PAR. 8. Certain of said fur products were falsely and deceptively advertised in that respondent on labels affixed to fur products 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 contained on the labels affixed to fur products, and others of similar import and meaning not specifically referred to herein, respondent falsely and deceptively advertised fur products in that respondent 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 and Rule 44(a) of said Rules and Regulations.

PAR. 9. Respondent, in making pricing claims and representations, respecting fur products 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 the said Rules and Regulations.

PAR. 10. The aforesaid acts and practices of respondent, 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.

Garland S. Ferguson, Esq., supporting the complaint.

Burton Caine, Esq., of *Wolf, Block, Schorr and Solis-Cohen*, of Philadelphia, for respondent.

INITIAL DECISION BY LEON R. GROSS, HEARING EXAMINER

On July 18, 1960, the Federal Trade Commission issued a complaint against the above-named respondent, in which he was charged with violating the Federal Trade Commission Act, and the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder by, among other things, misbranding by failing to label in accordance with the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder, falsely and deceptively invoic-

ing, and falsely and deceptively advertising fur products sold by respondent in interstate commerce. A true and correct copy of the complaint was served upon the respondent, as required by law. Thereafter respondent appeared by counsel and agreed to dispose of this proceeding without a formal hearing pursuant to the terms of an agreement dated December 5, 1960, containing consent order to cease and desist. The agreement was submitted to the undersigned hearing examiner on December 20, 1960, in accordance with §3.25 of the Commission's Rules of Practice for Adjudicative Proceedings. The agreement purports to dispose of this proceeding as to all parties and contains the form of a consent cease-and-desist order which the parties have represented is dispositive of the issues involved in this proceeding. The agreement has been signed by the respondent, the attorneys for both parties, and has been approved by the Assistant Director, Associate Director and Director of the Bureau of Litigation of the Federal Trade Commission. In said agreement respondent admits all of the jurisdictional facts alleged in the complaint and agrees that the record may be taken as if findings of jurisdictional facts had been made in accordance with such allegations. In the agreement the respondent waives: (a) any further procedural steps before the hearing examiner and the Commission; (b) the making of findings of fact or conclusions of law; and (c) all rights respondent may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement.

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

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

This proceeding having now come on for final consideration on the complaint and the aforesaid agreement of December 5, 1960, containing consent order, and it appearing that the order which is approved in and by said agreement disposes of all the issues presented by the

complaint as to all of the parties involved, said agreement of December 5, 1960, is hereby accepted and approved as complying with §§3.21 and 3.25 of the Commisssion's Rules of Practice for Adjudicative Proceedings. The undersigned hearing examiner, having considered the agreement and proposed order and being of the opinion that the acceptance thereof will be in the public interest, makes the following findings and issues the following order:

FINDINGS

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

2. Respondent Joseph Luria is an individual trading and doing business as Luria's, with his office and principal place of business located at 5724 North Broad Street, City of Philadelphia, State of Pennsylvania;

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

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

It is ordered, That Joseph Luria, an individual trading as Luria's, or any other trade name, and respondent's representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the sale, advertising, or offering for sale in commerce, or the transportation or distribution in commerce of fur products, or in connection with the sale, advertising, offering for sale, transportation, or distribution of fur products which are made in whole or in part of fur which has been shipped and received in commerce, as "commerce", "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

1. Misbranding fur products by:

A. Falsely or deceptively labeling or otherwise falsely or deceptively identifying any such product as to respondent's regular price thereof by any representation that respondent's regular or usual price of any such product is any amount in excess of the price at which respondent has usually and customarily sold such product in the recent regular course of business;

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

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

2. Falsely or deceptively invoicing fur products by:

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

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

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

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

4. Making claims and representations respecting prices and values of fur products unless respondent maintains 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 9th day of February 1961, become the decision of the Commission; and, accordingly:

It is ordered, That respondent Joseph Luria, an individual trading as Luria's, 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

MARY-MAC, INCORPORATED, ET AL.

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

Docket 8073. Complaint, Aug. 10, 1960—Decision, Feb. 9, 1961

Consent order requiring Dallas, Tex., distributors of its "Mary-Mac Relax-O-Motor Motorized" devices consisting of motordriven cushions, tables, chairs, mattresses, and belts, to cease representing falsely in advertising that use of said devices would effect a general loss of body weight and a localized loss of weight to waist, hips, legs, and other body areas; would tone the muscles and result in a firmer figure.

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 Mary-Mac, Incorporated, a corporation, and Harry H. McDaniel, H. J. McDaniel, and Mary McDaniel, 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 Mary-Mac. Incorporated is a corporation organized, existing and doing business under and by virtue of the laws of the State of Texas with its office and principal place of business located at 1012-14 Powhattan Street, Dallas, Texas.

Respondents Harry H. McDaniel, H. J. McDaniel and Mary McDaniel are the officers of corporate respondent who formulate, direct and control its activities including the acts and practices hereinafter set forth. Their business address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time past have been, engaged in the advertising, offering for sale, sale and distribution of mechanical vibrating equipment and furniture including motor driven cushions, tables, chairs, mattresses and belts. Said equipment is advertised and sold under the name "Mary-Mac Relax-O-Motor Motorized". Each of respondents' mechanical vibrating products is a "device" as that word is defined in the Federal Trade Commission Act.

PAR. 3. Respondents cause the said devices, when sold, to be transported from their place of business in the State of Texas to

purchasers thereof located in various other States of the United States and in the District of Columbia, both for rental and sale. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said devices in commerce, as "commerce" is defined in the Federal Trade Commission Act. The volume of business in such commerce has been and is substantial.

PAR. 4. In the course and conduct of their aforesaid business, respondents have disseminated, and have caused the dissemination of, certain advertisements concerning the said devices by the United States mails and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said devices; and respondents have disseminated, and caused the dissemination of, advertisements concerning said devices by various means for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said devices in commerce, as "commerce" is defined in the Federal Trade Commission Act.

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

> REDUCE — NEW EASY WAY TO
> KEEP SLIM AT HOME
> WAIST LINE CONTROL
> It's the first choice
> REDUCE UNWANTED BULGES
> SHAKE AWAY WEIGHT AT HOME FOR PENNIES
> The relaxing, soothing massage breaks down fatty tissues, tones the muscles and flesh, and the increased awakened blood circulation carries away waste fat—helps you regain and keep a firmer and more graceful figure
> "MARY-MAC" DOES ALL THE WORK FOR YOU! ITS DEEP POWERFUL MOTOR GENERATES DEEP, SOOTHING VIBRATIONS THAT SHAKE AWAY EXCESS WEIGHT LIKE MAGIC! YOUR BODY BECOMES LISSOME AND BEAUTIFUL.
> START TODAY!
> AT HOME
> REDUCE INCHES
> HIPS — WAIST — LEGS
> WITH — FAST — ACTING
> RELAX-O-MOTOR CUSHION
> SHAKE-A-WAY—REDUCE
> AT—HOME FOR PENNIES
> Don't Stay Fat
> Use "MARY-MAC"

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

1. Will effect a general loss of body weight;

2. Will effect a localized loss of weight to waist, hips, legs or other body areas;

3. Will tone the muscles and effect a firmer figure.

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

Is of no value in effecting either a general or localized loss of body weight.

Will not tone the muscles or effect a firmer figure.

PAR. 8. 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. John A. Erhard, of Dallas, Tex., for respondents.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

The Federal Trade Commission (sometimes also hereinafter referred to as the Commission) on August 10, 1960, issued its complaint herein, charging the respondents Mary-Mac, Incorporated, a corporation, and Harry H. McDaniel, H. J. McDaniel, and Mary McDaniel, individually and as officers of said corporation, with having violated the provisions of the Federal Trade Commission Act, and respondents were duly served with process.

On December 20, 1960, there was submitted to the undersigned hearing examiner of the Commission, for his consideration and approval, an "Agreement Containing Consent Order To Cease And Desist", which had been entered into by and between respondents, their counsel, and counsel supporting the complaint, under date of December 6, 1960, subject to the approval of the Bureau of Litigation of the Commission, which had subsequently 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 Mary-Mac, Incorporated is a corporation organized, existing and doing business under and by virtue of the laws of the State of Texas, with its office and principal place of business located at 1012-14 Powhattan Street, Dallas, Texas. Respondents Harry H. McDaniel, H. J. McDaniel and Mary McDaniel are the officers of the corporate respondent, who formulate, direct and control its activities, including the acts and practices hereinafter set forth. Their business address is the same as that of the corporate respondent.

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

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

4. Respondents waive:

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

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

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

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

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

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

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

Upon due consideration of the complaint filed herein and the said "Agreement Containing Consent Order To Cease And Desist", the hearing examiner hereby 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 against the respondents, both generally and in each of the particulars alleged therein; that this proceeding is in the interest of the public; that the order proposed in said agreement is appropriate for the just disposition of all of the issues in this proceeding as to all of the parties hereto; and that said order therefore should be, and hereby is, entered as follows:

It is ordered, That respondent Mary-Mac, Incorporated, a corporation, and its officers, and respondents Harry H. McDaniel, H. J. McDaniel, and Mary McDaniel, individually and as officers of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, distribution or rental of motor-driven mechanical vibrating equipment or furniture known as "Mary-Mac Relax-O-Motor Motorized", or any other device of substantially similar design or operation, do forthwith cease and desist from:

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

(a) That the use of said devices will be of value in effecting a general or localized reduction in body weight;

(b) That the use of said devices will tone the muscles or effect a firmer figure;

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 devices in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement contains any representation prohibited in paragraph 1 hereof.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 9th day of February, 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

THE STERN & MANN CO.

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

Docket 8108. Complaint, Aug. 30, 1960—Decision, Feb. 9, 1961

Consent order requiring furriers in Canton, Ohio, to cease violating the Fur Products Labeling Act by failing to set forth "Dyed Mouton processed Lamb" and similar terms as required in invoicing and advertising; by failing, in advertising, to disclose the names of animals producing certain furs or the country of origin of imported furs or that some products contained artificially colored fur; and by failing in other respects to comply with invoicing and advertising 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 The Stern & Mann Co., a corporation, hereinafter referred to as respondent, has 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. The Stern & Mann Co. 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 301 Tuscarawas Street West, Canton, Ohio. It does business under the name of Stern & Mann's.

PAR. 2. Subsequent to the effective date of the Fur Products Labeling Act on August 9, 1952, respondent has been and is 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 has 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 respondent 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 violation of the Fur Products Labeling Act in that they were not invoiced in accordance with the Rules and Regulations promulgated thereunder in the following respects:

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

(b) The term "Persian Lamb" was not set forth in the manner required where an election is made to use that term instead of Lamb in violation of Rule 8 of the said Rules and Regulations.

(c) The term "Dyed Mouton processed Lamb" was not set forth in the manner required where an election is made to use that term instead of Dyed Lamb in violation of Rule 9 of said Rules and Regulations.

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

(e) Required item numbers were not set forth on invoices in violation of Rule 40 of the 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 respondent 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 respondent which appeared in issues of The Canton Repository, a newspaper published in the City of Canton, State of Ohio, 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, respondent falsely and deceptively advertised fur products in that said advertisements:

(a) Failed to disclose the name or names of the animal or animals that produced the fur contained in the fur product as set forth in the

Fur Products Name Guide, in violation of Section 5(a)(1) of the Fur Products Labeling Act.

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

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

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

(e) The term "Dyed Mouton processed Lamb" was not set forth in the manner required where an election is made to use that term instead of Dyed Lamb in violation of Rule 9 of the said Rules and Regulations.

PAR. 7. The aforesaid acts and practices of respondent, 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 supporting the complaint.

Black, McCuskey, Souers & Arbaugh, by *Mr. Loren E. Souers, Jr.*, of Canton, Ohio, for respondent.

INITIAL DECISION OF JOHN LEWIS, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondent on August 30, 1960, charging it with having violated the Fur Products Labeling Act and the Rules and Regulations issued thereunder, and the Federal Trade Commission Act, through the false and deceptive invoicing and advertising of certain fur products. After being served with said complaint, respondent appeared by counsel and thereafter entered into an agreement, dated December 5, 1960, containing a consent order to cease and desist purporting to dispose of all this proceeding as to all parties. Said agreement, which has been signed by respondent, by counsel for said respondent, and by counsel supporting the complaint, and approved by the Director, Associate Director, and Acting 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.

Respondent, pursuant to the aforesaid agreement, has 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 respondent waives any further procedural steps before the hearing examiner and the Commission, the makings of findings of fact or conclusions of law and all of the rights it 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 respondent that it has violated the law as alleged in the complaint.

This proceeding having now come on for final consideration on the complaint and the aforesaid agreement containing consent order, and it appearing that the order provided for in said agreement covers all of the allegations of the complaint and provides for an appropriate disposition of this proceeding as to all parties, said agreement is hereby accepted and is ordered filed upon this decision's becoming the decision of the Commission pursuant to 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 The Stern & Mann Co. 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 301 Tuscarawas Street West, in the City of Canton, State of Ohio.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent hereinabove named. The complaint states a cause of action against said respondent under the 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 The Stern & Mann Co., a corporation, and its officers, and respondent's representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the sale, advertising, 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. Falsely or deceptively invoicing fur products by:

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

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

3. Failing to set forth the term "Persian Lamb" in the manner required where an election is made to use that term instead of lamb.

4. Failing to set forth the term "Dyed Mouton processed Lamb" in the manner required where an election is made to use that term instead of Dyed Lamb.

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

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

B. 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. Fails to disclose:

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

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

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

2. Sets forth information required under Section 5(a) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder in abbreviated form.

3. Fails to set forth the term "Dyed Mouton processed Lamb" in the manner required where an election is made to use that term instead of Dyed Lamb.

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 9th day of February 1961, become the decision of the Commission; and, accordingly:

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

IN THE MATTER OF

ARMSTRONG ALUMINUM WINDOW CO., INC., ET AL.

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

Docket 8127. Complaint, Sept. 26, 1960—Decision, Feb. 9, 1961

Consent order requiring a West Springfield, Mass., distributor of aluminum siding, storm windows and doors, aluminum patios, etc., to cease making offers to sell in advertising in newspapers and other media which were not bona fide but were made to obtain leads to prospective buyers, whose purchases at the advertised prices they then discouraged and to whom they attempted to sell much higher priced products.

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 Armstrong Aluminum Window Co., Inc., a corporation, and Leonard B. Paul, 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 Armstrong Aluminum Window Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Massachusetts, with its office and principal place of business located at 1702 Riverdale Road, West Springfield, Massachusetts.

