Paying, granting, or allowing, directly or indirectly, to any buyer or to anyone acting for or in behalf of or who is subject to the direct or indirect control of such buyer, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, upon or in connection with any sale of citrus fruit or fruit products to such buyer for his own account.

It is further 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 this order.

IN THE MATTER OF

THE NATIONAL SUGAR REFINING COMPANY

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF SEC. 7 OF THE CLAYTON ACT

Docket 6852. Complaint, July 25, 1957—Decision, Feb. 1, 1962

Consent order requiring the nation's second largest domestic sugar refiner to sell within six months and so as to restore the former competitive standing, the assets including refinery and sugar mill at Reserve, La., of the seventh largest—fifth largest east of the Mississippi River—refiner, which it acquired in June 1956 for approximately $6 million for the fixed assets and about $8 million for accounts receivable, inventories, and manufacturing supplies.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondent named in the caption hereof and hereinafter more particularly designated and described, has violated and is now violating the provisions of Section 7 of the Clayton Act (15 U.S.C. Title 15, Sec. 18), as amended, and approved December 29, 1950, hereby issues its complaint, charging as follows:

PARAGRAPH 1. Respondent, The National Sugar Refining Co. (hereinafter sometimes referred to as "respondent National"), is a corporation doing business under and by virtue of the laws of the State of New Jersey, with its principal office and place of business located at 100 Wall Street, New York, N.Y.

The present company was organized under the laws of the State of New Jersey on June 2, 1900, under the corporate name of The National Sugar Refining Company of New Jersey. In 1939 its corporate name was changed to its present form.

Upon its organization the respondent National acquired the stock of the New York Sugar Refining Company, Mollenhauer Sugar Re-

fining Company, and National Sugar Refining Company (a New Jersey corporation distinct from respondent National, and dissolved in 1938), and, through such stock ownership or by transfer thereafter, the sugar refineries of the above named companies, then situated respectively at Long Island City, New York; Brooklyn, New York; and Yonkers, New York.

Following the merger of the three companies the Mollenhauer plant was closed and operations were begun immediately at the Long Island City and Yonkers refineries.

In 1927 the respondent purchased the refinery of Warner Sugar Refining Company at Edgewater, New Jersey, and in 1931 the operations of the Yonkers refinery were terminated, leaving the respondent with two operating plants, its present refinery in Long Island City, New York, and the Edgewater, New Jersey refinery.

In January 1941, the trademark, good will and certain other assets, but not the refinery, of Arbuckle Brothers were purchased by Arbuckle Sugars, Inc., a wholly owned subsidiary of respondent National. This subsidiary was dissolved August 25, 1947, and its business continued under the name of Arbuckle Sugars Division of The National Sugar Refining Company.

In 1941 a newly incorporated subsidiary of respondent National, the Pennsylvania Sugar Company, acquired the sugar refinery, plants and refining business of the former Pennsylvania Sugar Company. Since 1947 this subsidiary has been operated as the Pennsylvania Sugar Division of The National Sugar Refining Company.

During 1943 and 1944 the respondent sold the machinery, refinery, and other property which it owned at Edgewater, New Jersey, and confined its sugar refining operations and those of its subsidiary to the Long Island City and Philadelphia refineries.

Respondent, directly and through its various subsidiaries, is engaged, among other things, in the business of refining cane sugar and refines and distributes under the trade names "Jack Frost", "Quaker", "Arbuckle's" and "Godchaux" over forty grades of cane sugars in a great variety of packing. It also has a line of hard, soft, and liquid cane sugars under the brand name "National", and also produces under the name "Krist-O-Kleen" nine grades of special liquid and semi-solid invert sugars adaptable for industrial use. Respondent National is the second largest domestic refiner of sugar in the United States, selling its products in 28 states and accounting for approximately 15% of the national output.

PAR. 2. Respondent National purchases raw sugar from suppliers located in various States of the United States. This raw sugar is

extracted from sugar cane which is grown in the United States, Cuba, Hawaii, Puerto Rico and the Philippine Islands. The refined sugar produced by respondent is offered for sale, sold, and distributed to purchasers thereof located throughout the United States and respondent is engaged in commerce as "commerce" is defined in the Clayton Act and the Federal Trade Commission Act.

PAR. 3. Prior to June, 1956, Godchaux Sugars, Inc. (hereinafter sometimes called Godchaux), was a corporation organized and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located in the Carondelet Building, New Orleans, Louisiana. Godchaux was incorporated in New York on July 7, 1919. At that time it acquired all of the property of Godchaux Company, Inc., which had been incorporated in 1914 to succeed Leon Godchaux Co., Ltd., a business that was founded by Leon Godchaux in 1898 under a perpetual charter.

Godchaux was principally a planter, manufacturer and refiner of cane sugar and in 1955 ranked seventh in size among sugar refiners in the United States and fifth in size among sugar refiners operating east of the Mississippi River. The properties and assets of Godchaux were located in the Parishes of St. John the Baptist, St. Charles, Lafourche, Assumption, and St. Bernard, Louisiana. The real property consisted of approximately 32,000 acres of land in the heart of the cane growing district of Louisiana. The company had approximately 13,500 acres planted in sugar cane. These properties are on or near the Mississippi River and are an average distance of about 50 miles from New Orleans, Louisiana. The cane sugar produced from this acreage formed only a small part of the refined output of Godchaux. In addition to its own sugar the company's refinery handled a large amount of Cuban and Puerto Rican sugar imported through the port of New Orleans, Louisiana. Godchaux purchased this sugar from suppliers located in various States of the United States. The company owned and operated a refinery and mill at Reserve, Louisiana, as well as a sugar cane mill at Raceland, Louisiana. Products were distributed under the brand names "Godchaux" and "Raceland" through jobbers and wholesale grocers in 21 States, principally in the southern and central freight rate territories. These brand names had become well established over a long period of years.

Godchaux, while in the course and conduct of manufacturing, refining, selling and distributing its principal product, refined sugar, was in commerce, as "commerce" is defined in the Clayton Act.

PAR. 4. In 1939 there existed 112 companies doing business in the sugar refining industry. In 1954 the number of companies doing

business in the industry was 88. This represents a decrease of 21%. In 1939 these companies produced 6,088,772 tons of refined sugar. In 1954 these companies produced 7,481,434 tons of refined sugar. This represents an increase of 23%. There has been little, if any, expansion in the sugar refining industry since 1939, and the aforementioned figures clearly indicate a tendency toward concentration of production facilities. Entry into the sugar refining industry is difficult for various reasons which are, among others, severe capital requirements due to the nature of manufacturing processes and heavy initial advertising expenditures in order to overcome public acceptance of entrenched well-known brands of a commodity for which the demand is fairly inelastic.

The sugar refining business consists of two basic products, refined cane sugar and refined beet sugar. The refined product of both beet and cane sugar is similar, with the exception of minor chemical differences and small price variations due to public preference for refined cane sugar. Respondent National and Godchaux are both refiners of cane sugar exclusively. For the purpose of this complaint, and the practices alleged to be illegal herein, refined beet sugar and refined cane sugar are considered identical.

PAR. 5. Respondent National and Godchaux were in competition prior to and during a part of 1956 in the sale of refined sugar products in substantially all of the States east of the Mississippi River and the States of Arkansas, Iowa, Louisiana, Missouri, and Oklahoma. In this area, in 1955, the five leading sugar refiners accounted for 58.3 percent of all refined sugar deliveries. The largest refiner in this area is the American Sugar Refining Company. In 1955 this company delivered 29.3 percent of the sugar in the area. Respondent National was the second largest refiner of sugar, delivering 821,080 tons of refined sugar which amounted to 13.4 percent of the industry total in the area in 1955. Godchaux was the fifth largest refiner of sugar, delivering 243,079 tons of refined sugar which amounted to 4 percent of the industry total in the area in 1955. The combined total of American Sugar, respondent National, and Godchaux gives these three producers 46.7 percent of the refined sugar delivered in the area.

In 1955 in the area embracing the five States of Illinois, Indiana, Kentucky, Michigan and Ohio, respondent National produced 11.8 percent of the refined sugar delivered and Godchaux produced 5.7 percent of the refined sugar delivered. The two companies produced a total of 17.5 percent.

In 1955 in the tri-state area of Indiana, Kentucky and Ohio, respondent National produced 22.5 percent of the total refined sugar delivered and Godchaux produced 8.3 percent of the total refined sugar delivered. The two companies produced a total of 30.8 percent.

In 1955 in the area embracing the States of Indiana and Ohio, respondent National produced 26.5 percent of the refined sugar delivered and Godchaux produced 5.7 percent of the refined sugar delivered. The two companies produced a total of 32.2 percent.

PAR. 6. On or about January 1956, Webb and Knapp, Inc., an organization engaged primarily in the business of investing and dealing in real estate, began buying stock in Godchaux through its corporate subsidiary, The 52026 Corporation, with the express purpose of gaining control of Godchaux and its approximately 32,000 acres of real estate in Louisiana. Effective control of Godchaux was acquired shortly thereafter.