Respondent Leonard B. Paul is an officer of the corporate respondent. He formulates, directs and controls the policies, practices and acts of said corporate respondent, including the practices and acts

hereinafter referred to. His address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time past have been, engaged in the advertising, offering for sale, sale and distribution of various items of merchandise suitable for installation in private homes, including aluminum siding, storm windows and doors, and aluminum patios.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time past have caused, their said products to be shipped from their place of business in the State of Massachusetts to purchasers thereof located in the State of Connecticut, and maintain, and at all times 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 aluminum products, respondents have made statements in newspapers and other media, typical of which, but not all inclusive are the following:

Save Now! Pay
Next Fall
Aluminum Siding
Includes Labor
And Materials
No Extras
Any 5-Room House
Completely Installed
Only $329
Up to 1000 sq. ft.
Aluminum Siding
Cover your entire house
Completely Installed
$299 Per 1000 sq. ft.
In 14 Beautiful colors
No Down Payment

PAR. 5. By means of the statements in the aforesaid advertisements, and others of the same import not specifically set out herein, respondents represented, directly or by implication, that they were making a bona fide offer to sell the product advertised at the price set out in the advertisements.

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

1. The offers set forth in Paragraph Four above were not genuine and bona fide offers but were made for the purpose of obtaining leads and information as to persons interested in the purchase of respondent's products. After obtaining such leads through response

to such advertisements and calling upon such persons, respondents and their salesmen made no effort to sell the advertised products at the advertised price, but, instead, disparaged such products in such a manner as to discourage their purchase and attempted to, and frequently did, sell much higher priced products.

2. Prospective customers who did purchase certain of respondents advertised products were in many instances switched to more expensive items after such a sale by respondents' practice of not delivering the purchased product to the homeowner.

PAR. 7. In the course and conduct of their business at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals engaged in the sale of products 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 such statements and representations were, and are, true and into the purchase of substantial quantities of respondents' products 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.

Theodor P. von Brand, Esq., for the Commission.
Irving Fein, Esq., of Springfield, Mass., for respondents.

INITIAL DECISION BY ROBERT L. PIPER, HEARING EXAMINER

The Federal Trade Commission on September 26, 1960, issued its complaint against the above-named respondents charging them with having violated the Federal Trade Commission Act, by misrepresenting the price of their products. Respondents appeared and entered into an agreement dated December 1, 1960, containing a consent order to cease and desist, disposing of all the issues in this proceeding without further hearings, which agreement has been duly approved by the 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 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 Armstrong Aluminum Window 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 1702 Riverdale Road, in the City of West Springleld, State of Massachusetts.

2. Individual respondent Leonard B. Paul is President and Treasurer of the corporate respondent. He formulates, directs and controls the policies, practices and acts of said corporate respondent. His address is the same as that of the corporate respondent.

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

It is ordered, That respondents Armstrong Aluminum Window Co., Inc., and its officers, and Leonard B. Paul, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of aluminum siding, or any other merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Representing, directly or indirectly, that certain merchandise is offered for sale when such offer is not a bona fide offer to sell the merchandise so offered.

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 9th day of February 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

HERBERT A. ATKINSON DOING BUSINESS AS SUDBURY LABORATORY

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

Docket 8156. Complaint, Oct. 26, 1960—Decision, Feb. 11, 1961

Consent order requiring a seller in Sudbury, Mass., to cease representing falsely in advertising the qualities of marine paint and metal coating products he sold, as in the order below indicated.

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 Herbert A. Atkinson doing business as Sudbury Laboratory, hereinafter referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would

be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Herbert A. Atkinson is an individual doing business as Sudbury Laboratory with his office and principal place of business located at Dutton Road, Sudbury, Massachusetts.

PAR. 2. Respondent is now, and for some time has been, engaged in the advertising, offering for sale, sale and distribution among other things, of a marine paint designated as "Sudbury 365 Bright Work Finish" and a coating for metal products known as "Galva-Coat" and the sale thereof to the public and to dealers for resale to the public.

PAR. 3. In the course and conduct of his business, respondent has caused his products, when sold, to be transported from his place of business in the State of Massachusetts to purchasers thereof located in other States of the United States, and maintains, and at all times mentioned herein has maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Respondent, in the course and conduct of his business, is now, and has been, in substantial competition, in commerce, with corporations, firms and individuals in the sale of products of the same general kind and nature as those sold by respondent.

PAR. 5. In the course and conduct of his aforesaid business, and for the purpose of inducing the sale of his products, respondent has caused advertisements to be placed in various publications having a distribution in the various States of the United States of which the following is typical:

As to Sudbury 365 Bright Work Finish

Sudbury 365 Bright Work Finish * * * not affected by blistering sun, salt water spray, cigarette burns, * * * Can be easily brushed or sprayed on in any climate, zero to 100° * * * Dries dust-free in 15 minutes, and is ready for additional coats in 30 to 40 minutes * * * with or without sanding.

* * * * * * *

Sudbury 365 Bright Work Finish is a new type of Marine coating and one that has no similarity whatsoever to varnish, lacquer or any other coating now on the market.

* * * * * * *

Using the newly developed Urethan base.

* * * * * * *

Three-year in-use tests in European and Tropical waters prove conclusively that this marine finish eclipses any spar varnish now on the market.

As to Sudbury GALVA-COAT

Electro-chemical action binds Galva-Coat to the metal in a rust-preventive finish that is comparable to hot-dip galvanizing. * * * Covers 48 sq. feet per pound * * * protects metals like Hot Dip Galvanizing.

PAR. 6. Through the use of the aforesaid statements respondent represented, directly or by implication, that Sudbury 365 Bright Work Finish: (1) is not adversely affected by heat, salt water spray or cigarette burns; (2) can be easily brushed or sprayed on in temperatures from zero to 100°; (3) dries dust-free in 15 minutes and is ready for additional coats in 30 or 40 minutes with or without sanding; (4) is type of marine coating that has no similarity whatsoever to any other coating on the market; (5) three-year end-use tests in European and tropical waters proves conclusively that Sudbury 365 Bright Work Finish eclipses any spar varnish on the market.

Through the use of the aforesaid statements, respondent represented, directly or by implication, that Sudbury Galva-Coat: (1) protects metals in the same manner and to the same extent as Hot-Dip galvanizing; and (2) one pound of Galva-Coat will effectively cover approximately 48 square feet of metal.

PAR. 7. Said statements and representations were and are, false, misleading and deceptive. In truth and in fact: (1) Sudbury 365 Bright Work Finish will be adversely affected by sun, salt water spray and cigarette burns; (2) it cannot be easily brushed or sprayed at low temperatures such as zero or high temperature such as 100°; (3) the length of time that will elapse before the product will dry dust free or within which additional coats may be applied depends upon several factors including the temperature, humidity and presence or absence of sunlight. It is, therefore, not possible to fix a minimum time unless such factors are taken into consideration. Under certain conditions said product would not dry dust free in 15 minutes or be ready for additional coats in 30 to 40 minutes. If the product remains on the surface until it hardens or cures, sanding will be necessary before another coat is applied; (4) said product is similar to other coatings on the market; (5) said product was not subjected to three-year end-use tests, in European or tropical waters or at any other place as it has not been on the market for three years; (6) Sudbury Galva-Coat does not protect metals in the same manner or to the same extent as Hot-Dip galvanizing; (7) one pound of Galva-Coat will not effectively cover 48 square feet of metal.

PAR. 8. The use by respondent of the aforesaid false, misleading and deceptive statements and representations has had, and now has, the capacity and tendency to mislead 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 a substantial number and quantity of respondent's said products because of such erroneous and mistaken belief. As a result thereof, trade has been unfairly diverted to respondent from his

competitors and injury has thereby been done to competition in commerce.

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

Mr. Morton Nesmith for the Commission.
Respondent for himself.

INITIAL DECISION BY HARRY R. HINKES, HEARING EXAMINER

The complaint in this matter charges the respondent with violation of the Federal Trade Commission Act in connection with the offering for sale, sale and distribution of marine paint and metal coating.

An agreement has now been entered into by respondent and counsel supporting the complaint which provides, among other things, that respondent admits all the jurisdictional facts alleged in the complaint; that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and the agreement; that the making of findings of fact and conclusions of law in the decision disposing of this matter is waived, together with any further procedural steps before the hearing examiner and the Commission; that the order hereinafter set forth may be entered in this proceeding without further notice to the respondent and when entered shall have the same force and effect as if entered after a full hearing, respondent specifically waiving all the rights it might have to challenge or contest the validity of the order; that the order may be altered, modified, or set aside in the manner provided for other orders; that the complaint may be used in construing the terms of the order; that the agreement is for settlement purposes only and does not constitute an admission by respondent that it has violated the law as alleged in the complaint; and 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.

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

1. Respondent Herbert J. Atkinson, erroneously named Herbert A. Atkinson in the complaint, is an individual doing business as

Sudbury Laboratory with his office and principal place of business located at Dutton Road, in the City of Sudbury, 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 Herbert J. Atkinson doing business as Sudbury Laboratory or under any other trade name, his agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of his products designated as "Sudbury 365 Bright Work Finish" and "Sudbury Galva-Coat" or any other product of substantially the same composition or properties whether sold under the same or any other name or similar products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing directly or by implication that:

1. Sudbury Bright Work Finish is not adversely affected by sun, salt water spray or cigarette burns;

2. Said product can be easily brushed or sprayed on at temperatures as low as zero or as high as 100°; or representing that said product can be brushed or sprayed on at any temperature that is not in accordance with the facts;

3. Said product dries dust-free or is ready for additional coats, with or without sanding in any specific period of time unless it is stated that such periods will vary depending upon the temperature. humidity and sunlight;

4. It has no similarity to other coatings on the market;

5. Said product has undergone a three year test which proved that it eclipses any spar varnish now on the market; or has undergone any tests which prove its superiority in any manner, unless such is the fact;

6. Sudbury Galva-Coat protects metals to the same extent or in the same manner as Hot-Dip galvanizing;

7. One pound of Sudbury Galva-Coat effectively covers 48 square feet of metal or effectively covers any other number of square feet that is not in accordance with the facts.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 11th day

of February, 1961, become the decision of the Commission; and accordingly;

It is ordered, That respondent Herbert J. Atkinson (erroneously designated in the complaint as Herbert A. Atkinson), doing business as Sudbury Laboratory, 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

SOMA ADVERTISING AGENCY ET AL.

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

Docket 7214. Complaint, Aug. 1, 1958—Decision, Feb. 14, 1961

Order requiring a Portland, Ore., correspondence school and its affiliated advertising agency, engaged in selling aviation training courses, to cease representing falsely, in newspaper advertising and through their commission sales agents, that positions were available to persons who completed their courses, that such persons were qualified for employment by major commercial airlines, and that their salesmen were "Registrars" or "Field Registrars".

Mr. John J. McNally and *Mr. Ames W. Williams* for the Commission.

Mr. Howard A. Rankin of *Shuler, Sayre, Winfree & Rankin*, of Portland, Ore., and *Mr. Charles M. Meehan*, of *Dow, Lohnes and Albertson*, of Washington, D. C., for respondents.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER [1]

This proceeding is brought under the Federal Trade Commission Act and involves the advertisement and sale of various correspondence and other courses in commerce. There are eight separate charges. The first and eighth charges are found to have been sustained by the

[1] Upon joint motion of the parties to amend the complaint filed June 30, 1959, the complaint was ordered amended on July 1, 1959, to correct a clerical error in the above-captioned original title and in the body of the complaint as to respondent Soma, the correct corporate title being Soma Advertising Agency, Inc., and also to revise the complaint and its title to conform to the established facts as to incorporation of the partnership of Northwest Schools as Northwest Schools, Inc., on February 28, 1958, the ownership of its stock by respondents Sawyer, their control of the corporation as officers thereof and the discontinuance of the partnership business as more explicitly set forth in the course of this initial decision. The new corporation Northwest Schools, Inc., and its said officers as such and also individuals were made parties to this proceeding in accordance with said joint motion.

evidence but the others are dismissed herein for lack of substantial, credible evidence to sustain them.

Following a preliminary investigation, the Commission filed its formal complaint herein on August 1, 1958, and all respondents named therein were duly served with process. After certain interlocutory motions had been disposed of, respondents filed their answers on February 11, 1959. On an between March 16, 1959, and April 20, 1959, 14 hearings were held in Portland, Oregon; Seattle and Spokane, Washington; Boise, Idaho; and San Francisco, California. On April 20, 1959, both sides rested. The trial record consists of some 1,426 pages and 208 documentary exhibits, many of such exhibits being quite extensive. Of this total, 96 exhibits were the Commission's and 112 were the respondents'. Forty-two witnesses testified in the course of the hearings.

Proposed findings of fact, conclusions of law and order, together with extensive briefs thereon, were duly and respectively submitted by all parties on August 3, 1959. After hearing oral arguments, and careful consideration of all proposals, some presented by each side have been adopted either verbatim or in substance and effect and are incorporated in this decision. All proposals not adopted herein have been rejected. Many of the proposed findings of fact and references to allegedly supporting evidence are either too detailed and lengthy or too immaterial to warrant inclusion herein. Other proposed findings of each of the parties have been rejected as not in accordance with the facts established by the evidence as hereinafter found.

On June 30, 1959, counsel for all parties filed their formal joint motion to amend the complaint to accord with uncontradicted facts then of record with respect to the correct name of the corporate respondent Soma Advertising Agency, Inc., and the organization, status and true corporate name of the respondent Northwest Schools, Inc., and respondents Sawyer both as officers thereof and individually. Respondents waived the filing and service of a new complaint and it was agreed that their answer should stand as the answer to the complaint as amended. This motion was granted by the hearing examiner on July 1, 1959. Matters requiring the changes made by reason of the dissolution of the former partnership Northwest Schools and the incorporation of respondent Northwest Schools, Inc., are more fully described in the subsequent findings of fact.

At the request of counsel, extensive oral arguments on their proposed findings were presented to the examiner September 11, 1959, and final submission taken by him. Presentation of the Commission's case was made by Mr. Williams (who appeared in the case only for

that purpose), while Mr. Rankin argued the defense for the respondents. All matters presented in the proposals, briefs and oral argument, and all matters of evidence have been closely reviewed and fairly and impartially considered in reaching the determinations herein made.