During the last half of May 1956, Webb and Knapp, Inc., announced its intention to sell the Godchaux sugar refinery and the refining business at Reserve, La., to Respondent National. This sale was consummated in June 1956, when respondent National announced the purchase of the refinery and mill of Godchaux, together with the business, trade-mark, and goodwill of the Godchaux brand. The consideration for the transaction was approximately $6,000,000 for the fixed assets, plus approximately $8,000,000 for accounts receivable, inventories, and manufacturing supplies.

As of the date of the aforementioned sale to respondent National, the stockholders of Godchaux voted to change the name of the corporation to Gulf States Land and Industries, Inc., and said corporation is still a part of the sugar industry by virtue of its ownership and operation of the cane mill at Raceland, Louisiana, and all of its original cane growing operations. Approximately 31,000 of the 32,000 acres of land originally owned by Godchaux was retained by Gulf States Land and Industries, Inc.

PAR. 7. The aforesaid acquisition by respondent National of Godchaux may have the effect of substantially lessening competition or tending to create a monopoly in the production and sale of refined sugar in commerce, as "commerce" is defined in the Clayton Act.

More specifically, the aforesaid effects include the actual or potential lessening of competition and a tendency to create a monopoly in violation of Section 7 of the Clayton Act in the following ways, among others:

(1) Godchaux has been permanently eliminated as one of the substantial independent producers of refined sugar and is no longer a competitive factor in the areas designated;

(2) By substantially increasing the competitive position of respondent National in the areas designated which may be to the detriment of actual and potential competition;

(3) Actual and potential competition between respondent National and Godchaux has been and will be eliminated in the production and sale of refined sugar in the areas in which they compete;

(4) Actual and potential competition generally in the production and sale of refined sugar may be substantially lessened and industry-wide concentration in the production of refined sugar has been and may be increased;

(5) The acquisition of Godchaux substantially increases respondent's overall position and gives respondent National the facilities, market position, and ability to monopolize or to tend to monopolize the refined sugar business in the designated areas;

(6) Substantially lessen competition by discouraging new entrants into the sugar refining business because of the monopolistic position of respondent National in certain areas and the further concentration of the industry as a whole.

PAR. 8. The foregoing acquisition, acts and practices of respondent, as hereinbefore alleged and set forth, constitute a violation of Section 7 of the Clayton Act (U.S.C. Title 15, Sec. 18), as amended, and approved December 29, 1950.

Mr. Rufus E. Wilson and *Mr. Ross D. Young* for the Commission.

Cravath, Swaine & Moore, by *Mr. Albert R. Connelly* and *Mr. Grosvenor Blair*, of New York, N.Y., for the respondent.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

The Federal Trade Commission (sometimes also hereinafter referred to as the Commission) on July 25, 1957, issued its complaint herein, charging the respondent, The National Sugar Refining Company, a corporation, with having violated the provisions of § 7 of the Clayton Act (15 U.S.C., Title 15, § 18), as amended, and approved December 29, 1950; and respondent was duly served with process.

On December 27, 1961, there was submitted to the undersigned Hearing Examiner of the Commission, for his consideration and approval, an "Agreement Containing Consent Order To Divest", together with its Appendices A and B, both attached thereto and by reference made a part of said agreement, which was entered into by respondent, its counsel, and counsel supporting the complaint on

December 27, 1961, subject to the approval of the Bureau of Restraint of Trade, which has subsequently duly approved the same.

After due consideration, 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 dated March 1960, and that the parties have specifically agreed to the following matters:

1. Respondent is a corporation existing and doing business under and by virtue of the laws of the State of New Jersey, with its office and principal place of business located at 100 Wall Street in the city of New York, State of New York.

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

3. This agreement disposes of this proceeding as to all parties. The parties agree that the order contained herein is in the public interest for the reasons set forth in the attached Appendix A which by reference is made a part of this agreement.

4. Godchaux Sugar Refining Co., a newly formed corporation, created for the purpose of acquiring the assets which are the subject of the order of divestiture herein, shall be deemed a purchaser approved by the Commission. The terms of the contract annexed hereto as Appendix B are acceptable for the aforesaid purpose.

5. Respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and

(c) All rights to seek judicial review or otherwise to challange or contest the validity of the order entered pursuant to this agreement.

6. 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.

7. This agreement shall not become a part of the official record of the proceeding unless and until it is accepted by the Commission.

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

9. The following order may be entered in this proceeding by the Commission without further notice to respondent. The complaint may be used in construing the terms of the order. When so entered the order to divest shall have the same force and effect as if entered

after a full hearing. It may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders.

Upon due consideration of said complaint and agreement, the hearing examiner approves and accepts the "Agreement Containing Consent Order To Divest"; finds that the Commission has jurisdiction of the subject-matter of this proceeding and of the respondent herein; that the complaint states a legal cause for complaint under § 7 of the Clayton Act, as amended, against the respondent, both generally and in each of the particulars alleged therein; that this proceeding is in the interest of the public; and that the order proposed in said agreement is appropriated for the just disposition of all the issues in this proceeding as to all of the parties thereto; and therefore issues the said order, as follows:

I

It is ordered, That The National Sugar Refining Company, a corporation, through its officers, directors, agents, representatives and employees, shall divest itself within six (6) months of service of this order by the Commission, absolutely and in good faith, as a unit by sale to Godchaux Sugar Refining Co. or any other purchaser approved by the Commission, of all assets, properties, rights or privileges, tangible or intangible, including but not limited to, all plants, equipment, trade names, trademarks, contracts and business, and all other properties, rights and privileges acquired by The National Sugar Refining Company by the acquisition of the assets of Godchaux Sugars, Inc. (except as such assets or any part thereof may have been disposed of heretofore), together with such additions and equipment of whatever description as have been added thereto, in such a manner as may be necessary to restore Godchaux Sugars, Inc., to at least the same, relative competitive standing it formerly had in the sugar refining industry at or around the time of its acquisition by respondent.

II

It is further ordered, That in such divestment, none of the said assets, properties, rights and privileges, tangible or intangible, shall be sold or transferred, directly or indirectly, to anyone who at the time of the divestiture is an officer, director, employee, or agent of, or otherwise directly or indirectly connected with or under the control or influence of, respondent, The National Sugar Refining Company.

III

It is further ordered, That respondent shall submit to the Commission bi-monthly reports describing the action that has been taken and the efforts that have been made to sell the subject assets. Such reports shall indicate the methods and means employed to effectuate a sale, the result of such actions and efforts and shall set forth the name and address of each person or company contacted, or who has indicated interest in acquiring said properties, together with copies of all correspondence and summaries of all oral communications with such persons or companies.

IV

It is further ordered, That respondent shall, within sixty (60) days after divestiture of the subject properties, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with this order.

V

It is further ordered, That, in the event respondent retains any security interest in the subject properties which may be divested to Godchaux Sugar Refining Co. and thereafter, by enforcement or settlement or any other means of enforcing such security, regains ownership or control of such property, respondent shall divest itself of said property regained in the same manner as provided in Sections I, II, III and IV of this Order.

VI

It is further ordered, That for a period of five (5) years from the date of this order respondent shall cease and desist from acquiring, directly or indirectly, through subsidiaries or otherwise, the assets, stock or any equity in any other sugar refining or beet processing company in the United States.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, published May 6, 1955, as amended, the initial decision of the hearing examiner shall, on the 1st day of February 1962, become the decision of the Commission; and, accordingly:

It is ordered, That respondent The National Sugar Refining Company, a corporation, shall file with the Commission reports in writing, setting forth in detail the manner and form in which it has complied with the order to divest, as required by Paragraphs III and IV of the order contained in the initial decision.

IN THE MATTER OF

JACK LEVINE TRADING UNDER HIS OWN NAME AND AS JACK LEVINE FURS, ETC.

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

Docket C-68. Complaint, Feb. 1, 1962—Decision, Feb. 1, 1962

Consent order requiring a furrier in Beverly Hills, Calif., to cease violating the Fur Products Labeling Act by failing to disclose on labels and invoices the true animal name of the fur used in fur products, the country of origin of imported furs, and when furs were artificially colored; failing to identify the manufacturer, etc., on labels, and to show on invoices when products contained used fur, and to comply in other respects with labeling and invoicing requirements; and by making price and value claims in advertising in newspapers without maintaining adequate records disclosing the facts upon which such representations were based; and to cease violating the Wool Products Labeling Act by failing to disclose on labels the percentage of the total fiber weight of each of the fibers present in ladies' sweaters, and showing the fiber content of sweaters as "cashmere" without setting forth the actual percentage of cashmere fleece contained therein.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, the Fur Products Labeling Act and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Jack Levine, trading under his own name and as Jack Levine Furs, Jale of California, and Jack Levine & Company, 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 the Wool Products Labeling Act of 1939, 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 Jack Levin is an individual trading under his own name and as Jack Levine Furs, Jale of California, and Jack Levine & Company, with his office and principal place of business located at 332 South Beverly Drive, Beverly Hills, Calif.