The case was well tried and argued and throughout the numerous hearings a model atmosphere of fair and friendly cooperation prevailed between counsel, parties, and witnesses, in the production of documents, arrangements for and attendance of witnesses at hearings, and otherwise. Respondent William Sawyer most commendably, correctly, and efficiently recorded the evidence taken at Boise, Idaho, on April 2, 1959, when for unexplained reasons the official reporter failed to appear and other reporting services proved entirely unavailable (R.531). Respondents also arranged for and transported by air at their expense a Commission witness, Lois B. Bates, whom respondents had not previously seen or interviewed, to and from her home at Ashton in eastern Idaho, over 200 miles away, to Boise to testify (R. 534). All of these fine courtesies saved much confusion, loss of time and expense to all concerned, and while they have no bearing on the decision of the issues herein, they nevertheless deserve favorable comment as outstanding examples of the cooperative spirit displayed by counsel and the parties throughout the trial phases of this litigation.

The complaint charges respondents with having made eight different alleged types of misrepresentation, all of which are denied by respondents in their answer, except the eighth. This initial decision determines that by the weight of the substantial evidence the Commission's case has been sustained upon two of the eight charges in the complaint. These in substance are: The first charge (Complaint, Paragraphs Three and Four), relating to alleged false offers of employment; and the eighth charge (Complaint, Paragraphs Nine and Ten), relating the respondents' designation of their salesmen as "registrars." The first charge was contested and is primarily established by respondents' advertising, although corroborated and aided by the testimony of certain witnesses who answered respondents' advertising and were subsequently interviewed by respondents' salesmen. The eighth charge is admitted but respondents, in effect, urge its discontinuance as a defense thereto.

In this initial decision, however, each of the other six charges, second to seventh inclusive (Complaint, subparagraphs 1 to 6, inclusive, of Paragraphs Seven and Eight), which were all in strenuous contest, have not been established by the weight of the evidence and particularly fail upon the uncertainty or lack of credibility of

those enrollees and other witnesses who were present at various interviews with respondents' salesmen. Many of these witnesses were contradicted either by their own later correspondence with respondent school or by other testimony, and in many instances their testimony was so vague, weak and uncertain as to render it insubstantial and valueless on these six charges. Consideration of all such evidence is discussed in some detail later herein. The testimony of no such witness is rejected *in toto*, but certain portions of their material testimony on disputed issues is found wanting in certainty or credibility, and therefore rejected, as subsequently herein more explicitly set forth.

The main thrust of the Commission's charges and evidence relates to alleged misrepresentations in regard to the respondents' airline and jet-training courses, although some evidence pertaining to other courses advertised and sold by them was received over respondents' objections. As alleged, the charges in part concern all courses of respondents and are not limited to airline or jet-training courses although certain charges relate only to specific courses. Such evidence was also received as being of value in obtaining a more comprehensive understanding of respondents' entire extensive and varied operations in commerce in the field of correspondence school and other training.

Under the amended complaint and answer as well as upon various stipulations of record much is admitted. The principal contested issues of fact hinge upon the alleged statements, representations and actions of respondents' salesmen in their dealings with the various consumer witnesses who testified. Most of the testimonial record involves such matters and they are dealt with appropriately and necessarily at some length herein.

In determining the facts in this proceeding upon the whole record as required by law, the hearing examiner has given full, careful and impartial consideration to all the evidence and to the fair and reasonable inferences arising therefrom. He has carefully examined the pleadings and found those facts alleged in the complaint and admitted by the answer to be true. From such consideration of the whole record and from his personal observation of the conduct and demeanor of the witnesses, the examiner makes the following:

FINDINGS OF FACT

Respondent Northwest Schools, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Oregon and with its principal office and place of business located at 1221 N.W. 21st Street, Portland, Oregon. Respondent

Soma Advertising Agency, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Oregon and with its principal office and place of business located at 1221 N.W. 21st Street, Portland, Oregon. Respondents William A. Sawyer and Alice L. Sawyer are and at all times material hereto were husband and wife. Prior to March 1, 1958, they were partners conducting the correspondence school business here in question under the name and style of "Northwest Schools." They are now and on and ever since March 1, 1958, have been officers and the principal and controlling shareholders of corporate respondents Northwest Schools, Inc., and Soma Advertising Agency, Inc. Their principal offices and place of business are the same as those of said corporate respondents. Respondent William A. Sawyer formulates, directs and controls the acts, policies and practices of said corporate respondents in performing the acts and practices hereinafter set forth.

The respondent *Alice L. Sawyer* testified briefly that while she was an equal stockholder with her husband, William A. Sawyer, in the corporate respondents Northwest Schools, Inc., and Soma Advertising Agency, Inc., she did not take an active part in the managment or control or formulation of policy of either corporation. She also testified that while her husband did discuss what was going on in the business with her at home, she did not attend any policy meetings at the place of business, and that her prior relationship as a partner in the business had been of like character before the incorporation of the school in 1958 (R. 762-764). Her husband fully corroborated her (R. 102). Their testimony is credible and in no way contradicted by other evidence. There is no evidence whatever connecting her personally with any of the practices charged either during the prior partnership or the present corporate activities. Under such circumstances her relationship to the respondents' business is not such as to meet the standards for her inclusion in an order in her individual capacity. See opinion of the Commission issued October 20, 1959, in Docket No. 7146, *Trans-Continental Clearing House, Inc., et al.*, and authorities cited. See also the opinion of the Commission in Docket No. 7016, *Basic Books, Inc., et al.*, issued July 17, 1959 (following its prior holding in Docket No. 6445, *Kay Jewelry, Inc.*), dismissing the proceeding as to certain corporate officers in their individual capacities who were not shown to have personally taken any part in, or had any direction of, the deceptive practices therein charged and found to exist, although admittedly such officers formulated, directed and controlled the general policies, acts and practices of the corporate respondent. There is no evidence that a return to partnership status by said respondents is intended or evidence from which such action may be reasonably inferred.

The proceeding is therefore dismissed as to said respondent *Alice L. Sawyer* in her individual capacity, and further references herein to respondents generally have no application to her in such individual capacity, but only as a corporate officer.

As already found, the said respondents Sawyer were, up to March 1, 1958, trading and doing business as copartners under the style of Northwest Schools in the sale of various courses hereinafter more fully referred to. On February 24, 1958, they incorporated respondent corporation Northwest Schools, Inc., and transferred their respective partnership interests to the said corporate respondent effective as of March 1, 1958, which corporation has carried on such business since that date. These facts presented on the record resulted in a formal joint motion of counsel to amend the complaint filed June 30, 1959, and an order granting such motion on July 1, 1959, whereby the complaint was ordered amended to show that the former trading partnership Northwest Schools was discontinued after February 28, 1959, and Northwest Schools, Inc., an Oregon corporation, in which respondents Sawyer are officers and hold controlling financial interests, has since taken over and operated the business of said partnership. The amendment also provided for the correction of the complaint's title to accord to such facts as well as to correctly state in the title and body of the complaint the true corporate name of the advertising house agency as Soma Advertising Agency, Inc.[2] This latter corporation has functioned and now functions only as advertising agent for respondent Northwest Schools, Inc., which is engaged in the sale of courses of instruction in various fields. The said courses of instruction are principally correspondence courses requiring home study but some of such courses are combined with a period of residence training taken at residence schools owned and operated by the said respondents. The respondents' branch residence schools for the various airline and television courses taught are located in Portland, Oregon; Chicago, Illinois; and Hollywood, California. The said courses of study are designated as "Airline Career," "Electronics Technician," "Jet Engine Maintenance," "Heavy Equipment" or "Operating Engineer," and "Television Broadcasting courses. The "Airline Career" courses are to prepare enrollee students for employment in commercial airline positions such as ticket agents, stewardesses, hostesses, teletype operators, telephone sales and travel plan agents and traffic control operations clerks. Such "Airline Career" courses may be pursued entirely through the medium of the United States mails, or in combination with a period of resident study in the said branch residence schools. The Jet Engine

[2] See footnote 1.

Maintenance course purports to prepare enrollee students for employment as jet-engine maintenance technicians and is taught entirely by means of correspondence, with no resident training. The most recently inaugurated course is that of "Heavy Equipment" or "Operating Engineer." It is entirely a practical field training given at Portland, Oregon.

The said respondent Northwest Schools, Inc., has, in the course and conduct of its business, caused and now causes the said courses of study and instruction to be transported from its place of business in Portland, Oregon, by mail or otherwise, to purchasers thereof located in various other states of the United States. It is further found that such courses also have been widely advertised in interstate commerce, and as hereinafter found the respondents' salesmen travel in various states and mail in the enrollments and fees from those who buy courses to respondent Northwest Schools. Hence there can be no doubt that respondents are engaged in commerce. The volume of such business in such commerce has been and is very substantial.

Mr. Sawyer was a radio announcer prior to 1946; in September 1951, he started selling correspondence courses in partnership with another person whose interest he bought out in 1952 (R. 27). During that time the enterprise was known as Portland Announcing Studio, but in 1952 the name was changed to Northwest Radio and Television School. Subsequently the various other courses were added to the school's curriculum. In 1956, the partnership, with his wife, the respondent Alice L. Sawyer, then coming in as a copartner, changed its business name to Northwest Schools and as already stated on February 24, 1958, their enterprise was incorporated as Northwest Schools, Inc. (R. 28), and such corporation and its officers have since March 1, 1958, conducted the business involved in this proceeding. Respondent Soma Advertising Agency, Inc., was organized in June, 1955, by respondents Sawyer as the house advertising agency for the enterprise (R. 29) and is an integrated part of the entire operation.

In 1951 the school instituted its courses in television production, television and radio service and maintenance. A later development in 1955 was the airlines career training courses. The jet engine maintenance course was then added in 1957 and the heavy equipment course was only started in 1958 (R. 31, 33). All of said courses except the last are sold for $395 on terms or $360 cash. The heavy equipment course is sold for $495 or $460 cash (R. 33). Respondents have regional offices in Seattle, Sacramento, Kansas City, Tampa, Atlanta, and New York (R. 43).

The home office is on premises consisting of some 70,000 square feet and expansion is in the offing when Soma moves to another building. In the home office the servicing is done for all of the courses and respondents enploy a normal clerical force of between 35 and 40 (R. 148–149), as well as a director of education and a number of qualified teachers of the various courses offered. This home office is very adequately housed in a fine new modern type of office building, and the business is well staffed. These facts, together with the branch schools and the substantial business carried on in securing enrollees and in conducting educational courses both by mail and in residence, clearly establish that it actually is a substantial operating educational concern and is in no manner a fictitious or "fly-by-night" type of purported or nonexistent educational institution. It has complied with the laws of the several states in which it does business by procuring necessary licenses for itself and its sales representatives who work in such states where such licenses are required and it is otherwise conducting its business in a lawful manner under the laws of such states. While not material to this proceeding, the evidence does not disclose that respondents are in difficulty with any state or local authorities by reason of any alleged violation of state laws or regulations or of municipal ordinances pertaining to correspondence schools and their agents.

A number of exhibits in the record by way of photographs reflect the excellent facilities the school possesses for its administrative work and such residence or other practical courses of training that it conducts. The quality of the courses of instruction offered are not directly attacked in the complaint and certain samples of the correspondence courses in the record as exhibits appear to be well drafted. There is some slight amount of prejudiced and insubstantial testimony in the record of unqualified public witnesses who criticized the inherent worth of the courses offered as instructional material. Such testimony is that of Mrs. Dorothy Josephine Riel who thought it a waste of time for her enrolled daughter to obtain any knowledge of the history of aviation (R. 1007, 1012–1013) or that of Miss Lorraine R. M. Cooper who felt the course was too elementary for her after having had some years of actual training and flying experience (R. 636–637).

The business recently has had spectacular growth. During the one-year period ending September 30, 1957, a total of 11,339 courses were sold (Commission's Exhibit 45-A). At that time there were 150 salesmen on the road selling courses to prospects (R. 34). During the three-year period from January 1, 1956 through December 31, 1958, 33,721 students were enrolled (R. 686), of which almost half

or some 14,700 enrollments occurred during the last year of that period (R. 35). There is substantial competitive activity in this business in those correspondence school and related fields in which respondent Northwest Schools, Inc., operates.

The details of the respondents' methods in obtaining leads through advertisements and the follow-up procedures employed in the office and by the salesmen in the field will be more logically discussed in connection with the various specific charges.

The testimony falls into two main groups. The first relates to respondents' business. Respondents' officers and employees testified concerning the general nature of the business as above referred to, and some of the salesmen testified respecting certain specific transactions with various enrollees. The evidence with respect to the general program of the corporation was given by the respondent William Sawyer (R. 26-102, 106-127, 222-231, 683-764, 847-856); Marjorie L. Andrews, the director (general office manager) (R. 128-149, 210-221, and 818-844); Margaret Stone, personnel supervisor of graduate students (R. 150-166, 764-801, and 845-847); Joseph B. Gargan, credit manager (R. 167-202); and Virginia Cain, manager of Soma Advertising Agency, Inc. (R. 202-210, and 801-818). The several salesmen who testified, Roy J. Johnson (R. 1126-1159); Willard J. Peterson (R. 1357-1377); and H. P. Hurlbert (R. 1401-1408) will be discussed in connection with the testimony of the specific enrollees with whom they dealt.

The second group of testimony consists of a number of enrollees in respondents' courses, and either their parent or parents or wife as the case might be. Eleven young women testified who had subscribed to the airline course, particularly that course which would lead to service as a stewardess or hostess. Three young men testified who had also subscribed to one or the other of the airline courses offered in connection with service at airports. Four young men testified that they had subscribed for the respondents' jet-engine course while one further witness was only interviewed but never subscribed to such a course. Only one witness testified with respect to the heavy equipment course and his testimony is totally rejected for reasons hereinafter stated. Analyses of the testimony of each of such witnesses will be made in connection with the findings on the second to seventh charges, inclusive.

As already stated, the complaint as amended contains eight distinct charges of misrepresentation by respondents. While some of the general evidence pertains to more than one charge, for clarity and brevity, each of them will be considered seriatim in the order wherein they appear in the complaint as amended.

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The first charge in the complaint, as amended (Paragraphs Three, Four and Five), is, in essence, that the respondents have so falsely and deceptively advertised in various newspapers throughout the country that there is great need and opportunity for young men and women to train for ground and flight position, that they have indicated, either directly or by implication, that such advertisements are offers of employment. While the quoted ads in Paragraph Three of the complaint as amended refer to airline positions, the allegation is broad enough to encompass other types of employment as well, such ads being alleged to be "a variety of statements" of which those quoted "are typical but not exclusive." Evidence therefore was received and has been considered which relates to other courses advertised by respondents, and the ads related thereto. It is alleged that in truth and fact such advertisements were not offers of employment, but were published to obtain purchasers for respondents' courses of instruction (Complaint, as amended, Paragraph Five). The publication of such alleged advertisements is admitted by respondents (Answer, Paragraph Three), but they deny the allegations relating to the falsity of such advertisements, although admitting in effect that the quoted ads were published solely to obtain purchasers or "enrollees" for their "Airline Career Training" course of study (Answer, Paragraphs Five and Six).

The factual issue presented is, what do the advertisements actually lead or tend to lead the readers thereof to believe? Such issue would be determinable solely from a study of any of a number of respondents' advertisements, each in its entirety. But such consideration is further aided by certain evidence relating to their effect upon those witnesses who actually read and acted upon various of such ads. All matters relating to the effect of such advertising have been adjudged in the light of the many applicable basic principles of law enunciated by the Commission and the courts. It is well settled that in this type of proceeding the law does not require that the ordinary reader of advertisements shall painstakingly study and weigh advertisements and make fine distinctions with grammatical and lexical aids at hand, but he may gather what they mean and form his impressions from merely reading the advertisement. (See *D.D.D. Corporation* v. *FTC* (C.C.A. 7, 1942), 125 F. 2d 679, 681 [3 S. & D. 455]; *Aronberg, etc.* v. *FTC* (C.C.A. 7, 1942), 132 F. 2d 165, 167 [3 S. & D. 647]; and *P. Lorillard Co.* v. *FTC* (C.A. 4, 1950), 186 F. 2d 52, 58 [5 S. & D. 210], and numerous cases cited.) Furthermore, the test is not what an advertisement means to the experienced and erudite, but what it means to the public generally, "that vast multitude which includes the ignorant, the unthinking and the credulous, who in making purchases, do not stop to analyze but too often are

governed by appearances and general impressions" (*Aronberg, etc.* v. *FTC, supra*). See also *Charles of the Ritz Distributors Corp.* v. *FTC* (C.C.A. 2, 1944), 143 F. 2d 676, 679–680 [4 S. & D. 226], and cases cited; and *American Life & Accident Insurance Company* v. *FTC* (C.A. 8, 1958), 255 F. 2d 289, 293–294 [6 S. & D. 397] and cases cited (*rehearing denied*, and *certiorari denied*, 358 U.S. 875).

The record contains a large number of newspaper and magazine advertisements, some directed to be placed and actually placed in the "Help Wanted" columns, and others directed to be placed and actually placed under classified headings such as "Schools and Education" or "Instruction." They severally relate to airline, jet-engine, heavy equipment operators' and television electronics training. These ads in the record are some 60 in number, a few of them being duplicates or essentially duplicates of others. Through respondent Soma Advertising Agency, Inc., these ads were placed and published in the classified sections of numerous large daily newspapers throughout the United States (R. 203-204; Commission's Exhibits 11-A through -I and 67). Some ads were also published in leading magazines of nationwide circulation.

Some of respondents' newspaper ads were placed in the "Help Wanted" columns as already referred to. They were cross-referenced to headings such as "Schools and Education," "Instruction," or the like. Some of these ads were completely "blind ads" in that they did not indicate anywhere either the name or address of the advertiser, but required the one who answered the ad to write to a department in care of a newspaper numbered box or the like; while others were partially blind in that they named "Northwest Schools" but did not give an address and necsssarily required the reader to write to a newspaper box or other uninformative address for further information. Only a few of the ads revealed to the reader just who the advertiser was, and its address, so that such reader might communicate directly with the respondent, Northwest Schools, if he was interested in doing so or make independent inquiry regarding its status and standing. Such latter types of ads are apparently those most recently and currently used by respondents. (See Respondents' Exhibits 51-A through -D, advertising the airline career and jet-engine courses in newspapers, and 52-A through -C which were placed either in leading aviation periodicals or in Popular Mechanics Magazine for January 1959, R. 802-803). These ads ran through the pendency and trial of this proceeding.

While limitations of time and space preclude detailed analysis of all the respondents' advertisements in the record, the examiner has carefully examined them all. They have been classified generally as

to the training courses advertised; as to whether they run under "Help Wanted" classified advertising columns and cross-referenced to "Schools and Education," etc.; and as to whether they list the name and address of respondent school at all, or are partially or completely blind or uninformative as to such vital matters. The specific advertisements in evidence fall into the following classes:

1. Airline career course for steward, stewardess, and also for various ground positions, Commission's Exhibits 19-A through -D, 20, 21, 23-A and -B, 24-A through -C, 25 through 28, 29-A through -D, 30 through 33, 68 and 69; Respondents' Exhibits 51-A and -B, 52-B, 55, 56, 57-A and -B and 59-A through -D. All of said Commission's Exhibits are completely blind ads, and all of respondents' said exhibits are partially blind, giving no address except "C/o" the newspaper, etc., except Respondents' Exhibits 59-A through-D, which are ads in which no fault is pointed out or found. A number of such blind or partially blind ads were published in various large daily newspapers under the "Help Wanted" classification with reference over to other blind or partially blind ads under "Education – Instruction," etc. classifications. See Commission's Exhibits 19-A and 29-A through -C, and Respondents' Exhibits 51-A and -B, 55, and 58-A and -B. One of such ads, Commission's Exhibit 22, is a combination ad relating to Airlines, Air Travel Bureaus and TV Broadcasting Stations, addressed to "Ambitious Men and Women" and referring "to many types of positions open to qualified" persons.

2. Radio-television electronic courses, Commission's Exhibits 12-A through -C; 15-A through -D; 16 through 18. All of these are completely blind ads and are captioned by such headings as, "Men Needed," "Men Wanted," "Television Needs Men and Women." See also Commission's said Exhibit 22, a combination ad referring to this and airline courses, *supra.*

3. Jet-engine course, Commission's Exhibits 13-A through -C; 14-A through -D; Respondents' Exhibits 51-C and -D; 52-A; 54; 58-A and -B. All of these ads are partially blind, lacking address except "C/o" the publication. Also all of respondents' said exhibits contain ads under the "Help Wanted" classification.

4. Heavy-equipment operators' course, Commission's Exhibit 95-B and Respondents' Exhibits 51-E and -F, all partially blind ads, and one ad of 52-E being under "Help Wanted Male." Respondents' Exhibit 52-C, however, the said magazine ad of January, 1959, correctly gave respondent school's name and address.

The evil resulting from the use of respondents' ads in the "Help Wanted" columns of various newspapers is evident from the record in this case. This is further accentuated by the deceiving practice

of "blind ads," which nowhere reveal to the one who seeks a job that to answer such an ad merely opens the door to a commission salesman who does not offer or guarantee a job at all, but only offers an opportunity to subscribe, at substantial cost, to a course of training or preparation for a position which may or may not become available under circumstances beyond the control of either the seller or the buyer of the course. A blind ad is inherently deceptive in that it arouses curiosity without revealing to the reader the true author of the statement. The "Help Wanted" column ads of respondents are typically illustrated by the following: "AIRLINES NEED Young Men. See our ad under Classifiication. . . ," followed by such loose expressions as "Airline Career Division," "Airlines" or "Aviation," and "C/o Box . . . this newspaper" or "P.O. Box 305, Sacramento, California," or a similar uninformative address.

In answering such an anonymous or "blind" ad, the one who responds is still actually ignorant as to whom or to what concern, or to where he is writing. In most instances such ads have no address except the local newspaper or post office box to which an answering letter is addressed. It is true that these "blind" ads may be convenient to respondent in "killing leads" from clearly unwanted or unqualified applicants without unnecessary interviews and correspondence. But that does not relieve such ads of their strong capacity to mislead the public initially into believing that they are writing to an airline or other industrial organization for a job, rather than to a training school for a correspondence or other course of instruction. They are actually writing to mere random and unknown addressees such as "Airlines" and the like. Under the cross-reference in such "Help Wanted" ads over to: "Schools and Education" and similar captions of classification, upon turning to these ads they intriguingly say in large type heads, "Young Men and Women—Airlines Need You" and "Airlines Need Men and Women," with many other encouraging and colorful references, such as "Opportunity for exciting, interesting work" (See, for example, Commission's Exhibit 21), or even more glamorous ones such as "Romantic . . . Exciting . . . Good Pay—In The Air . . . On the Ground—Fly to Hollywood at No Extra Charge . . . Enjoy Life as never before. See the world! Meet interesting people, enjoy advancement, adventure, and ROMANCE!" (See Commission's Exhibit 23-A, for example.) Even these secondary ads do not negative the first impression of the primary ads that employment is offered. While it is true that some of the ads do indicate "low cost basic training" or similar phrasing, the emphasis is laid upon matters more appealing to the average young man or woman. Such persons do not actually know

in many instances that they are opening dealings with a commercial correspondence school until the agent calls at their home.

It is now elementary in this type of proceeding that it is the first contact which is the important one. Although references may come in some cases through satisfied students, substantially all of respondents' business comes from "leads" which are established by the answers to their blind ads sent in by inquiring members of the public. If this initial effort to reach the individual sought to be sold is false and misleading in character, whether by newspaper or magazine ads or by any other means, it is conduct which is subject to the Commission's order of restraint. The law is violated if the first contact or interview is secured by deception (*Federal Trade Commission* v. *Standard Education Society, et al.*, 302 U. S. 112, 115), even though the true facts are made known to the buyer before he enters into the contract of purchase (*Progress Tailoring Co., et al.* v. *FTC* (C.A. 7, 1946), 153 F. 2d 103, 104–105 [4 S. & D. 455]). See also *Aronberg, et al.* v. *FTC*, *supra*, at page 169.

Although the testimony of the consumer witnesses will be more fully analyzed on other points in the discussion of subsequent charges, their impressions as to whether the respondents offered jobs obtained from reading the said "Help Wanted" or cross-reference advertisements and before the salesman arrived at their homes, are now briefly referred to. Witnesses who credibly testified either positively or in substance that they believed from the respondents' ads they read that they would be employed by airlines if they answered such ads were *Judith Ann Grisch* (R. 235-236), corroborated by her mother, *Esther M. Grisch* (R. 248-249); *Carol Jean Potts* (R. 254-255), corroborated by her mother, *Irene Potts* (R.264-265); *Douglas F. Pesznecker* (R. 270); *Francis G. Wells* (R. 284-285); *Barbara Kjersen* (R. 612); and *Billy Lee Brown* (R. 646-647).

Other consumer witnesses skirted or avoided precisely answering the question of whether they believed a job was offered by the ads they read, and, while inferences might possibly be drawn to the effect that they had similar beliefs as to the ads offering airline jobs, such inferences would not be clear and entirely free from doubt. Hence, their vague testimony on this point is rejected as insubstantial. See *Edith Pleger* (R. 447-449); *Bruce Donald Robertson* (R. 485); *Lois Butikofer Bates* (R. 535-536), and *Loraine R. M. Cooper* (R. 627-628). Other public witnesses who dealt with respondent school did not testify at all on this phase of the case.

There was received in evidence without objection a true copy of a "Stipulation as to the Facts and Agreement to Cease and Desist" in Commission File No. 5420620, In the Matter of William A. Sawyer,

an individual trading as Northwest Radio & Television School, Portland, Oregon (R. 294-295). It is dated August 9, 1955, signed by W. A. Sawyer and the Commission's then Chairman, and approved by the Commission September 27, 1955. This is strongly urged to be substantial evidence against respondents in this adjudicative proceeding by counsel supporting the complaint (See his proposed findings, etc., pp. 13-14).

The Commission's Rules pertinent here recite:

"§1.54 *Stipulation.* The stipulation shall consist of a statement setting forth the material facts concerning the acts or practices deemed to be violative of law and an agreement to cease and desist therefrom. When executed by proposed respondents and satisfactory to the Chief, Division of Stipulations, and Director, Bureau of Consultation, the stipulation is submitted to the Commission for its consideration."

"§1.55 *Effect of stipulation.* When an executed stipulation is approved by the Commission the matter is closed without prejudice to the right of the Commission to reopen if and when warranted by the facts. The agreement does not constitute an admission by the parties that they have engaged in any method, act or practice violative of law, but it shall, if relevant to the issues, be admissible as evidence of the prior use of the acts or practices set forth therein in any later formal proceeding."

This stipulation specifically contained certain provisions of said rules providing that the stipulation is accepted "without prejudice to [the Commission's] right to issue a complaint and institute formal proceedings against the said William A. Sawyer if at any time the Commission shall deem such action warranted" and "This Agreement is for settlement purposes only and does not constitute an admission by the said William A. Sawyer that he has not engaged in any method, act or practice violative of law." Had objection to said exhibit been made, the hearing examiner would have then sustained it on the ground that it was contrary to a general principle of law to receive evidence of compromise and settlement in litigated matters as well as violative of the Commission's said rules. But such stipulation was received in evidence and the examiner had theretofore, without objection, stated he would take official notice of it when the respondent Sawyer admitted its execution (R. 29-30). That official notice taken of any material fact not appearing on the record must afford opportunity to anyone objecting thereto to prove the contrary on timely request is a clear statutory mandate. Administrative Procedure Act, §7(d). See also the last paragraph of the Opinion of the Commission dated October 30, 1959, accompanying its order

remanding the case for the taking of further evidence in Docket No. 7292, *Lifetime Cutlery Corp., et al.*

In the instant proceeding since respondents made no objection and the stipulation was received, the entire official record of the Commission relating thereto becomes properly a matter of official notice. From the stipulation it appears, however, that only the first paragraph of the agreed cease-and-desist order and the agreed facts whereon it is premised have relevance to the case here at bar. They relate to representations indicating offers of employment in newspapers and other media "Under such headings as 'Help Wanted,'; 'Men Needed,' 'Wanted' or in any other manner . . . to persons who answer such advertisements." Such matters are in issue here and are decided upon evidence presented in this adjudicative proceeding. But this first inhibition was rescinded July 24, 1958, by the Commission before instituting the present proceeding, wherein the amended complaint's said first and second charges (Paragraphs Three and Four and subparagraph 1 of Paragraphs Seven and Eight) cover the same general grounds of offers of employment and availability of positions. Commission's counsel cannot now ask to have findings premised either in whole or in part on a stipulation that, insofar as relevant hereto, has been revoked and is now a nullity and no longer binding on either party. No other matter in said stipulation is relevant to any other issues herein. Hence, notwithstanding its receipt in evidence without objection, the examiner finds it has no evidentiary value herein. A large amount of substantial evidence sustains the Commission's case on such issue. The said stipulation at best is only unnecessarily cumulative and by its terms would relate only to respondent William A. Sawyer.