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 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 has 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 has been shipped and received in commerce, as the term "commerce", "fur" and "fur product" are defined in the Fur Products Labeling Act.

PAR. 3. Certain of said fur products were misbranded in that they were falsely and deceptively labeled or otherwise falsely and deceptively identified to show that the fur contained therein was natural when in truth and in fact the fur in said fur products was bleached, dyed or otherwise artificially colored, in violation of Section 4(1) of the Fur Products Labeling Act.

PAR. 4. Certain of said fur products were misbranded or otherwise falsely and deceptively labeled in violation of Section 4(1) of the Fur Products Labeling Act in that labels affixed to fur products contained the following guarantee: "We guarantee that the fur products or furs specified herein are not misbranded nor falsely nor deceptively advertised or invoiced under the provisions of the Fur Products Labeling and the Rules and Regulations thereunder", when in truth and in fact such products were misbranded in violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder.

PAR. 5. 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.

Among such misbranded fur products, but not limited thereto, were fur products with labels which failed:

(a) To show the true animal name of the fur used in the fur product;

(b) To disclose that the fur contained in the fur product was bleached, dyed or otherwise artificially colored, when such was the fact;

(c) To show the name, or other identification issued and registered by the Commission, of one or more of the persons who manufactured the fur product for introduction into commerce, introduced it into commerce, sold it in commerce, advertised or offered it for sale in commerce, or transported or distributed it in commerce.

PAR. 6. Certain of said fur products were misbranded in violation of the Fur Products Labeling Act in that they were not labeled in accordance with the Rules and Regulations promulgated thereunder in the following respects:

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

(b) 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.

(c) 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.

(d) 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. 7. 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 Rules and Regulations promulgated under such Act.

Among such falsely and deceptively invoiced fur products, but not limited thereto, were invoices pertaining to such fur products which failed to show:

1. The true animal name of the fur used in the fur product.

2. That the fur product contained used fur, when such was the fact.

3. That the fur contained in the fur product was bleached, dyed or otherwise artificially colored, when such was the fact.

4. The country of origin of imported furs contained in the fur products.

PAR. 8. Certain of said fur products were falsely and deceptively invoiced in that respondent set forth on invoices pertaining to fur products the name of an animal other than the name of the animal that produced the fur, in violation of Section 5(b)(2) of the Fur Products Labeling Act.

PAR. 9. 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 "Broadtail Lamb" was not set forth in the manner required, in violation of Rule 8 of said Rules and Regulations.

(c) The term "Dyed Broadtail-processed Lamb" was not set forth in the manner required, in violation of Rule 10 of said Rules and Regulations.

(d) The disclosure "secondhand", where required, was not set forth, in violation of Rule 23 of said Rules and Regulations.

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

PAR. 10. Respondents advertised fur products in the Los Angeles Times, a newspaper published in the City of Los Angeles, State of California, and having a wide circulation in said state and various other States of the United States.

Respondent in advertising fur products for sale as aforesaid, made claims and representations respecting prices and values of fur products. Said representations were of the types covered by subsections (a), (b), (c), and (d) of Rule 44 of the Rules and Regulations promulgated under the Fur Products Labeling Act. Respondent in making such claims and representations failed to maintain full and adequate records disclosing the facts upon which such claims and representations were based in violation of Rule 44(e) of said Rules and Regulations.

Among and typical of the claims and representations contained in such advertisements, but not limited thereto, were the following:

Here is how you can buy $795 mink stoles for only $395. . . .Cerulean, Autumn Haze, Tourmaline and other matchless mink stoles. . . . .usually $795 in fine stores. . . . . .Jack Levine priced to you. . . . . .only $395 plus tax. . . .

PAR. 11. 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 and unfair methods of competition in commerce under the Federal Trade Commission Act.

PAR. 12. Subsequent to the effective date of the Wool Products Labeling Act of 1939, respondents have introduced into commerce, sold, transported, distributed, delivered for shipment, and offered for sale in commerce, as "commerce" is defined in said Act, wool products as "wool products" are defined therein.

PAR. 13. Certain of said wool products were misbranded by respondent in that they were not stamped, tagged or labeled as re-

quired by Section 4(a)(2) of the Wool Products Labeling Act and in the manner and form prescribed by the Rules and Regulations promulgated under said Act.

Among such misbranded wool products were ladies' sweaters with labels which failed to disclose the percentage of the total fiber weight of each of the fibers present in the product.

PAR. 14. Certain of said wool products were misbranded in violation of the Wool Products Labeling Act in that they were not labeled in accordance with the Rules and Regulations promulgated thereunder in that the labels attached to the wool products showed the fiber content as "cashmere" without setting forth the actual percentage of the hair or fleece of the cashmere goat contained therein, in violation of Rule 19 of the aforesaid Rules and Regulations.

PAR. 15. The acts and practices of the respondents as set forth in Paragraphs Thirteen and Fourteen were, and are, in violation of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, and constituted, and now constitute, unfair and deceptive acts and practices and unfair methods of competition in commerce, within the intent and meaning of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondent named in the caption hereof with violation of the Federal Trade Commission Act, the Fur Products Labeling Act and the Wool Products Labeling Act of 1939, and the respondent having been served with notice of said determination and with a copy of the complaint the Commission intended to isue, together with a proposed form of order; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the complaint to issue herein, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as set forth in such complaint, and waivers and provisions as required by the Commission's rules; and

The Commission, having considered the agreement, hereby accepts same, issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Jack Levine is an individual trading under his own name and as Jack Levine Furs, Jale of California, and Jack Levine &

Company with his office and principal place of business located at 332 South Beverly Drive, Beverly Hills, Calif.

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 Jack Levine, an individual trading under his own name or as Jack Levine Furs, Jale of California, or Jack Levine & 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 sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce, of any fur product; or in connection with the manufacture for sale, sale, advertising, offering for sale, transportation or distribution, of any fur product which is made in whole or in part of fur which has been shipped and received in commerce, as "commerce", "fur" and "fur product" are defined in the Fur Products Labeling Act do forthwith cease and desist from:

1. Misbranding fur products by:

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

B. Representing directly or by implication that the fur contained in the fur products is natural, when such is not the fact.

C. Setting out a guaranty on labels affixed thereto that such fur products are not misbranded or falsely or deceptively invoiced or advertised under the provisions of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder, when such is not the fact.

D. Setting forth on labels affixed to fur products:

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

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

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

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

2. Falsely and deceptively invoicing fur products by:

A. Failing to furnish invoices to purchasers of fur products showing in words and figures plainly legible 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 on invoices pertaining to fur products the name or names of any animal or animals other than the name or names of the animal or animals producing the fur contained in the fur products as specified in the Fur Products Name Guide and as prescribed under the Rules and Regulations.

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

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

E. Failing to disclose that fur products are "secondhand", when such is the fact.

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

G. 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. Making pricing claims and representations of the types covered by subsections (a), (b), (c) and (d) of Rule 44 of the Rules and Regulations promulgated under the Fur Products Labeling Act unless there are maintained by respondent full and adequate records disclosing the facts upon which such claims and representations are based.

It is further ordered, That respondent Jack Levine, an individual trading under his own name or as Jack Levine Furs, Jale of California, or Jack Levine & 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 into commerce, or the offering for sale, sale, transportation, or delivery for shipment, in commerce of any wool product, as "wool product" and "commerce" are defined in the Wool Products Labeling

Act of 1939, do forthwith cease and desist from misbranding such products by:

1. Failing to securely affix to, or place on, each product, a stamp, tag, label or other means of identification showing in a clear and conspicuous manner each element of information required to be disclosed by Section 4(a)(2) of the Wool Products Labeling Act of 1939.

2. Stamping, tagging, labeling or otherwise identifying such products as containing the hair or fleece of the Cashmere goat without setting out in a clear and conspicuous manner on each such stamp, tag, label or means of identification the percentage of such Cashmere therein.

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

IN THE MATTER OF

GLAMORENE, INC.

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

Docket 8088. Complaint, Aug. 24, 1960—Decision, Feb. 2, 1962

Order requiring a Clifton, N.J., distributor of rug and upholstery cleaning shampoos to jobbers and retailers, to cease representing falsely in advertising in magazines and newspapers, and on television and radio, that its rug cleaning device "Glamorene Rug Shampoo'er", when used with its rug shampoo, was as effective as professional cleaning, and would clean merely by spreading the shampoo over a rug or carpet.

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 Glamorene, Inc., a corporation, hereinafter referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Glamorene, Inc., is a corporation organized existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 175 Entin Road in the city of Clifton, State of New Jersey.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the advertising, offering for sale, sale and distribution of rug and upholstery cleaning devices and rug and upholstery cleaning shampoos, to distributors and jobbers and to retailers for resale to the public.