That respondents' newspaper advertising was false, misleading and deceptive in inducing the public to believe that jobs and positions were offered with the airlines or with other industries, as the case might be, is the only rational conclusion which can be reached upon the record herein. It is therefore found that the first charge of the complaint has been sustained and an appropriate order should issue prohibiting such deceptive practices, and particularly including the use of "blind ads." The advertiser who is free from guile will offer his product or service openly and frankly to the public without concealing his name and address in the shadow-land of fictitious identity.

The second to seventh charges, inclusive (Subparagraphs 1 to 6, inclusive, of Paragraphs Seven and Eight of the complaint), involve generally certain alleged false and misleading statements pertaining to the six individual charges appearing in respondents' advertise-

ments, in printed materials furnished to their salesmen, and by oral statements made by the salesmen to the prospective enrollees and their relatives. Insofar as the advertisements are concerned, these have already been covered in the first charge which is more broadly framed than the second charge and naturally encompasses it. Hence such advertisements are not considered in connection with the second to seventh charges. Insofar as materials alleged to have been carried about by the salesmen and shown to their prospects are concerned, there is no specific evidence that any of these misled anyone or tended to mislead anyone. Rather the complaint is that the salesmen turned the sales kits so rapidly that the prospects were not given an adequate opportunity to read and understand the prospectuses therein contained, and there is no evidence that any of such literature was left behind when the salesman departed. These charges therefore depend entirely upon the certainty, weight, and credibility of the testimony of the young people who were interviewed as well as their respective relatives who were present at any such interviews. It is undisputed that in all cases an effort was made by respondents and their salesmen to have the parents present when a minor was interviewed and the spouse in the case of a married man. This occurred in most of the situations testified about. While it may be inferred that in the case of the minor this enabled the salesman to obtain the parents' signature to the contract as well as the furnishing of the necessary down-payment on the course purchased, nevertheless, upon a consideration of the whole record, including the required presence of wives in the case of married men, it appears that there was also the motive that the family would be informed and would subsequently cooperate with, and assist, the child or spouse who was taking the course. While it is contended by counsel supporting the complaint that respondents' sales methods deceived ignorant young people, he also argues that the parents or relatives were likewise deceived and should have known better than to sign the enrollment contract and make the advance down-payment involved herein. From his observation of all of such witnesses, the hearing examiner is of the opinion that the young people interviewed were intelligent and fairly well educated and that their parents were people of average intelligence and experience in middle age. While there is insistence that the sales methods employed were "aggressive, high-pressured," and "fast-talking," the evidence reveals that on several occasions the sales talks occupied from two to four hours' time with extended discussions and that rather than being rapid-fire, in several instances they were so boring that people left before they were concluded. Criticism is directed against the

practice of advising prospects in advance that there would only be one interview and that the salesman would not return. There seems to be nothing unusual in this. These sales agents following up leads over large territories naturally would not be expected to stay forever in one home or small locality to follow up reluctant or uncertain prospects. Even counsel supporting the complaint concedes this because he repeatedly says, in substance, that if they did so "they would starve to death."

The record discloses that ten young ladies who subscribed to the airline career course were interviewed and that the mothers of seven of them testified. In one case the father and mother testified in the absence of the daughter who was in college. Two men also testified concerning their enrollment in the air line course to qualify for ground positions. The wife of one also testified. One high school youth did not appear but his mother testified concerning the transaction whereby he became an enrollee. Four men enrollees of the jet-engine course testified, together with the wife of one, and another who did not enroll also testified. Only one witness, Glen H. Richey testified concerning an enrollment in the heavy equipment course, and his testimony is considered unworthy of belief as hereinafter more fully discussed. All in all, 29 of these witnesses testified in the course of this proceeding. It is of great significance that of those who enrolled for a course not one ever completed it. In most cases they had what respondents' counsel has aptly referred to as "buyer's remorse" a day or so after the course was purchased. Many of them never opened the courses which came to them by mail. Others who had substantially completed the course quit near the end of it and never made an effort to procure the type of employment for which they had been trained. Two were still pursuing the courses at the time of the hearings. It is, therefore, clearly evident that not one of these enrollees ever reached the stage of putting their training into application. To the contrary, most of them relied on hearsay information that they could not obtain any jobs such as they were trained for, became discouraged, and quit. Even assuming that the testimony of these witnesses was to be believed in the entirety, counsel supporting the complaint has furnished no proof that any of these enrollees could not obtain substantially paid positions had they completed the courses. A cross-examination of such witnesses revealed that in fact they had abandoned the courses for diverse reasons having no relationship whatsoever to the alleged misrepresentations of the salesmen who had solicited their particular enrollment.

Counsel for the Commission who tried the case, in his supporting reasons for the proposed findings upon the second to seventh charges, inclusive, has developed a very extensive and elaborate thesis of a ground conspiracy on the part of respondents and their salesmen to defraud and victimize all who might possibly be in the least interested in respondents' courses. This plot is claimed to commence with the salesmen's training and the advertisements of respondents and thereafter to permeate every practice and act of respondents and their employees to and including the allegedly harsh collection of the last penny due on delinquent accounts of enrolled students (Proposed Findings, etc., pp 15-60). It may be noted at this time that this proceeding does not involve any charge that respondents used any unlawful collection methods and much of the evidence in the record on the subject of collection of past due accounts is not material to the issues herein. Without regard to the whole record Commission's counsel has picked and chosen certain selected portions of the sales training kit, the enrollment agreement and evidence of the enrollees and other witnesses and has drawn inferences therefrom to fit an elaborate thesis of guilt in complete disregard of other contrary substantial evidence in the record. He assumes, but does not demonstrate, the credibility of the direct testimony of the consumer witnesses. He completely disregards the able and effective cross-examination of each of them which, by and large, presented substantial self-contradiction or other weaknesses in the evidence on the part of such witnesses. Counsel poses such findings on allegedly positive and definite evidence of such witnesses, whereas, in fact, most of it was vague, and uncertain or irrelevant to the charges, even on direct examination. He fails to refer to credible evidence of respondents which strongly supports the denials of these six several charges and fails to refer to those portions of the sales training kit and other official instructions to agents which tend to refute and destroy the specific inferences concluded and pressed by him. It cannot be denied that the presentation has been very strongly expressed at great length from the purely partisan standpoint of completely supporting the complaint. The sharply worded attacks upon the personal moral character of respondents and those in their employ (Proposed Findings, etc. pp. 6, 7, 24, 25, 27, 28, 33, 39-40, 46-47, 58-59, 60, 61, and 67), coming after the long and pleasant hearings stages of the case, brought about a powerful and dynamic rejoinder from respondents' counsel in oral argument (R. 1450-1453). The hearing examiner in deciding this case, however, has disregarded all statements of counsel in

their briefs and arguments which he deems do not fairly reflect the material evidence or the law applicable thereto. From his own careful observation and hearing of the witnesses and after a very careful study of the record he is not persuaded to Commission counsel's viewpoint on the second to seventh charges, inclusive, and upon mature deliberation he has rejected counsel's entire thesis thereon.

Under the Administrative Procedure Act, Section 7(c) (5 U.S.C. §1006(c)), the Commission's Rules of Practice for Adjudicative Proceedings, §3.21(b), and controlling judicial decisions, *Universal Camera Corp.* v. *NLRB*, *supra*, at pp. 482-484, and *NLRB* v. *Pittsburgh Steamship Co.* (1951), 340 U.S. 498, 499, the hearing examiner is duty bound to decide this case fairly and impartially upon the whole record, and not from a viewpoint either hostile to or biased in favor of either side. The examiner has no theory to sustain and cannot capriciously reject credible evidence and select and give undue weight to evidence lacking substance and certainty merely to sustain or reject a proposed finding of any party.

The burden of proof in this case is imposed upon counsel supporting the complaint, Administrative Procedure Act, §7(c)(5 U.S.C. §1006(d)) and the Commission's Rules of Practice for Adjudicative Proceedings, §3.14(a), to establish each charge by substantial evidence of reliable and probative character. This burden remains upon counsel supporting the complaint throughout the whole proceeding until it is finally decided by the Commission. His evidence must be more than a mere scintilla, "must do more than create a suspicion of the existence of the fact to be established" and must be "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Universal Camera Corp.* v. *NLRB*, *supra*, at page 477. See also *Folds* v. *FTC* (C.A. 7, 1951), 187 F. 2d 658, 660 [5 S. & D. 271], and *Minneapolis-Honeywell Regulator Co.* v. *FTC* (C.A. 7, 1951), 192 F. 2d 786, 787 [5 S. & D. 307]. In *Carlay Co.* v. *FTC* (C.C.A. 7, 1946), 153 F. 2d 493, 496 [4 S. & D. 470], the court held:

> Substantial evidence is more than a mere scintilla. It means such relevant evidence as a reasonable mind would accept as adequate to support a conclusion. It must be of such character as to afford a substantial basis of fact from which the fact in issue can be reasonably inferred. It excludes vague, uncertain or irrelevant matter. It implies a quality and character of proof which induces conviction and makes a lasting impression on reason. *Consolidated Edison Company* v. *National Labor Relations Board*, 305 U. S. 197; *National Labor Relations Board* v. *Columbian Enameling and Stamping Company*, 306 U. S. 292, 299; *National Labor Relations Board* v. *Thompson Products, Inc.*, 97 F. (2d) 13, 15 (C.C.A. 6). The rule of substantial evidence is one of fundamental importance and marks the dividing line between law and arbitrary power;

and the requirement that a finding must be supported by substantial evidence does not go so far as to justify orders without a basis in evidence having rational, probative force. *Consolidated Edison Company* v. *National Labor Relations Board, supra, National Labor Relations Board* v. *Thompson Products, supra.*

"[E]ach case must be determined upon its own facts." *FTC* v. *Beech-Nut Packing Company* (1922), 257 U.S. 441, 453 [1 S. & D. 170]. See also *Ford Motor Co.* v. *FTC* (C.C.A. 6, 1941), 120 F. 2d 175, 182 [3 S. & D. 378], *cert. denied* 314 U.S. 668, and *Hasting Manufacturing Co.* v. *FTC* (C.C.A. 6, 1946), 153 F. 2d 253, 258 [4 S. & D. 460]. This principle is especially true where the outcome of a case wherein the hearing examiner "has observed the witnesses and lived with the case" depends in whole or in large part upon "the consistency and inherent probability of testimony." See *Universal Camera Corp.* v. *NLRB*, *supra*, at pp. 496–497. The duty of the hearing examiner in such regard cannot be performed perfunctorily or arbitrarily and without "reasons or basis therefor" as is now explicitly required by Section 8(b) of the Administrative Procedure Act (5 U.S.C. § 1007 (b)). Even before its enactment it had been held with respect to a similar federal official,

Material and substantive rights of citizens are determined by the Hearing Officer. He assumes great power and authority under the Act and regulations in conducting hearings. He is, therefore, duty bound to be particularly sensitive to his responsibility. His findings of facts in a case that may result in the destruction of a man's business must be based on substantial evidence of probative force, and not on suspicion, innuendo and faulty conclusions on disputed facts. *Automobile Sales Co., Inc.* v. *Bowles, Adm'r.* (Dist. Ct., N.D. Ohio, 1944), 58 F. Supp. 469, 473.

Before discussing the specific charges, second to seventh (complaint as amended, paragraphs Seven and Eight), a resume of the consumer witnesses is appropriate. All of the young ladies who made application for respondents' air training course were attractive and personable young women. The record contains a photograph of one, Dorothy Riel (Respondents Ex. 76), and her attractiveness may be said to have been typical of all the other female enrollees. All of them had completed or almost completed a high school education, were intelligent and well favored. The men who enrolled for the training for ground positions with airlines as well as those who enrolled for the jet-engine course were all strong young men and in the latter group each had had training and possessed knowledge of mechanics and indicated an aptitude for the course they subscribed to. These factors have substantial bearing on the fifth charge that the school was selective and would not take all who applied. There were no misfits among any of the male or female enrollees, which clearly indicates that respondents' salesmen were not seeking

to sell the courses to anyone who had a little money, as urged by counsel supporting the complaint. The record discloses that all of these people either failed to follow through with the course, some rejecting it without even opening the lessons, or having taken substantially all of it ceased to be interested in obtaining a position for which the course had trained them.

Judith Ann Grisch (R. 234-247, 903-916) was a clerical typist and 19 years of age; *Carol Jean Potts* (R. 253-263, 926-945) was employed in the State of Washington's Department of Labor and Industries and was 18 years of age; *Dorothy Riel* (R. 388-400, 978-996) was nearly 19 years of age and after graduation from high school the previous year had remained at home until she became interested in becoming an air stewardess. *Beverly Hyder* (R. 427-433, 1189-1213) was past 17 years of age and at home and likewise interested in becoming a stewardess; *Nancy Schiehe* (R. 458-463, 1170-1182) had not completed high school, being just short of 18 years of age; *Pauline Selph* (R. 496-511, 1276-1318) was a bookkeeper and 23 years of age; *Marcella Jane (Proctor) Coomer* (R. 515-524, 1318-1324) had married some time prior to the hearings and was 21 years old. Likewise *Lois B. (Buttikofer) Bates* (R. 534-575, 576-604), 21 years of age, was also married. She had been in the auto license department at the local courthouse but had become a housewife at the time of the hearing. *Josephine E. Shupe* (R. 576-604) did not appear personally, her testimony being given by her parents but she had completed high school and was attending college; *Barbara Kjersen* (R. 611-626, 1327-1356) appeared to be a young woman in the 20's and was a stock-transfer clerk; *Loraine R. M. Cooper* was a mature young woman who was a receptionist-secretary at the Cliff Hotel in San Francisco, possessed a college degree and had had extensive pilot training (R. 627-643, 1414-1421).

Douglas Pesznecker (R. 269-282, 1013-1019, 1052-1054) was a graduate of a Bible school and at the time of hearing was a qualified substitute postal carrier; *Francis G. Wells* (R. 283-290, 1019-1035, 1055-1062) was a young man and a riveter by profession; *James Pleger* (R. 446-457, 1159-1170) was an attendant at a hospital. He did not appear but his mother gave evidence pertaining to his transaction with respondents.