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

PAR. 4. In the course and conduct of its business, and for the purpose of inducing the sale of its products, respondent has made certain statements with respect to the cleaning abilities and qualities of its products, in advertisements in magazines of national circulation, on television, on radio and in newspapers, of which the following are typical:

NOW! SHAMPOO YOUR RUGS
WITH PROFESSIONAL RESULTS
. . . no stooping or scrubbing!
It's *so easy* with the *new*
GLAMORENE RUG SHAMPOO'ER
Here's all you do:
1. Fill tank with Glamorene Shampoo solution.
2. Set exclusive "FOAM CONTROL" dial for the right amount of Shampoo Foam needed for your rug.
3. Simply guide RUG SHAMPOO'ER over carpet, and see instant results. Oversize sponge roller and extra-long "EASE-FLEX" bristles beautifully deep-clean an average room size rug in 20 minutes!

PAR. 5. Through the use of the aforesaid statements, respondent represented that its rug cleaning device, known as a "Glamorene Rug Shampoo'er," when used with its rug shampoo, is as effective in cleaning rugs and carpets as professional rug or carpet cleaning, and will clean a rug or carpet merely by spreading the shampoo over a rug or carpet.

PAR. 6. Said statements and representations are false, misleading and deceptive. In truth and in fact said "Glamorene Rug Shampoo'er" and rug shampoo are not as effective in cleaning rugs and carpets as professional rug or carpet cleaning, and they will not clean a rug or carpet merely by spreading the rug shampoo over a rug or carpet.

PAR. 7. In the course and conduct of its business, at all times mentioned herein, respondent has been in substantial competition, in commerce, with corporations, firms and individuals in the sale of products of the same general kind and nature as those sold by respondent.

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

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

Mr. Frederick J. McManus supporting the complaint.

Rogers, Hoge & Hills, by *Mr. Andrew J. Graham*, of New York, N.Y., for respondent.

INITIAL DECISION BY JOHN LEWIS, HEARING EXAMINER

STATEMENT OF PROCEEDINGS

The Federal Trade Commission issued its complaint against the above-named respondent on August 24, 1960, charging it with engaging in unfair and deceptive acts and practices and unfair methods of competition, in commerce, within the meaning of the Federal Trade Commission Act, by misrepresenting the cleaning abilities and qualities of its rug cleaning products. After being served with said complaint, respondent appeared by counsel and thereafter filed its answer in which it admitted in part and denied in part having made the representations charged, and denied that insofar as it had made such representations they were false, misleading and deceptive.

Hearings on the charges were thereafter held before the undersigned hearing examiner in Washington, D.C., and New York, New

York, on various dates between May 17, 1961 and September 21, 1961. At said hearings, testimony and other evidence were offered in support of and in opposition to the allegations of the complaint, the same being duly recorded and filed in the office of the Commission. All parties were represented by counsel and were afforded full oportunity to be heard and to examine and cross-examine witnesses. At the close of all the evidence, and pursuant to leave granted by the undersigned, proposed findings of fact and conclusions of law and an order were filed by both parties on November 15, 1961.

After having carefully reveiwed the entire record in this proceeding, and the proposed findings,[1] conclusions and order, the undersigned finds that this proceeding is in the interest of the public and, based on the entire record and from his observation of the witnesses, makes the following:

FINDINGS OF FACT

I. The Business of Respondent, Interstate Commerce and Competition

1. Respondent, Glamorene, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its principal office and place of business located at 175 Entin Road in the city of Clifton, State of New Jersey.

2. Respondent is now, and for some time last past, has been, engaged in the advertising, offering for sale, sale and distribution of rug and carpet cleaning devices and shampoos to distributors and jobbers and to retailers for resale to the public.

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

4. In the course and conduct of its business, respondent has been, at all times herein mentioned, in direct and substantial competition, in commerce, with other corporations, firms and individuals in the sale of products of the same kind and nature as those sold by respondent.

---

[1] Proposed findings not herein adopted, either in the form proposed or in substance, are rejected as not supported by the record or as involving immaterial matters.

II. The Alleged Illegal Practices

Background and Issues

1. The allegations of misrepresentation revolve about certain statements made by respondent, in advertisements appearing in magazines and newspapers, concerning its rug cleaning device or applicator, known as the "Glamorene Rug Shampoo'er", and its liquid rug shampoo, for the purpose of inducing the purchase of said products by customers. Respondent also sells and distributes a rug cleaning compound in powdered form. However, the latter product is not referred to in the complaint, and counsel supporting the complaint has agreed that this proceeding does not involve the Glamorene powder.[2]

2. The complaint charges that respondent has made false, misleading and deceptive statements concerning its applicator and liquid rug shampoo in two respects, (1) that when the applicator is used with the shampoo, it is as effective in cleaning rugs and carpets as professional rug or carpet cleaning, and (2) that a rug or carpet may be cleaned merely by spreading the shampoo with the applicator over the rug or carpet. Respondent admits having represented that its applicator and shampoo, when used together, will give professional results and claims that such representation is true. It denies, however, having represented that these products will clean a rug or carpet merely by spreading the shampoo over the rug or carpet. The issues, therefore, are whether the first form of representation challenged by the complaint is false, and whether the second form of representation was, in fact, made by respondent.

3. Before considering the charges further, it should be noted that they are identical with those heretofore considered by the examiner in his initial decision filed November 30, 1961, in a proceeding involving respondent's competitor, Bissell, Inc. The *Bissell* case, Docket No. 8086, involved a number of additional forms of misrepresentation, but the principal issue, as in the instant case, was whether the respondent's product would clean rugs as effectively as the professional method of rug cleaning. The principal witness in both cases was one Richard Ned Hopper, technical director of the National Institute of Rug Cleaning, who conducted a test purporting to compare the effectiveness of several "do-it-yourself" home rug cleaners (including those of the two respondents) with the method used by professional cleaners. Hopper's testimony in both records is sub-

[2] R. 340–341.

stantially identical, and revolves largely about the test which he conducted.

4. There are two principal differences between the record in this case from that in the *Bissell* case, viz, (a) Commission counsel in the *Bissell* case called two professional cleaners whom he did not call in the instant case, the case-in-chief here consisting almost entirely of Hopper's testimony, and (b) respondent in the *Bissell* case elected not to call any witnesses but relied almost entirely on the insufficiency of Hopper's testimony, whereas here respondent offered countervailing testimony through its own experts for the purpose of establishing the insufficiency of the Hopper test. In the interest of brevity the examiner will, from time to time, refer to his findings in the *Bissell* case and incorporate them by reference into the instant decision, insofar as they involve the Hopper test and his testimony as to general cleaning procedures in the industry, which are substantially identical in both records.

Comparison With Professional Cleaning

5. As previously noted, the complaint charges respondent with having represented that its rug cleaning device, when used with its shampoo, is as effective as professional rug or carpet cleaning. The record establishes that respondent, in advertising its applicator and shampoo, has stated: "Now! Shampoo your rugs with Professional Results". Respondent does not deny having made this statement. While it claims that it has been discontinued, it does not rely on a defense of mootness, but asserts that the statement is true and that it has a right to make it. It is clear, and is so found, that by advertising that its applicator and shampoo will yield "professional results" respondent has represented that they are as effective, in cleaning rugs and carpets, as professional cleaning. The issue which is presented in this regard is whether the evidence establishes that respondent's claim is false, misleading and deceptive.

6. As noted in the examiner's initial decision in the *Bissell* case, there are two principal methods of professional rug cleaning, (a) in-plant cleaning and (b) home or on-location cleaning. As the names imply, in-plant cleaning is done in a special rug cleaning plant using fixed machinery and equipment, whereas on-location cleaning is done in the home using portable equipment. The record in this proceeding is substantially similar to that in the *Bissell* case insofar as it reflects the nature of each of these methods. The examiner considers it unnecessary to describe in detail each of the methods, but instead

adopts the findings with respect thereto which he made in the *Bissell* case.[3]

7. Counsel supporting the complaint contends that professional cleaning in the plant is more effective than on-location cleaning, citing Hopper's testimony that whereas 95% to 100% of the dirt may be removed in in-plant cleaning, about 65% is the average of dirt removal in on-location cleaning. It may be noted that this testimony is at variance with that of one of the Government's own experts in the *Bissell* case, who testified that it was possible to clean rugs as well in the home as in the plant, except for certain special situations.[4] In any event, it is the opinion of the examiner that the contention of counsel supporting the complaint in this respect is wholly immaterial since, as noted in the *Bissell* decision, on-location cleaning is recognized as a form of professional cleaning.[5] In the absence of evidence establishing that the public would receive the impression that a reference to professional cleaning denotes cleaning in a plant, the proper standard with which to compare respondent's product, insofar as determining whether it will clean as effectively as professional cleaning, is with the results achieved by professional cleaners in the home.

8. Respondent's recommended method of rug cleaning is substantially similar to the on-location professional method. The instructions which come with the shampoo direct the housewife to, first, vacuum or brush loose dirt; second, mix the shampoo in a solution of warm water and pour it into the tank of the applicator; third, apply the solution to the rug with the Shampoo'er (or, in the alternative, with a long-handled brush); and, fourth, to brush the rug after it has dried. This basically, is the professional method, except that most professionals apply the detergent solution with a mechanical rotary brush, rather than with a hand applicator, and a small percentage follow this up with a wet-dry vacuum in the case of detergents which have a high foaming action. Also, some of them use a rubber finger rake or deck brush to erect the pile after the solution has been applied.

9. The record here, as in the *Bissell* case,[6] fails to disclose that the equipment and methods used in professional on-location cleaning are any more effective in dirt removal than is respondent's method. The cleaning in both instances is achieved, basically, by the application of

[3] This includes pars. 6–8, pp. 4–5 of the *Bissell* decision [p. 139 herein].
[4] *Bissell* decision, par. 9, p. 5 [p. 139].
[5] *Id.*, par. 10 [p. 140].
[6] *Id.*, par. 13, pp. 6–7 [pp. 141, 142].

a detergent which causes the dirt to be loosened from the pile of the rug, so that it can later be picked up by a vacuum cleaner. There was no chemical analysis made here to show that respondent's shampoo is any less effective in its detergent qualities than the detergents used by professional cleaners. On the contrary, the principal witness called by counsel supporting the complaint conceded that tests made by him in 1954 with Glamorene shampoo, disclosed that it was satisfactory for professional use as a detergent.[7] Nor is there anything to show that the application of the detergent with a hand applicator is any less effective, in dirt removal, than applying it with a mechanical rotary brush. The record here establishes, as in the *Bissell* case, that while the mechanical rotary brush does the job more quickly and is more economical for commercial purposes, particularly where large areas are involved, a hand applicator if properly used can do just as effective a job in applying the detergent.[8]

The record fails to establish that the additional equipment used by some professional cleaners will necessarily result in a more effective cleaning job than the use of respondent's method and equipment. The use of the wet-dry vacuum is generally limited to detergents with a high foaming action, is used only by a small percentage of professional cleaners and acts primarily to prevent over-wetting of the rug rather than to remove dirt. The rubber finger rake or deck brush is used to erect the pile because of the matting action of the heavy mechanical rotary brush. There is nothing to show that such equipment is required with respondent's light hand applicator. While the principal witness called by counsel supporting the complaint also used a commercial-type vacuum for the final step of dirt removal in the so-called professional test conducted by him, the record establishes that this step is normally performed by the housewife herself, using an ordinary home-type vacuum.

10. As in the *Bissell* case, the only evidence which purports to show that respondent's method of rug cleaning is not as effective as that used by professional cleaners, is the test performed by Richard Ned Hopper under the auspices of his employer, the National Institute of Rug Cleaning (referred to herein as the NIRC). Respondent's position with respect to the Hopper test is essentially that of the respondent in the *Bissell* case, viz, that the test is lacking in objectivity due to the interest of the NIRC, as the spokesman for the professional cleaners, in the outcome of this proceeding and, more importantly, that

[7] R. 138–141.

[8] This was somewhat reluctantly conceded by the principal witness for counsel supporting the complaint (R. 137).

the test is unscientific and lacking in validity insofar as establishing that respondent's product is not as effective as professional cleaning. In addition to alluding to some of the deficiencies in the Hopper test relied upon by respondent in the *Bissell* case, respondent here also relies on the testimony of its own experts to support its position as to the scientific unworthiness of the test.

11. As noted in the *Bissell* decision, the Hopper test involved the soiling of a number of samples of white carpeting and the cleaning thereof by various cleaners and methods, and the taking of readings before and after the soiling and cleaning thereof, by a photo-electric device known as the Gardner Automatic Photometric unit or, for brevity, as the Gardner reflectometer.[9] Admittedly, the machine did not directly measure dirt or dirt removal, but recorded light values in terms of degrees of grayness from white to black. As noted in the *Bissell* decision,[10] the test purports to show that the samples cleaned with respondent's shampoo achieved a percentage of cleaning of 52.7%, based on the assumption that there is a correlation between the change in light values and the removal of dirt. The samples cleaned by the professional method purported to show a percentage of cleaning of 68.2%, based on the same assumption.

12. It was conceded by Hopper that the application of the detergent to the samples cleaned with respondent's product, did nothing to remove any substantial amount of dirt from the samples since the detergent would merely have the tendency to loosen the dirt from the pile, but would not remove it to any substantial extent without a final vacuuming. Since the manufacturer's directions did not prescribe a final vacuuming of the rug, but merely a brushing thereof, the final vacuuming step was not performed. Thus, without there being any step taken to actually remove the dirt, the samples cleaned with respondent's shampoo purported to show a very substantial amount of dirt removal, according to the reading made on the reflectometer and Hopper's theory that the change in light values is a reliable indicator of dirt removal.

13. One explanation of this situation, which has already been discussed in the *Bissell* decision,[11] is that the dirt had merely been redistributed by the application of the detergent. Since the reflectometer only obtains a light reflection of an area the size of a 50-cent piece,[12] a shifting of the dirt from the area on the sample read by the reflectometer, to the surrounding area, would cause a change in light

[9] See *Bissell* decision, par. 15, pp. 8–9 [pp. 142, 143 herein].
[10] *Id.*, par. 18, at p. 11 [p. 144].
[11] *Ibid.*
[12] R. 167.

values but not establish the extent of dirt removal from the rug as a whole. If this condition can be considered to account for the reading made on the samples cleaned with respondent's shampoo, it is equally possible, if not more so, that it affected the reading taken of the samples cleaned by the so-called professional method. As indicated in the *Bissell* decision,[13] the samples cleaned were less than a foot square and were mounted on a plywood board 4 x 6 feet, where they were surrounded by clean carpeting. While the do-it-yourself detergents (including respondent's) were applied manually to the soiled samples and, at most, overlapped an area of about six inches of the surrounding clean carpeting, the heavy mechanical rotary brush (operating at 175 r/p/m), which was used on the samples cleaned by the professional method, covered most of the 4 x 6 foot area in the process of applying the detergent to the soiled samples. Obviously, under these circumstances, there would be a greater tendency to disperse the dirt from the soiled samples to the clean carpeting, a fact to which one of the experts called by respondent attested.[14] A reading taken of the originally soiled area would not truly reflect the ability of the professional method to remove dirt from the carpet as a whole.

14. The expert witnesses called by respondent, consisting of respondent's chemical director and the former technical director of the NIRC, both expressed the opinion that the reflectometer has serious limitations as a device for measuring dirt removal. They pointed out that the light values which the reflectometer records can be affected by a number of factors other than soil removal, such as the texture of the pile of the carpet, the angle at which the reflectometer is placed in relationship to the carpet, the type and color of the soil involved, and the presence or absence of optical brighteners in the carpet or in the detergent.

15. Of particular note, is the testimony of Col. James W. Rice, Hopper's predecessor as technical director of the NIRC. Although Col. Rice had arranged for the purchase of the Gardner reflectometer while he was with the NIRC and had developed the techniques of its use as a testing device, he stated that before he had left the NIRC he had come to the conclusion that it had serious limitations as a measure of dirt removal. While he was of the view that the reflectometer did have value as a testing device, he considered it necessary to test as many as twenty samples (instead of the four tested by Hopper) in order to assure a reasonable degree of reliability, and to take five readings on each sample (instead of four readings as was done by Hopper).

[13] Pp. 11–12 [p. 143 herein].
[14] R. 452.

He was further of the opinion that the mechanical test should be verified by a visual jury test. No reason has been suggested why the testimony of Col. Rice, who was Hopper's predecessor and teacher and was recognized by Hopper as an "outstanding expert" in the field, should not be accepted as reliable and worthy of credit.

16. Indicative of the questionable reliability of the Hopper test, as an indicator of dirt removal, is the wide variation in readings obtained on a number of the samples cleaned with the same detergent. Thus, the four samples cleaned by one do-it-yourself detergent powder showed readings varying from a low of −3.8% to a high of 16.3%; the samples cleaned by another product purported to show percentages of cleaning ranging from 13.2% to 35.7%; and those cleaned with another detergent showed variations from 21.6% to 47.8%. Respondent's experts were of the opinion that a range of 20% or more in the samples tested, and particularly the minus reading obtained from one of the samples, was indicative of the test's lack of reliability and of the necessity for testing more than four samples to obtain a result which would be scientifically meaningful.

17. Even if the Hopper test is accepted as having a reasonable measure of scientific accuracy, insofar as indicating whether respondent's product will or will not clean as effectively as the professional method, it fails to establish that respondent's product will not do so. As previously noted, the test purported to show a percentage of cleaning achieved by respondent's shampoo of 52.7%, even though no steps had been taken to remove any substantial amount of dirt from the samples. All that Hopper did after applying the detergent was to brush the samples when they were dry, but he did not thereafter vacuum them as is customary. He conceded that even in professional cleaning, it is the subsequent vacuuming by the housewife which actually removes the bulk of the dirt from the rug. He likewise conceded that if the samples cleaned with respondent's product had been given a final vacuuming, it is probable that there would have been as much dirt removed as in those cleaned by the professional method.[15]

The evidence also suggests that Hopper could have obtained even better results than those which he achieved on the samples cleaned with respondent's product, if he had used respondent's applicator in applying the shampoo. The complaint charges that respondent's *applicator*, when used with its shampoo, is not as effective as professional cleaning. Hopper did not use respondent's applicator, but used a

[15] Hopper conceded this would be so, provided there was no optical brightener in respondent's product. There is not a scintilla of evidence to indicate that respondent's shampoo does contain any brightener or bleach.

brush instead because the directions which came with the shampoo suggested this as an alternative method. However, according to the testimony of respondent's president, the applicator, which applies the shampoo through a roller made of polyethylene material, does a more effective job in applying the detergent than does a brush.