Chester A. Holman (R. 416-426), a mill worker 33 years of age, did not enroll as a student; *Carman L. Bliss* (R. 433-445, 1214-1254), a young man with a year's college, was engaged as a truck driver; *Eugene Nokes* (R. 479-483, 1069-1096), 26 years of age, was engaged in the building business; *Bruce Donald Robertson* (R. 484-493, 1096-1119), 25 years of age, was a fireman for the City of Spokane;

Billy Lee Brown (R. 644-659, 1384-1401), 22 years of age, the holder of an Air Force diploma, was just out of the military service.

All of these witnesses were in attendance under subpoenas and testified chiefly from memory as to the transactions alleged, which in period of time ranged from the fall of 1956 until as late as February, 1959. While a few statement of certain witnesses were definite and positive, for the most part their testimony was fragmentary, conjectural and uncertain. The examiner has given due consideration to the fact that most of such witnesses, as well as their parents, were endeavoring to give a fair narrative of the transaction involved, but on the other hand on cross-examination each of the enrollees revealed that his testimony on direct consisted of after-thoughts and that the real reason for discontinuing the courses was not on any alleged misstatement by the salesman from whom they purchased the course but on circumstances entirely independent thereof. Mrs. Grisch requested the cancellation of her daughter's course because the young lady was severely injured on February 24, 1959, in an automobile accident and would be disabled for some time, with doctor and hospital bills to meet (Respondents' Ex. 72). Letters from Mrs. Potts (Respondents' Exhibits 72-A -C) indicated financial difficulty in raising the money and complaint that the course was coming in too rapidly and that her daughter was not happy by being pushed by the work entailed thereby. Further letters continued in the same vein (Respondents' Exhibits 74-A -B and 75-A -B) but finally concluded that she was entitled to ge her money back because a friend had done so. Mrs. Riel the wife of a contractor (Respondents' Ex. 77), during the course of the hearings wrote to the Seattle Better Business Bureau contending that the course in which her daughter had enrolled had been misrepresented in that several of the local airlines had told her that in order to become a stewardess a girl would have to take the airlines' own course and that her daughter was too young to be employed. Her statements were, of course, premised on hearsay as were many of the other witnesses to like effect, and while the testimony was received it is of too indefinite a character to be given credence in a contested proceeding such as this particularly in view of reliable evidence in the record to the contrary. *Beverly Hyder* wrote similarly, having relied on hearsay from others who had taken the course and were dissatisfied therewith (Respondents' Exhibits 90-A and -B). *Nancy Schiehe*, while somewhat dissatisfied, was still continuing her course at the time of hearing and hoped to obtain employment in some ground capacity although she had been somewhat discouraged by answers from several airlines to whom she had written. It is noted

that one of these letters from United Airlines stated, among other things, the commercial airline schools "were a supplementary source of applicants for our company and the principal source for many of the smaller airlines who do not have their own requirement and training program." She expects to get a position with an airline although conceding that respondents' salesman had never guaranteed her a position. She was making progress as her grades ranked from 92 to 100 in all of her lessons, and she admits she is learning a great deal and the course is very interesting. Her mother indicated her daughter might have to receive further training with the airline but stated with respect to respondents, "this school helps her."

Mrs. Edith Pleger (R. 446-457, 1159-1170), whose son was a high school graduate after which he had worked on a farm and was currently a hospital attendant, testified that the sales agent had said the starting salary would be $300, he could choose whatever airline and territory he wanted, and would be qualified for some ground operation. Her testimony is weakened by reason of the fact that her son is continuing the course and the payments are up-to-date. Doubt is cast upon the veracity of her story by reason of her claim that her son had a heart condition, "a hole between the two lower parts of his heart." It is impossible for this examiner to believe that such a condition would even permit big 6′-2″ Jim to live, let alone perform the labors absolutely attendant upon farm work and the heavy lifting and pushing that goes with service as a hospital attendant. Mrs. Pleger was a motherly sort and evidently wanted to safeguard her son but was inclined to exaggerate nearly all statements she made. *Pauline Selph* (R. 496-511, 1276-1318) stated the salesman advised here that the lowest salary "would be $250 and the top salary would be a $1,000 a month." This young lady completed the correspondence phase with fine grades, averaging 96, and then proceeded to Hollywood to take the residence portion of the course. She went with her future sister-in-law Katherine Blair, 17 years old. Both were high school graduates and attended a mixed class of 28 students. Despite Miss Selph's fine record at home, the undisputed testimony is that her grades fell and she did not finish the course at Hollywood. The reasonable inference is that Hollywood was too glamorous for a girl from Kennewick, a small city in eastern Washington. At any rate she returned home, and there is no evidence she made any effort to obtain the type of employment for which she was trained.

Marcella Jane (*Proctor*) *Coomer* (R. 515-524, 1254-1268) testified the salesman told her that it would be possible for her to become qualified as a stewardess, that the school was recognized by the different airlines, and the salary from six to eight hundred dollars.

Her father signed the enrollment contract, her mother objecting thereto. She testified that she was opposed to any correspondence school as a person cannot do much with it at home but that the daughter has finally had her way; that she and her daughter had a discussion after the salesman had left, the daughter getting very nervous and upset, so "I thought, well, if it was going to make her that sick she better not take it, and I talked to my husband and I thought that as long as we had not accepted the lessons" they might be able to get the money back. She hired an attorney and through him settled by the school's accepting the down-payment in full payment. From observing Mrs. Proctor, the examiner can well understand why her daughter was nervous and was unable to make any decision of her own.

Lois (Buttikofer) Bates (R. 534-575, 576-604) became disinterested in the course because she married. *Josephine E. Shupe*, mother of Mary Lou (R. 605-609), testified she decided to go to college and not complete the respondents' course. *Barbara Kjersen* relied on hearsay to the effect that she could not expect to get a position and did not follow through. *Loraine R. M. Cooper* was not interested after she had enrolled because from the first few lessons she found the course was entirely too elementary for her.

Douglas Pesznecker pled failure of memory (R. 273) and as a truthful man tried to avoid making any positive statement as to what was said to him by the salesman. His letters seeking cancellation of the contract (R. 1014-1015) were solely on the basis of his inability to continue due to his wife's illness which would not permit him to work away from home. *Francis G. Wells* by his letters (Respondents' Exs. 78-80) desired to cancel out because of the financial burden upon him.

With reference to the jet training course, the testimony of *Chester A. Holman* is rejected in its entirety as to these charges. He was of a very suspicious nature and stated, in substance, that he did not trust or believe anything the salesman said to him so paid no attention to anything he said having become disinterested when he found he would have to start at pay less than he was then making. He was the only witness who during his testimony appeared eager to be at his work and not in the least interested in testifying about a dead transaction that he had no interest in during the time it occurred. His general attitude makes his statements relative to the transaction with the agent all untrustworthy.

Carman L. Bliss by his letters (Respondents' Exs. 95-99) cancelled out because of the expense he was incurring in connection with an anticipated birth of a child. *Eugene Nokes* enrolled for the jet

training course after an extended discussion with the salesman. While he testified to alleged misrepresentations made by the salesman, the evidence developed that he fully understood he was only subscribing to a correspondence course and said, "It was all in your lessons that come through the mail, I should say" (R. 1081). Although he knew the airlines were not in operation with jet planes, nevertheless he immediately made inquiry of two of them and found there was no job available. He then went to the Spokane Better Business Bureau and claimed that he had been promised a six-weeks' practical training course at $3.65 an hour. (See letter of its manager, Marie M. Farrell, RX-82.) He was unable to explain this inconsistency and it may be added he wrote the school merely alleging general misrepresentation (RX-81). His testimony is rejected as unworthy of belief.

Bruce Donald Robertson and his wife simply changed their mind after he had enrolled and endeavored to cancel the check the next morning. This effort failed but due to Mrs. Robertson's having made an error in the name signed to the check it did not accord to the bank's record and no payment was ever made. The evidence shows that he went over the contract repeatedly before he signed it. It appears that it was after he and his wife had received notification that he was to be laid off and would be unemployed that "we attempted to cancel the schooling." His testimony is vague and uncertain in many particulars.

Billy Lee Brown decided the course would not be worth the effort. In summation, none of the witnesses pertaining to the jet training course gave credible, consistent evidence as to any misrepresentation.

The witness *Glen H. Richey* (R. 662-679, 1409-1414) was the only witness as to the operating engineer course. The ad he answered (Commission's Exhibit 95-B) clearly stated that "Men were wanted for heavy equipment operation—Complete training program for heavy equipment work—Get full information today on how you can become a heavy equipment operator." Richey, who had been a scullery worker on a ship and who had had very little education, interpreted this as an offer of employment but stated that he had never driven motor vehicles, had never had a driver's license, and said, "I just don't want to learn how to drive" (R. 672). While he comes squarely within that extreme class of ignorant persons described in *Aronberg* v. *FTC*, *supra*, the examiner cannot believe he was misled by this advertising into believing that he could work as a ditch digger or anything else other than as one able to operate heavy equipment. He was mentally dull, confused, and ignorant, and, upon careful scrutiny, his testimony has been found wholly unworthy of belief. The examiner is not empowered to rewrite

advertising to cover as bizarre conclusions as this witness drew from the ad he answered.

There is no evidence of any alleged misstatements of salesmen made in connection with respondents' radio and television courses. The only evidence pertaining to such courses consists of the advertisements above referred to under the first charge and the stipulation of 1955 signed by respondent Sawyer which has hereinbefore been held not to be substantial evidence.

Only a few of respondents' many salesmen were called as witnesses. Of the three who testified, *Roy J. Johnson*, who had been in an automobile accident three days previously and was still weak and scarred up therefrom, testified in contradiction to the alleged statements claimed to have been made by him by Bruce Donald Robertson, although he could not remember his transactions with Eugene Nokes. He recalled particularly his conversations with the Robertsons because of the confusion, over the cashing of the check. He denied guaranteeing employment, that the agreement could be canceled in thirty days, opportunity of placement with any airline in the world, and other statements of the Robertsons. This witness had been with respondents' school for about four years, was a high school graduate, and had had several years of technical training in the Army Air Corps and also three years of radar and electronics training in the Navy. He had been an insurance agent and had also engaged in educational sales work prior to this employment.

William J. Peterson testified that after six years of general sales experience he had become associated, about three years prior to the hearing, with the respondents in a sales position. He testified particularly in contradiction to the testimony of Barbara Kjersen, recalling the case because of the unusual situation which prevailed in her case although he interviewed some 1400 or 1500 people per year, selling about one out of every five or six interviewees. He had taken a radio as a downpayment on the course which the school later used as a basis for a new policy prohibiting any sale except upon a money basis. He also recalled that there was some controversy at the time of the interview arising out of a neighbor of Miss Kjersen's coming into the room during the interview to arrange for hiding her boy friend there as her husband was on the way up to their apartment.

H. P. Hurlbert, who had had extensive business and sales experience contradicted the testimony of Billy Lee Brown. These witnesses outlined their sales procedures in the field to some extent and demonstrated substantially why they were prohibited from and did

not make the respective statements attributed to them. During one of the hearings in Spokane, another salesman, a *Mr. Harkema*, was present during the cross-examination of Pauline Selph and mother and Marcella Coomer and her mother. He had sold them the courses concerning which they were complaining. In the brief of Commission's counsel, attention is called to Hurlbert's failure to testify: "This failure to stand up and deny the statements" which are charged to have been "particularly flagrant" misrepresentations "can only lead to the inference that he is not an honest man and did not dare to have the light of day penetrate his operations." This charge is unfair to Mr. Harkema. He had no control over whether he was called as a witness or not, and respondents' counsel, with good judgment, did not call him because in the cross-examination of the enrollees and their mothers he had already fully discredited their testimony.

In this connection in his observation of respondents' salesmen upon the witness stand and in the hearing rooms, it is the measured opinion of the hearing examiner that they were high calibre gentlemen whose testimony was far more trustworthy than the loose impressions and misstatements of the consumer witnesses. Quite naturally they had been trained by respondents' methods to spend only sufficient time to present the courses to the prospects and appropriate ways to attract interest therein. There is nothing inherently wrong in salesmen taking training. The only issue here is whether they lied to the prospective students and their relatives at the interviews with which this case is concerned. There seems to be no occasion for extensive quotations from the training kit to discredit these and other salesmen of respondents. It is true that a comparatively small number of respondents' salesmen have been discharged over the years for improper sales practices, and included in this number are one or two who engaged in making some of the sales involved herein, although the discharges were not on account thereof. It would be a strange business of any size that a salesman here and there would not misrepresent his product or service to some degree. What the law is interested in, however, is in preventing a general practice of false representations confirmed and approved by the executive management of the concern involved. The far-fetched inferences sought to be drawn by counsel supporting the complaint from minor incidents in the record and selected excerpts from the training manual do not appeal to the examiner as that kind of evidence upon which a cease and desist order should be founded.

While it is probably unnecessary to refer to any specific parts of the record in connection with specific proofs alleged to sustain

the second to seventh charges, inclusive, particularly in view of the rejection substantially of all the consumer evidence in the record, nevertheless it is deemed appropriate to make brief reference to such matters in connection with each of said specific charges.

The second charge, in substance, is that respondents have falsely represented that positions are available to persons who complete their courses of instruction. This charge relates only to the unavailability of positions "with commercial airlines" but also relates to the "unavailability of any other positions" to those who had completed respondents' courses of instruction. As already shown only one of the witnesses had completed the correspondence course but had waived any further interest in procuring employment when she did not succeed in the residence school at Hollywood. Two of the enrollees, Jim Pleger and Nancy Schiehe, were still taking the courses and had not yet graduated. Of the others, some had refused to even open the lessons while others, after a few desultory studies had abandoned the course and for various reasons had requested cancellation of their contracts.

There is a substantial amount of testimony from Seattle airline representatives Floyd H. McGroskey, personnel manager of Northwest Airlines, and Robert Sanford Heath, employment manager of West Coast Airlines. There is an extensive turnover in the field of airline stewardesses and while the turnover in ground services is less rapid, there are always opportunities for those who are qualified. In this connection it is important to note that the airlines have become less stringent in the requirements for stewardesses and that attractive applicants with an uncorrected vision not less than 20/40 who wear glasses or contact lenses will be accepted as stewardesses. This would dispose of the contention that several of the girls interviewed wore glasses and were therefore not acceptable to the airlines in such employment. The record is not clear what the feeder airlines require in the way of physical examinations, but the unnoticeable hearing defect of Pesznecker and the alleged heart ailment of Jim Pleger do not clearly appear to be such that any completion of a course on their part would find them disqualified to hold an airline ground position for lack of physical qualification.