18. Hopper's explanation for not vacuuming the samples after they had been cleaned with respondent's product was that the directions did not specifically so state. The directions do provide that the rug should be brushed after it has dried. The record discloses that if a rug is brushed or swept long and hard enough there will ultimately be as much dirt removed as with a vacuum. However, for practical, every-day purposes, a vacuum is the preferable method for the housewife. Respondent's explanation for not specifically stating, in its instructions, that the rug should be vacuumed after it has been cleaned with the shampoo is that the housewife ordinarily does this as a matter of regular routine without specific instructions. While it may be that it would be desirable to spell out this step specifically in the instructions, its omission does not establish that respondent's shampoo, when applied with its applicator, will not clean a rug as effectively as professional cleaning.

19. Based on the record as a whole, including the evidence above discussed, it is concluded and found that counsel supporting the complaint has failed to sustain the burden of proving by reliable, probative and substantial evidence that respondent's shampoo, when applied with its applicator known as the "Glamorene Rug Shampoo'er", will not clean a rug or carpet as effectively as professional rug or carpet cleaning.

Cleaning Merely by Spreading

20. The complaint charges respondent with having represented that its applicator, when used with its rug shampoo, will clean a rug or carpet merely by spreading the shampoo over the rug or carpet. Respondent denies having made any such representation. To resolve this issue, it is necessary to examine respondent's advertising material which is in evidence.

21. In addition to stating that its product will "Shampoo your rugs with Professional Results", a number of respondent's advertisements contain the following statements:

. . . no stooping or scrubbing!
It's *so easy* with the *new*
GLAMORENE RUG SHAMPOO'ER
Here's all you do:
1. Fill tank with Glamorene Shampoo solution.

2. Set exclusive "FOAM CONTROL" dial for the right amount of Shampoo Foam needed for your rug.

3. Simply guide RUG SHAMPOO'ER over carpet, and see instant results. Oversize sponge roller and extra-long "EASE-FLEX" bristles beautifully deep-clean an average room size rug in 20 minutes!

22. Respondent argues that telling the housewife she must "simply guide" the "Shampooer" over the rug is not tantamount to telling her that the rug will become clean merely by spreading the shampoo over it. Respondent apparently concedes that something more than a mere spreading of the shampoo is necessary, and that a certain amount of agitation or brushing action is necessary or required in order for the shampoo to penetrate the rug sufficiently to loosen the dirt.

23. In the opinion of the examiner, when respondent's advertising material is read as a whole, it conveys the impression that little or no effort is required in cleaning a rug or carpet. In the context of its use, the direction to "simply guide" the applicator suggests that no pressure or agitation is required, and that the rug will automatically become clean as the shampoo is released following the setting of the "Foam Control" dial.

24. The record establishes that a rug cannot be cleaned in this effortless manner. As respondent's own directions on the label indicate, preliminary vacuuming or brushing is required. Furthermore, the shampoo must be applied with a reasonable amount of downward pressure or brushing action, in order to secure effective penetration of the rug. A test conducted on respondent's behalf, which is in the record, indicates that a mere light, horizontal spreading of the shampoo sufficient to wet the top of the rug, but with no downward pressure, will not result in effective penetration. It is also necessary to vacuum the rug after it has dried. The rug will not dry "a deep-clean * * * in 20 minutes" after the application of the shampoo, as respondent's advertisements suggest.

25. It is concluded and found that, (a) respondent's advertisements convey the impression that rugs can be cleaned merely by spreading on its shampoo with its applicator, using little or no effort, and (b) the statements made by it to this effect are false, misleading and deceptive in that rugs cannot be cleaned merely by spreading the shampoo on the rug and letting it dry, but additional effort and steps are required.

CONCLUSIONS

1. The use by respondent of the statements, representations and practices hereinabove found to be false, misleading and deceptive has had, and now has, the capacity and tendency to mislead members

of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true, and into the purchase of substantial quantities of respondent's products by reason of said erroneous and mistaken belief. As a consequence thereof, it may be inferred that substantial trade in commerce has been, and is being, unfairly diverted to respondent from its competitors and that substantial injury has been, and is being, done to competition in commerce.

2. The acts and practices of respondent, as thus found, 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.

3. The allegation of paragraph 6 of the complaint, that respondent has falsely represented that its rug cleaning device and shampoo are as effective in cleaning rugs and carpets as professional cleaning, has not been sustained and should, accordingly, be dismissed.

ORDER

It is ordered, That Glamorene, Inc., a corporation, and its officers, employees, agents and representatives, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of any rug cleaning device and rug shampoo in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that any such rug cleaning device and rug shampoo will clean a rug or carpet merely by spreading the shampoo on the rug or carpet and allowing it to dry.

It is further ordered, That the complaint be, and the same hereby is, dismissed insofar as it alleges that the statements and representations made by respondent, to the effect that its rug applicator and rug shampoo are as effective in cleaning rugs and carpets as professional rug or carpet cleaning, are false, misleading, and deceptive.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 4.19 of the Commission's Rules of Practice, effective July 21, 1961, the initial decision of the hearing examiner shall, on the 2d day of February 1962, 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.

Complaint

IN THE MATTER OF

THE REGINA CORPORATION

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

Docket 8421. Complaint, June 2, 1961—Decision, Feb. 2, 1962

Consent order requiring a Rahway, N.J., distributor of floor polishers, waxers, and vacuum cleaners and parts and accessories therefor, with gross annual sales in excess of $12,000,000, to cease violating Sec. 2(d) of the Clayton Act by giving compensation for services to certain favored customers but not to others competing with them, such as (1) a payment of $1,612 toward the salary of demonstrating sales persons hired by Abraham & Straus, (2) promotional allowances of $1,000 paid to L. R. Beavis & Co., a distributor of its products, and of $2,501 paid to Gimbel Brothers, Inc., of New York, and (3) varying amounts paid different customers in connection with advertising programs, which bore no relation to the amounts accrued by them upon purchases.

COMPLAINT

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

PARAGRAPH 1. Respondent, The Regina Corporation, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office, factory and principal place of business located at Regina Avenue, Rahway, N.J.

PAR. 2. Respondent is now, and for many years last past has been, engaged in the sale and distribution of floor polishers, waxers, and vacuum cleaners with parts and accessories thereto. Respondent sells these products to distributors and indirectly through such distributors to retailers such as department stores and appliance stores, and also directly to such retailers. These retailers have businesses located in various cities throughout the United States.

The Regina Corporation's gross sales volume is in excess of $12,000,000 annually.

PAR. 3. In the course and conduct of its business, respondent now causes, and for some time last past has caused, its said products, when sold, to be transported in commerce, as "commerce" is defined in the Clayton Act, as amended, from its principal place of business in the State of New Jersey to customers located in the same and in other States of the United States and the District of Columbia.

PAR. 4. In the course and conduct of its business in commerce, respondent paid or contracted for the payment of something of value to or for the benefit of some of its customers as compensation or in consideration for services or facilities furnished by or through such customers in connection with their offering for sale or sale of products sold to them, directly or indirectly, by said respondent, and such payments, sometimes hereinafter referred to as promotional allowances, were not available on proportionally equal terms to all other customers competing in the distribution of its products.

PAR. 5. Included among, and illustrative of the payment alleged in paragraph 4, were credits, paid by way of allowances or deductions, to certain favored customers during 1959 and 1960. During the period January 1, 1959, through November 30, 1960, respondent contracted to pay and paid $1,612.00 toward the salary of demonstrating sales persons hired by Abraham & Straus in connection with the offering for sale and sale by Abraham & Straus of respondent's products without making such monies available to customers competing with the aforesaid favored customer.

PAR. 6. As a further example, during the period May 1, 1960, through November 30, 1960, L.R. Beavis & Co., Inc., a distributor of the respondent's products, was paid or credited $1,000.00 (one thousand dollars), from respondent's Associate Fund as a promotional allowance. Respondent did not offer, or otherwise make available, to distributors competing with said favored distributor promotional allowances on proportionally equal terms.

In addition, certain retailers purchasing respondent's products through distributors were paid promotional allowances not offered or paid on proportionally equal terms to competing retailers purchasing respondent's products through the same, and through different distributors. For example, Gimbel Brothers, Inc., of New York, was paid $2,501.00 as promotional allowances during the period January 1, 1960, through November 30, 1960, while during the same period no promotional allowance was offered or otherwise made available to B. Altman & Company, Inc., of New York. The two stores named in this example are competitors in the sale of respondent's products, and both stores purchase said products through the same distributor.

PAR. 7. During the years 1958 through and including 1960, and for some years prior thereto, respondent maintained advertising programs for each customer purchasing directly from the respondent based upon varying accruals, depending upon the product and model purchased. These direct purchasing accounts were not advised or otherwise informed of the amount of advertising monies which ac-

crued per machine, nor were they advised or otherwise informed of their total advertising accruals. Some direct purchasing customers received promotional allowances in excess of the amount accrued by them, while other competing direct purchase customers were not offered, nor did they receive, promotional allowance monies which they had accrued.

For example, during the period January 1, 1959, through November 30, 1960, R. H. Macy & Co. accrued $6,078.50 in promotional allowances and was paid $16,933.58; Abraham & Straus accrued $3,723.00 and was paid $10,290.18; Bamberger's accrued $1,219.50 and was paid $764.03. The three customers named in this example compete with one another in the sale of respondent's products.

As a condition to the receipt of credit or payment from the respondent for advertising its products, such as those described in this paragraph and in paragraph 6, customers were required in placing such advertisements either to mention no price at all, or to list a price no lower than that suggested by respondent.

PAR. 8. The promotional allowances referred to in paragraphs 5, 6, and 7, were not, and are not, available on proportionally equal terms to all of respondent's customers competing in the distribution of respondent's products in that:

(1) Respondent made, or offered to make, such allowances to some customers and failed to make, or offer to make, similar allowances to all competing customers, and (2) the terms and conditions of respondent's various promotional plans were, and are, such as to preclude some competing customers from accepting and enjoying the benefits to be derived from said plans.

PAR. 9. The acts and practices of respondent as alleged above violate subsection (d) of Section 2 of the Clayton Act, as amended (U.S.C. Title 15, Sec. 13).

DECISION AND ORDER

This matter having come to be heard by the Commission upon a record consisting of the Commission's complaint charging the respondent named in the caption hereof with violation of subsection (d) of Section 2 of the Clayton Act, as amended, and an agreement by and between respondent and counsel supporting the complaint, which agreement contains an order to cease and desist, an admission by the respondent of all the jurisdictional facts alleged in the complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that it has violated the law as alleged in the complaint, and waivers and provisions as required by the Commission's rules; and

The Commission having considered the agreement and order contained therein and being of the opinion that the agreement provides an adequate basis for appropriate disposition of the proceeding, the agreement is hereby accepted, the following jurisdictional findings are made, and the following order is entered:

1. Respondent The Regina Corporation is a corporation existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located in the city of Rahway, State of New Jersey.

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

ORDER

It is ordered, That respondent The Regina Corp., a corporation, its officers, employees, agents and representatives, directly or through any corporate or other device, in the course of business in commerce, as "commerce" is defined in the Clayton Act, as amended, do forthwith cease and desist from:

Paying or contracting for the payment of anything of value to, or for the benefit of, any customer of respondent as compensation or in consideration for advertising, demonstrator services, or any other services or facilities furnished by or through such customer in connection with the processing, handling, sale or offering for sale of floor polishers, waxers, vacuum cleaners, and related products manufactured, sold or offered for sale by respondent, unless such payment or consideration is made available on proportionally equal terms to all other customers competing with such favored customers in the distribution of such products.

It is further 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 this order.

IN THE MATTER OF

MISSION CITRUS GROWERS, INC.

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

Docket C-69. Complaint, Feb. 2, 1962—Decision, Feb. 2, 1962

Consent order requiring packers of citrus fruit in Mission, Tex., selling through brokers, retailers, and commission merchants, to cease violating Sec. 2(c) of

the Clayton Act by paying a commission or brokerage on a large number of sales made to brokers and other direct buyers purchasing for their own accounts for resale.

COMPLAINT

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

PARAGRAPH 1. Respondent Mission Citrus Growers, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Texas, with its offices and principal place of business located at 824 West 10th Street, Mission, Tex., with mailing address as P.O. Box 328, Mission, Tex.

PAR. 2. Respondent is now and for the past several years has been engaged in the business of packing, selling and distributing citrus fruit, such as oranges, tangerines and grapefruit, all of which are sometimes referred to as citrus fruit products. Respondent sells and distributes its citrus fruit through brokers, retailers, commission merchants, as well as direct, to customers located in many sections of the United States. When brokers are utilized in making sales for it, respondent pays them for their services usually at the rate of 10 cents per 1⅗ bushel box, or the equivalent. Respondent's annual volume of business in the sale and distribution of citrus fruit is substantial.

PAR. 3. In the course and conduct of its business over the past several years, respondent has sold and distributed and is now selling and distributing its citrus fruit in commerce, as "commerce" is defined in the aforesaid Clayton Act, as amended, to buyers located in the several states of the United States other than the State of Texas in which respondent is located. Respondent transports, or causes such citrus fruit, when sold, to be transported from its place of business or packing plant, or other places within the State of Texas, to such buyers, or to the buyers' customers, located in various other states of the United States. Thus there has been at all times mentioned herein a continuous course of trade in commerce in said citrus fruit across state lines between respondent and the respective buyers of such citrus fruit.

PAR. 4. In the course and conduct of its business as aforesaid, respondent has been and is now making substantial sales to some, but not all, of its brokers and other direct buyers purchasing for their own account for resale, and on a large number of these sales respondent paid, granted or allowed, and is now paying, granting or allowing

to these brokers and other direct buyers, on their purchases, a commission, brokerage, or other compensation, or an allowance or discount in lieu thereof, in connection therewith.

PAR. 5. The acts and practices of respondent as above alleged and described are in violation of subsection (c) of Section 2 of the Clayton Act, as amended (U.S.C. Title 15, Sec. 13).

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondent named in the caption hereof with violation of subsection (c) of Section 2 of the Clayton Act, as amended, and the respondent having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the complaint to issue herein, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as set forth in such complaint, and waivers and provisions as required by the Commission's rules; and

The Commission, having considered the agreement, hereby accepts same, issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Mission Citrus Growers, Inc., 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 824 West 10th Street, Mission, Tex., with mailing address as Post Office Box 328, Mission, Tex.

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

ORDER

It is ordered, That the respondent Mission Citrus Growers, Inc., a corporation, and its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the sale of citrus fruit or fruit products in commerce, as "commerce" is defined in the Clayton Act, as amended, do forthwith cease and desist from:

Paying, granting, or allowing, directly or indirectly to any buyer, or to anyone acting for or in behalf of or who is subject to the direct or indirect control of such buyer, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, upon or in connection with any sale of citrus fruit or fruit products to such buyer for his own account.

It is further 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 this order.

IN THE MATTER OF

N. & E. GREENBERG SONS, INC., ET AL.

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

Docket C-70. Complaint, Feb. 2, 1962—Decision, Feb. 2, 1962

Consent order requiring New York City furriers to cease violating the Fur Products Labeling Act by labeling and invoicing as "natural", fur which was artificially colored, and failing to show on labels and invoices that other fur was artificially colored.

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 N. & E. Greenberg Sons, Inc., a corporation, and Edward Greenberg, Louis Greenberg, Isadore Greenberg, Samuel Greenberg and Harry Greenberg, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Fur Products Labeling Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent N. & E. Greenberg Sons, 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 330 Seventh Avenue, New York, N.Y. Edward Greenberg, Louis Greenberg, Isadore Greenberg, Samuel Greenberg

and Harry Greenberg are officers of said corporate respondent and control, direct and formulate the acts, practices and policies of the said corporate respondent. Their office and principal place of business is the same as that of the said corporate respondent.

PAR. 2. Subsequent to the effective date of the Fur Products Labeling Act on August 9, 1952, respondents have been and are now engaged in the introduction into commerce, and in the 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 or otherwise falsely or deceptively labeled in that said fur products were labeled to show that the fur contained therein was natural when in fact such fur was bleached, dyed or otherwise artificially colored 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.

Among such misbranded fur products, but not limited thereto, were fur products with labels which failed to disclose that the fur contained in the fur products was bleached, dyed or otherwise artificially colored, when such was the fact.

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

Among such falsely and deceptively invoiced fur products, but not limited thereto, were invoices pertaining to such fur products which failed to disclose that the fur contained in the fur products was bleached, dyed or otherwise artificially colored when such was the fact.

PAR. 6. Certain of said fur products were falsely and deceptively invoiced in that said fur products were invoiced to show that the fur contained therein was natural when in fact such fur was bleached, dyed or otherwise artificially colored in violation of Section 5(b)(2) of the Fur Products Labeling Act.

PAR. 7. Certain of said fur products were falsely and deceptively invoiced in violation of Section 5(b)(2) of the Fur Products Labeling

Act in that such invoices contained statements to the effect that the respondents had a continuing guarantee on file with the Federal Trade Commission, when such was not the fact.

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.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act and the Fur Products Labeling Act, and the respondents having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as set forth in the complaint, and waivers and provisions as required by the Commission's rules; and

The Commission, having considered the agreement, hereby accepts same, issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent N. & E. Greenberg Sons, 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 330 Seventh Avenue, New York, N.Y.