Comment has already been made to the effect that none of the complaining enrollees ever attained the point where it could be determined that no positions were available to them with the airlines. On this issue the examiner is asked to determine the results of an experiment which has never been completed and a conjecture that had these young people finished their courses they would have

been turned down for any airline employment for which they had been trained by respondents' courses. Nearly all of them, or their parents for them, right after enrolling had been willing to accept the hearsay information of friends or of unidentified persons at airports that they could not be expected to be employed. This hearsay testimony has no weight and is entirely rejected by this examiner. It would serve no useful purpose to detail the testimony of each of the witnesses on this and the succeeding charges, and this decision will not be burdened therewith, although as hereinbefore stated, the testimony is in practically every instance vague and indefinite or exaggerated and incredible. Each of such enrollees apparently suffered from what respondents' counsel has aptly referred to as "buyer's remorse."

Each of the enrollees, with one or two exceptions, upon their respective cross-examinations had admitted that the basic reason for quitting the courses had no relationship to the type of courses offered. Most of these witnesses admitted writing letters giving various other reasons for seeking to cancel their contracts than those they gave on direct examination. There was no rehabilitation of these witnesses on redirect examination, and the conclusions of counsel supporting the complaint "that these people were hoping respondents would take pity upon their plight" (Proposed findings, etc., p. 57) is but the conclusion of counsel and not the testimony of the witnesses.

It is therefore found that the evidence does not sustain the second charge.

The third charge (subparagraphs 2 of Paragraphs Seven and Eight of the complaint) is that respondents have falsely represented that "persons who complete their courses of instruction are qualified for employment by major commercial airlines." The respondents denied this charge, and the issue was tried upon these precise allegations.

The record contains several discussions of "major" airlines as distinguished from "feeder" airlines. The "major" airlines are the "big five," United, American, TWA (Trans-World), Eastern and Northwest, and also several others, Delta, Continental, Western, Northeast, Capital and Braniff, according to the witness *McCroskey* of Northwest Airlines (R. 303-304). The witness *Heath* of West Coast Airlines testified it was a scheduled local service carrier or "feeder airline" (R. 354). *McCroskey* defines "transcontinental carriers as being the major carriers within the United States. Some of the other carriers who serve high-density population could also be considered major carriers, as opposed to carriers that provide service

to smaller communities," and he thinks "feeder lines" is a good categorical description for airlines which are not major ones (R. 303). Like testimony was given by the witness *Stone*, respondents' personnel supervisor (R. 155), referring to Lake Central, North Central, Ozark, Pacific and West Coast as examples of "feeder" airlines. Counsel supporting the complaint fully recognizes these two distinct segments of the airline industry (Proposed findings, etc., p. 45).

In his proposed findings, however, such counsel sets forth with regard to this charge, "Persons completing respondents' courses of instruction are not thereby qualified for employment by major airlines *or any airline*." The words "or any airline" are not contained in the charge, which specifically relates to "major commercial airlines" and "any major airline," without generic reference to any and all airlines. And since counsel supporting the complaint does not cite or quote any evidence that respondents represented that their airline career course graduates would be qualified for employment "by major airlines," it must be inferred that he found none. He now vainly seeks to mend his hold by stating this charge more broadly than it was pleaded and litigated. There is an utter failure of proof on this charge. The examiner has searched the record in vain for any evidence that such a representation was made in advertisements, by salesmen's statements, or otherwise. No witness testified positively that any such alleged misrepresentation had been made by respondents' salesmen. There was much loose and inconsequential testimony as to employment being available with airlines generally and some witnesses negated positively that any such type of representation had been made by the salesman with whom such witness had had dealings. The extensive and largely inferential argument which counsel supporting the complaint makes on this charge (Proposed findings, etc., pp. 44-49) is to the summarized effect that the courses "cannot do the student any real good . . . for employment in the air industry" (p. 49), and naturally does not refer to any substantial evidence to support this specific charge since such evidence is wholly missing in the record. Such an alleged practice, furthermore, is denied by the testimony of respondent William Sawyer (R. 684). The examiner cannot go far afield to sustain this definite charge. "*Allegata et probata*" must agree.

The third charge is therefore dismissed for failure of proof.

The fourth charge (subparagraph 3 of Paragraphs Seven and Eight of the complaint) is in substance that respondents have falsely represented that the graduates are assured employment because of the school's affiliation and agreements with major commercial airlines whereby said school will supply trained personnel to such

carriers, there being in fact no such connection or agreement with major commercial airlines.

There is utterly no testimony which supports this charge. As in the case of the third charge the consumer witnesses gave such little testimony that could possibly relate to alleged connections and agreements with airlines that it does not prove anything definite or material to "major commercial airlines" as charged. Even such general testimony from only a few witnesses is extremely vague and lacking credibility. It is therefore found that the evidence does not sustain the fourth charge.

The fifth charge (subparagraph 4 of Paragraphs Seven and Eight of the complaint), in substance, is that the respondents falsely represented that the school is highly selective in accepting students and only outstanding candidates are enrolled following an investigation as to ability, character and physical fitness, whereas in fact they will enroll all persons who will pay the required fee for enrollment.

All of the enrollees (other than Richey) who were interviewed by respondents' salesmen were qualified persons as hereinbefore fully stated. There is nothing in the record to substantiate any claim that the agents sold a course to any young man or woman who did not possess the appearance or other prima facie qualifications to enable such person to qualify for a position after completing training. But, of course, correspondence schools and their salesmen cannot supply the necessary ambition to their students to study and qualify. The record of the hundreds of successful students of respondent school show that industrious students can obtain positions. See Commission's Exhibit 50, pp. 142-164, and Respondents' Exhibits 37-A – K and 47-A – C.

It is therefore found that the evidence does not sustain the fifth charge.

The sixth charge (subparagraph 5 of Paragraphs Seven and Eight of the complaint as amended) is, in substance, that respondents have falsely represented that the enrollment contract is flexible and may be cancelled by a dissatisfied enrollee with a full refund of moneys paid. While the evidence indicates a number of settlements were made in which the enrollees were permitted to cancel while the school retained money already paid or some additional money was paid, there is no credible evidence in the record that any salesman ever represented that the enrollee at will at any time could "walk out" of his contract contrary to its terms. It is therefore found that the evidence does not sustain the sixth charge.

The seventh charge (subparagraph 6 of Paragraphs Seven and Eight of the complaint as amended), in substance, is that the starting

salaries for nontechnical ground jobs for airline employees "available to all graduates of respondents' school range between $300 and $400 per month." Since the stewardess employment is not a ground job all of the evidence pertaining to the enrollees for the stewardess course can largely be disregarded on this charge although in several cases it was indicated that if they were too young for such positions or became otherwise interested they might accept ground jobs pending their acceptance as stewardesses. It would be of no benefit to recite all of the testimony on this point since the testimony has already been covered in substance and it has been disregarded for various reasons heretofore stated. And, of course, the testimony of the enrollees of the jet training courses also must be entirely disregarded on this charge because jet engine experts are not "non-technical ground jobs." It is therefore found that the evidence does not sustain the seventh charge.

As to the eighth charge (complaint, Paragraphs Nine and Ten), there is no question upon the record that respondents formerly used words "registrars" and "field registrars" to denote their sales representatives who were engaged in the personal solicitation of prospective enrollees for respondents' courses. This is both admitted by the answer (Paragraph Ten) and fully established by the evidence. (See, for example, Commission's Exhibits 10, p. 4; and 50, Employment Papers, page 2, where the words "registrar," "registrars," "Field Registrar" and "Field Registrars" appear.) This practice was apparently discontinued prior to 1959 but such words were not actually stricken from the respondents' sales manual until a new sales manual appeared about January, 1959 (Respondents' Ex. 19). Respondents correctly state there is no evidence that such descriptive terms, as applied to sales representatives in respondents' employ, were ever used to deceive or ever did deceive any of the consumer witnesses who testified in this proceeding (R. 1457-1459, 1497). But respondents still contend that the word "registrar" would be less deceptive than "sales representative" would be, since it "more clearly denotes a school than sales representative does" (R. 1457, 1459, 1489). This is important in connection with any claim of discontinuance, as it certainly evinces a strong continuing desire on respondents' part to use the word "registrar." At any rate, such practice was not discontinued until during the Commission's investigation of this matter, or even actually made manifest to the world until during the pendency of the instant litigation itself. Such a discontinuance or abandonment does not meet the Commission's criteria warranting dismissal on such a ground as expressed in the Commission's opinions in *Ward Baking Co.*, Docket No. 6833 (June 23, 1958); *The Firestone Tire & Rubber Company*, Docket No. 7020 (January 9, 1959);

and most recently epitomized and reaffirmed in *Transcontinental Clearing House*, Docket No. 7146 (October 21, 1959).

The Commission's policy of issuing cease and desist orders against the use of the word "registrar" for ordinary agents and salesmen has been followed for many years past. The reason therefor has been stated in contested litigation relating to a correspondence school as follows:

> The designation of respondent's salesmen as registrars is misleading for the reason that said salesmen are employed to sell courses of instruction on a commission basis and do not have the duties or responsibilities ordinarily incumbent upon officers of educational institutions employed and designated as registrars. *Career Training Institute, et al.*, Docket No. 5354 (1948), 44 F.T.C. 968, 972

It would be improper to list the Commission's numerous recent consent-order decisions covering such point since they are not authority in other cases but they are referred to only as indicating the consistency of the Commission's policy in such regard. A number of them particularly relate to so-called "air-career" training schools.

In the case at bar there is substantial evidence corroborating the Commission's viewpoint. This consists of the evidence of Marjorie L. Andrews, respondents' business director (R. 128-130) and a stipulation (R. 411-412), both in substance stating that a "registrar" in educational fields, is a college-trained person competent to be in charge of the general administration of students' records and to pass upon their qualifications to perform work at the collegiate level. It is noteworthy that in securing personnel to sell their courses of study to prospective students, respondents place ads for salesmen (R. 44, 717) advertising in classified magazine and newspaper ads, "Help Wanted - Salesmen," although respondents' director could not remember using the word "registrar" in such connection (R. 208).

There is no evidence that respondents' salesmen have been trained for or are qualified to carry out such duties, although they do, from time to time in the field, summarily screen out applicants who, although indicating interest in respondents' courses of instruction, from the application or interview appear to be clearly and palpably, physically, mentally or otherwise unfitted to follow through the desired course of training successfully. This screening is done, it is inferred, to save time, and consequently money and future chargebacks and other grief for these commission salesmen and the school itself, although in fairness to respondents it is also inferred that the salesmen are not out to take money from wholly unqualified applicants.

While no person on this record appears to have been misled in any way by the word "registrar," the Commission's orders look to the

future and it is to be reasonably anticipated that there are many others who might be misled by any future use of the word "registrar" or the like. A qualified registrar's function is to pass definitely upon the students' qualification to pursue a course of learning, and a true registrar gives the last official word in submitting students to an educational institution. These salespeople here involved were not the final authority in any case (R. 78), and at most, in accepting students, they merely performed their screening as so-called "a field registrar" only. Such salesmen just cannot be "registrars" in any proper sense of the word, and this high-sounding title for salesmen is therefore deceptive and misleading.

Upon the Commission's precedents, as well as for sound reasons appearing upon this record itself, the hearing examiner therefore finds that the use of the words "registrar," "registrars," "field registrar" or expressions of like import, as applied to respondents' salesmen, were false, misleading, and deceptive. The eighth charge of the complaint is fully sustained, and an order against the use of such words to describe salesmen is issued herewith.

> . . . [A]s one of the aims of the statute is to prevent unfair and deceptive practices, orders will be sustained even when it is clearly shown that the practices have actually been abandoned. The cogent and obvious reason is that there is no guarantee that the practice might not be resumed. *Goodman* v. *FTC* (C.A. 9, 1957), 244 F. 2d 584, 593, and numerous decisions cited in footnotes 21 and 22.

In dismissing the second to seventh charges, the effectivenes of the order herewith issued on the first and eighth charges is sufficient in the opinion of the examiner to prevent substantially all if not all of the alleged acts or misrepresentations whereon the complaint as amended is based. If respondents' advertising is purged of any capacity or tendency to mislead the public into believing that employment is offered, whether by airlines or other concerns, the inquiries received by the respondent school will be limited to serious-minded persons who have a definite understanding that they are only subscribing to courses and much of the alleged misunderstanding on the part of those interviewed by respondents' salesmen will be entirely avoided. In the instant case as hereinbefore set forth, all of the enrollees who testified were persons who for some reason—good, bad or indifferent—were unable to or disinterested in completing the course they subscribed to. Their testimony as a whole was almost entirely a waste of time and expense to all concerned as the effective record was determinable upon an inspection of respondents' advertising. Training by correspondence has become an accepted part of

American education, and, while counsel supporting the complaint appears to be allergic thereto, such business is not *per se* unlawful.

CONCLUSIONS OF LAW

From the foregoing findings of fact the following conclusions of law are drawn by the hearing examiner:

1. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the person of each of the respondents;

2. This proceeding is to the interest of the public and such interest is specific and substantial;

3. The false, misleading and deceptive advertising of respondents and the use of the word "registrar" and the like, as hereinabove found, were and are all to the prejudice and injury of the public and of the 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.

ORDER

It is ordered, That respondents, Northwest Schools, Inc., a corporation, and its officers; and Soma Advertising Agency, Inc., a corporation, and its officers; and William A. Sawyer individually; and William A. Sawyer and Alice L. Sawyer as officers of said corporations; and respondents' agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of courses of study or instruction, do forthwith cease and desist from:

1. Representing, directly or by implication: That employment is being offered when in fact the purpose is to obtain purchasers of such courses of study or instruction.

2. Using the word "Registrar" or "Field Registrar" as descriptive of or in referring to any of respondents' salesmen.

It is further ordered, That the second to seventh charges, inclusive, of the complaint as amended (Paragraphs Seven and Eight) should be and the same hereby are dismissed.

It is further ordered, That the complaint should be and hereby is dismissed as to respondent William A. Sawyer as a copartner trading as and doing business as Northwest Schools.

It is further ordered, That the complaint should be and the same hereby is dismissed as to respondent Alice L. Sawyer individually

and as a copartner trading as and doing business as Northwest Schools but not as an officer of said respondent corporations.

OPINION OF THE COMMISSION

By ANDERSON, *Commissioner:*

The amended complaint in this matter charges respondents with misrepresentation in the sale of their correspondence courses and other courses in violation of Section 5 of the Federal Trade Commission Act. The hearing examiner in his initial decision held that certain of the allegations were sustained by the evidence and ordered respondents to cease and desist from the practices found to be unlawful. Those allegations which he found were not sustained were ordered dismissed. Counsel supporting the complaint has appealed from the order of dismissal.

Respondents are charged with misrepresenting their courses of instruction in eight different respects. In the order in which the charges are set forth in the complaint, respondents are alleged to have made false and misleading representations as to offers of employment; the availability of positions to graduates; the qualifications of their graduates; assurance of employment; their selection of students; the availability of refunds; and the starting salaries available to graduates. In the eighth charge, they are alleged to have misused the term "registrar" in the designation of their salesmen.

The hearing examiner found that the first charge was primarily established by respondents' advertising, corroborated to some extent by the testimony of certain witnesses. He gave consideration to the advertising only in connection with this first charge and ruled that proof of the second through seventh charges rests entirely upon the credibility of the testimony of witnesses who had been interviewed by respondents' salesmen. As we understand the hearing examiner's reasoning on this point, it is his view that as alleged in this complaint, respondents' offers of employment were made through advertisements, whereas the representations challenged in the second through seventh charges were allegedly oral statements made by their salesmen. He rejected the consumer testimony almost in its entirety and dismissed the second through seventh charges. The eighth charge was sustained.

Counsel supporting the complaint first contends that the hearing examiner erred in holding that the evidence does not support a finding that respondents made certain of the representations as alleged. In support of this argument, he relies on the finding that respondents have falsely represented in their contact advertising that they are offering employment. It is his contention that since this contact advertising is deceptive, the false impression created thereby

has a bearing on whether or not certain other of the alleged representations were made by salesmen to persons responding to the advertisement. As an example, counsel supporting the complaint asks us to find that the fact that some prospects were under the impression that employment was being offered is significant in deciding whether statements made by salesmen to those prospects constituted representations that they were qualified for employment.

This argument has validity only if the false impression of an employment offer existed throughout the prospect's interview with the salesman. From our examination of the testimony of the consumer witnesses, we find that upon talking with the salesman, the prospect became aware that he was not being offered employment but was being solicited to purchase a course of instruction. Any statements made by the salesman were understood to relate to the sale of such course. Accordingly, the argument of counsel supporting the complaint on this point is rejected.

In an effort to show that the hearing examiner's appraisal of the testimony of the consumer witnesses is in error, counsel supporting the complaint has devoted the major portion of his appeal to detailing the specific testimony of each such witness as it relates to each of the dismissed charges. In our consideration of this testimony, we are not as impressed as the hearing examiner apparently was with the fact that most of these witnesses, in correspondence with respondents requesting cancellation of their contracts, gave reasons therefor which have no relationship to the alleged misrepresentations by salesmen. It is entirely possibly on this record to assume that many of those who requested cancellation for reasons such as lack of funds were in no position at the time of such request to determine the truth or falsity of any of the salesmen's statements. However, we have given careful consideration to this consumer witness testimony and, bearing in mind the fact that the hearing examiner personally observed their conduct and demeanor, we cannot say that he did not properly evaluate their testimony.

The hearing examiner is in error, however, in ruling that the second through seventh charges could only be established through the testimony of those persons interviewed by respondents' salesmen. The complaint alleges that the representations covered by these charges were made by respondents by means of statements appearing in advertisements as well as through their salesmen. In our view, one of the dismissed charges is clearly sustained by other evidence of record.

The charge which we think is sustained is that respondents falsely represent that persons who complete their courses of instructions are

qualified for employment by major commercial airlines. The hearing examiner ruled that this charge specifically relates to employment with "major commercial airlines" and found there was no evidence from which to conclude that respondents had ever made such a specific representation.

We have reviewed the advertisements in evidence and find numerous instances wherein respondents have represented that their airline career course can qualify persons for jobs with airlines. All of these advertisements are captioned in large type with statements such as "Airlines Need Men and Women" or statements of similar import. Examples of the claims appearing in such advertisements are: "Learn how you can NOW qualify for one or more interesting well-paid positions"; "A short, low-cost training period that will not interfere with your present job can qualify acceptable applicants for exciting, glamorous career"; and "We TRAIN you by advanced, new methods * * *." Also, a brochure which is part of the material carried by salesmen and which is distributed to prospects contains the statement "You receive a complete up-to-date Aviation Career Training which qualifies you for many interesting well-paid non-technical positions." We think it clear that these statements under the heading which they appear constitute representations that persons completing respondents' courses are thereby qualified for employment with any airline, including major commerical airlines. The hearing examiner's ruling restricting this charge to representations which specify major commercial airlines is in error.

There can be no doubt from this record that the foregoing representations are deceptive. Testimony was received from a major airline representative, Mr. Floyd K. McCroskey, personnel manager of the northwest region of United Airlines (erroneously referred to in the initial decision as Northwest Airlines) and from a "feeder" airline representative, Mr. Robert S. Heath, employment manager for West Coast Airlines. Each testified at length as to the qualifications for employment with his respective company. In addition to certain objective qualifications such as height, weight, age, etc., each company has certain subjective standards. In this latter category, personality characteristics are determined by West Coast Airlines through interviews conducted by departmental supervisors while United Airlines conducts temperament tests, samples of which are in evidence. It is obvious from this record that respondents' salesmen are not qualified to make such determinations and that office personnel who process enrollments are not concerned with such subjective qualifications. In addition, United Airlines subjects applicants to a rigid physical examination and both airlines make a

thorough check of character references, neither of which is done by respondents. Also both airlines conduct their own training courses for all stewardesses and public contact personnel hired by them. Moreover, respondents' counsel in his brief concedes that graduation from respondents' school does not in and of itself qualify the student to meet certain standards of employment of the airlines. As respondents' counsel points out, the fact that respondents were able to place only about one out of three graduates of its airline course who requested such placement, indicates that there are qualifications other than completion of respondents' courses.

In view of the standards imposed by the airlines, it is evident that students completing respondents' airline career course are not thereby qualified for airline employment. It is equally true that graduates of respondents' jet engine maintenance course are not thereby qualified in all respects to work with jet aircraft. Although respondents' advertising lists jet aircraft as one field of training furnished by its jet engine maintenance course, the record shows that there are standards in this field which are not met by the course. Specifically, in order to perform all of the functions of a jet engine mechanic, a person must be certified with a license from the Civil Aeronautics Administration. The license requires practical experience which is not furnished with respondents' course.

Under the above circumstances, we find that the third charge has been sustained.

Counsel supporting the complaint has also appealed from the hearing examiner's dismissal of the complaint as to the respondent Alice L. Sawyer in her individual capacity.

The record discloses that respondent Northwest Schools, Inc., was incorporated on February 24, 1958. From 1952 to 1956 the business was owned solely by respondent William A. Sawyer and operated under the name Northwest Radio and Television School. In 1956, Alice L. Sawyer, the wife of William A. Sawyer, became a copartner in the business with her husband and the name was changed to Northwest Schools. Upon incorporation, their partnership interests were transferred to the corporate respondent. They became officers and equal shareholders in the corporate respondent. They are also equal shareholders in respondent Soma Advertising Agency, Inc., which was incorporated in 1955 and which functions only as the advertising agent for the school.

Counsel supporting the complaint does not seriously dispute the hearing examiner's finding that Alice L. Sawyer has not taken an active part in the management or the formulation of policy of either the corporate respondents or the previous partnership arrangement.

It is his contention that under the circumstances shown to exist, the Commission, in the exercise of its discretion, should hold Mrs. Sawyer individually liable to prevent resumption of the unlawful practices. The circumstances to which counsel supporting the complaint refers are the structural changes in the business entities of respondents over the past several years. However, the evidence will not support a finding that these changes were made for other than valid business purposes. Since there has been no showing of circumstances from which we may reasonably conclude that the failure to hold Mrs. Sawyer individually liable might result in an evasion of the terms of the order to cease and desist, the argument of counsel supporting the complaint on this point must be rejected.

One final point raised by counsel supporting the complaint is that the hearing examiner erred in failing to consider a "Stipulation as to the Facts and Agreement to Cease and Desist" voluntarily executed by the individual respondent, William A. Sawyer, in 1955. It is his contention that this stipulation should be considered in determining the stringency of the order to cease and desist with respect to those charges in the complaint allegedly covered by the stipulation. However, since we have found that, for the most part, those charges have not been sustained, it is not necessary for us to decide whether or not the stipulation may or should have been considered. The order as issued herewith adequately prohibits the practices found to be illegal.

To the extent set forth herein, the appeal of counsel supporting the complaint is granted but in all other respects it is denied. As modified in accordance with this opinion, the initial decision is adopted as the decision of the Commission. An appropriate order will be entered.

FINAL ORDER

Counsel supporting the complaint having filed an appeal from the initial decision of the hearing examiner, and the matter having been heard on briefs and oral argument in support thereof and in opposition thereto; and the Commission having rendered its decision granting in part and denying in part the appeal and directing modification of the initial decision:

It is ordered, That the third sentence of the first paragraph on page 1 of the intial decision be modified to read as follows:

The first, third and eighth charges are found to have been established by the evidence but the others are dismissed for lack of substantial, credible evidence to sustain them.

It is further ordered, That the second full paragraph on page 3 of the initial decision be modified to read as follows:

The complaint charges respondents with having made eight different alleged types of misrepresentation, all of which are denied by respondents in their answer, except the eighth. This decision determines that by the weight of the substantial evidence the Commission's case has been sustained upon three of the eight charges. These in substance are: The first charge (Complaint, Paragraphs Three and Four), relating to alleged false offers of employment; the third charge (Complaint, Paragraphs Seven 2. and Eight 2.), relating to the qualifications of persons completing respondents' courses of instruction; and the eighth charge (Complaint, Paragraphs Nine and Ten), relating to respondents' designation of their salesmen as "registrars". The first charge was contested and is primarily established by respondents' advertising, although corroborated and aided by the testimony of certain witnesses who answered respondents' advertising and were subsequently interviewed by respondents' salesmen. The third charge is also contested and is established by respondent's advertising and the testimony of two airline officials. The eighth charge is admitted but respondents, in effect, urge its discontinuance as a defense thereto.

It is further ordered, That the following portions of the initial decision be stricken: the last paragraph beginning on page 3 with the words "In this" and ending on page 4 with the words "set forth"; the last paragraph beginning on page 15 with the words "There was" through and including the first full paragraph on page 17 ending with the words "William A. Sawyer"; the second through the sixth sentences of the paragraph on page 18 beginning with the word "Insofar" and ending with the word "interviews"; the first full paragraph on page 30 beginning with the word "While" and ending with the word "charges"; the last paragraph beginning on page 37 with the words "In dismissing" and ending on page 38 with the words "*per se* unlawful."

It is further ordered, That the following paragraphs be, and they hereby are, substituted for those paragraphs relating to the third charge in the complaint beginning with the second full paragraph on page 32 of the initial decision through and including the first full paragraph on page 33 thereof:

The third charge (subparagraphs 2 of Paragraphs Seven and Eight of the complaint) is that respondents have falsely represented that "persons who complete their courses of instruction are qualified for employment by major commercial airlines." Proof of this charge does not depend upon the testimony of consumer witnesses.

Numerous of respondents' advertisements in evidence are captioned with statements to the effect that airlines need men and women. As no distinction is made between major commercial airlines and other airlines, the caption clearly has reference to both categories. Many of the advertisements contain statements that respondents' courses qualify persons for positions such as stewardess, passenger agent, reservationess, hostess, and other non-technical ground positions.

The personnel manager of a major commercial airline and the employment manager of a local service, or "feeder", airline testified at length as to the qualifications for employment with their respective companies. Both testified that subjective qualifications such as personality characteristics, are an important factor in determining the acceptability of an applicant, particularly one applying for public contact work. Respondents' salesmen are not qualified to determine the subjective qualifications of a person for an airline position nor is such a determination made by respondents' office personel. Also, applicants are subjected to a rigid physical examination by the major airline and both airlines thoroughly check character references, neither of which is done by respondents. Moreover, the record shows that respondents are able to secure employment for only about one out of three graduates who request placement with the airlines. This situation, existing at a time when most airlines have job openings and are actually advertising for persons for certain positions, clearly indicates that airlines have certain qualifications which are not met through completion of respondents' courses.

In addition to standards imposed by the airlines themselves, there are certain other standards for employment which are not met simply by completing the course offered by respondents in that field. For example, a graduate of respondents' jet engine maintenance course is not thereby qualified to perform all of the functions of a mechanic with jet aircraft in view of the certification requirement of the Civil Aeronautics Administration. The license issued by that agency requires practical experience which cannot be acquired through any of respondents' courses.

Accordingly, we find that the third charge is fully established by the evidence.

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

It is ordered, That respondents, Northwest Schools, Inc., a corporation, and its officers; and Soma Advertising Agency, Inc., a corporation, and its officers; and William A. Sawyer, individually; and William A. Sawyer and Alice L. Sawyer, as officers of said corporations; and respondents' agents, representatives, and employees,

directly or through any corporate or other device, in connection with the offering for sale, sale or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of courses of study or instruction, do forthwith cease and desist from:

1. Representing directly or by implication:

(a) That employment is being offered when in fact the purpose is to obtain purchasers of such courses of study or instruction.

(b) That persons who complete their airline training course are thereby qualified for employment by major commercial airlines or any airline; or that persons completing any of their other courses of study or instruction are thereby qualified for employment in any job to which the course relates when all the qualifications for such job as established by the prospective employer or others, cannot be acquired through respondents' course.

2. Using the word "Registrar" or "Field Registrar" as descriptive of or in referring to any of respondents' salesmen.

It is further ordered, That the second and the fourth to seventh charges, inclusive, of the complaint as amended (subparagraphs 1, 3, 4, 5 and 6 of Paragraph Seven and Paragraph Eight) be, and they hereby are, dismissed.

It is further ordered, That the complaint be, and it hereby is, dismissed as to respondent Alice L. Sawyer in her individual capacity but not in her capacity as an officer of respondent corporations.

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 contained herein.

IN THE MATTER OF

GEORGE McKIBBIN & SON ET AL.

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

Docket 7245. Complaint, Aug. 28, 1958—Decision, Feb. 14, 1961

Order requiring Brooklyn, N.Y., printers of a one-volume reference work entitled "Webster's Encyclopedic Dictionary of the English Language", a loose-leaf edition of "Webster's Unified Dictionary and Encyclopedia"—itself based on two older works, whose publishers licensed respondents to print and sell it in supermarkets only in the U. S. and Canada, where it was sold a section at a time over a 10-week period—to cease representing falsely—in advertising circulars, window banners, store displays, and on