Respondents Edward Greenberg, Louis Greenberg, Isadore Greenberg, Samuel Greenberg and Harry Greenberg are officers of said corporate respondent and their office and principal place of business is the same as that of said corporate respondent.

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

ORDER

It is ordered, That N. & E. Greenberg Sons, Inc., a corporation, and its officers, and Edward Greenberg, Louis Greenberg, Isadore Greenberg, Samuel Greenberg and Harry Greenberg, 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, or manufacture for 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, 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. Representing directly or by implication on labels that the fur contained in the fur products is natural, when such is not the fact.

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

2. Falsely or deceptively invoicing fur products by:

A. Representing directly or by implication on invoices that the fur contained in fur products is natural, when such is not the fact.

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

3. Falsely or deceptively invoicing fur products by representing directly or by implication that respondents have a continuing guarantee on file with the Federal Trade Commission when such is not the fact.

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

IN THE MATTER OF

UNITED STATES CREDIT RATING BUREAU, INC., ET AL.

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

Docket C-71. Complaint, Feb. 8, 1962—Decision, Feb. 8, 1962

Consent order requiring Baltimore operators of a collection agency to cease representing falsely by their corporate name that they were a "bureau" and were engaged in rating other concerns from a credit standpoint; and rep-

resenting falsely in printed matter disseminated to clients and debtors that they provided "Nationwide Credit Protection".

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that United States Credit Rating Bureau, Inc., a corporation, and Landres Chilton, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows:

PARAGRAPH 1. Respondent United States Credit Rating Bureau, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland with its principal office and place of business at 100 Court Square Building, Baltimore 2, Md. Respondent Landres Chilton is an officer of said corporate respondent and he formulates, directs and controls the acts, policies and practices of said corporate respondent. His address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the business of operating a collection agency. Respondents solicit delinquent accounts for collection from business persons and firms in various States of the United States other than the State of Maryland. In the process of collecting said delinquent accounts, respondents send and transmit various notices, letters and documents of a commercial nature from their places of business in the State of Maryland to the debtors of their clients located in various States of the United States other than the State of Maryland and receive checks, money orders and other documents from said debtors transmitted across state lines. Respondents thus engage in extensive commercial intercourse, in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 3. In the course and conduct of their business, respondents, through the use of the name United States Credit Rating Bureau, Inc., have represented, and do now represent, that they are a "bureau" and that they are engaged in the business of rating other firms and companies from a credit standpoint. In truth and in fact, respondents are not a bureau and are not engaged in any credit rating but are instead a collection agency.

PAR. 4. In the course and conduct of their business, as aforesaid, respondents have made various statements concerning their business, its nature, size and extent, in the printed material disseminated to their clients and to debtors. Typical of the statements made are the following:

1. Serving the Nation's Business;

2. Nationwide Credit Protection.

PAR. 5. Through the aforesaid statements, respondents have represented, and now represent, directly or by implication, that:

1. The business is nationwide in scope;

2. They offer credit protection.

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

1. The business is not nationwide in scope; its operations are limited to approximately four states and the District of Columbia;

2. Respondents do not offer or supply any credit protection or furnish any credit reports.

PAR. 7. In the conduct of their business, at all times mentioned herein, respondents have been in substantial competition in commerce with corporations, firms and individuals engaged in business of the same general kind and nature.

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 public, including debtors and creditors, into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of respondents' services and the payment of accounts by debtors to respondents, by reason of said erroneous and mistaken belief.

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 methods of competition in commerce and unfair and deceptive acts and practices in commerce, in violation of Section 5(a)(1) of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act, and the respondents having been served with notice of said determination and with a copy

of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondents of all the jurisdictional facts set forth in the complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as set forth in the complaint, and waivers and provisions as required by the Commission's rules; and

The Commission, having considered the agreement, hereby accepts same, issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent, United States Credit Rating Bureau, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland, with its office and principal place of business located at 100 Court Square Building, in the city of Baltimore, State of Maryland.

Respondent Landres Chilton is an officer of said corporation, and his address is the same as that of said corporation.

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

ORDER

It is ordered, That respondents United States Credit Rating Bureau, Inc., a corporation, and its officers, and Landres Chilton, 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 or sale of any service or printed matter for use in the collection of claims or accounts, the solicitation of accounts or contracts therefor, or the collection of accounts in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

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

2. Using the word "nationwide" to describe or refer to respondents' business, or otherwise representing, directly or by implication, that

respondents' business is nationwide in scope or that it serves an area larger than is the fact.

3. Using the words "credit protection" in connection with the business aforesaid, or otherwise representing, directly or by implication, that respondents offer or supply credit protection or furnish credit reports.

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

IN THE MATTER OF

DURABLE FUR COMPANY, INC., ET AL.

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

Docket C-72. Complaint, Feb. 12, 1962—Decision, Feb. 12, 1962

Consent order requiring New York City furriers to cease violating the Fur Products Labeling Act by failing to show on labels and invoices the true animal name of fur used in fur products, to disclose on labels when fur was artificially colored, and to comply in other respects with labeling and invoicing requirements.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Durable Fur Company, Inc., a corporation, and Joseph Schimmel, Bernard Browner, and Sol Goldstein, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of such Acts and the Rules and Regulations under the Fur Products Labeling Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Durable Fur Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal place of business at 333 Seventh Avenue, New York, N.Y.

Individual respondents Joseph Schimmel, Bernard Browner and Sol Goldstein are respectively President, Vice President, and Secretary-Treasurer of the corporate respondent. Said individual respondents formulate, direct and control the acts, practices and policies

of the corporate respondent. Their address is the same as the corporate respondent.

PAR. 2. Subsequent to the effective date of the Fur Products Labeling Act on August 9, 1952, respondents have been and are now engaged in the introduction into commerce, and in the manufacture for introduction into commerce, and in the sale, advertising and offering for sale, 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 has 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.

Among such misbranded fur products, but not limited thereto, were fur products with labels which failed:

1. To show the true animal name of the fur used in the fur product.

2. To disclose that the fur contained in the fur products was bleached, dyed, or otherwise artificially colored when such was the fact.

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 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 by law, in violation of Rule 8 of the Rules and Regulations.

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

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

Among such falsely and deceptively invoiced fur products, but not limited thereto, were invoices pertaining to such fur products which failed to show the true animal name of the fur used in the fur product.

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 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. 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 and unfair methods of competition in commerce under the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act and the Fur Products Labeling Act, and the respondents having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the complaint contemplated by such agreement, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as set forth in such complaint, and waivers and provisions as required by the Commission's rules; and

The Commission, having considered the agreement, hereby accepts same, issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent, Durable Fur Company, 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 333 Seventh Avenue, in the city of New York, State of New York.

Respondents Joseph Schimmel, Bernard Browner and Sol Goldstein are officers of said corporation, and their address is the same as that of said corporation.

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

ORDER

It is ordered, That respondents Durable Fur Company, Inc., a corporation, and its officers, and Joseph Schimmel, Bernard Browner and Sol Goldstein, 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, or manufacture for 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, 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 Section 4(2) of the Fur Products Labeling Act.

B. Setting forth on labels affixed to fur products:

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

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

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

2. Falsely or deceptively invoicing fur products by:

A. Failing to furnish invoices to purchasers of fur products showing in words and figures plainly legible 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.

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

IN THE MATTER OF

I. J. FOX, INC., ET AL.

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

Docket C-73. Complaint, Feb. 12, 1962—Decision, Feb. 12, 1962

Consent order requiring Boston furriers to cease violating the Fur Products Labeling Act by failing to show on invoices the true animal name of fur used in fur products, when such fur was artificially colored, and the country of origin of imported furs, and failing to comply in other respects with invoicing requirements; by advertising in newspapers which represented prices of fur products as reduced from usual prices which were in fact fictitious, and as "⅓ to ½ off and even more" when such was not true; and by making price and value claims without maintaining adequate records as a basis therefor.

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 I. J. Fox, Inc., a corporation, and Alfred H. Lilienthal, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Fur Products Labeling Act and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. I. J. Fox, 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 411 Washington Street, Boston, Mass.

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

PAR. 2. Subsequent to the effective date of the Fur Products Labeling Act on August 9, 1952, respondents have been and are now engaged in the introduction into commerce, and in the 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 falsely and deceptively invoiced by the respondents in that they were not invoiced as required by Section 5(b)(1) of the Fur Products Labeling Act, and the Rules and Regulations promulgated under such Act.

Among such falsely and deceptively invoiced fur products, but not limited thereto, were invoices pertaining to such fur products which failed:

1. To show the true animal name of the fur used in the fur product.

2. To disclose that the fur contained in the fur products was bleached, dyed, or otherwise artificially colored, when such was the fact.

3. To show the country of origin of the imported furs used in the fur products.

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 "assembled" was used to describe fur products composed of pieces in lieu of the required terms, in violation of Rule 20(d) of said Rules and Regulations.

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

PAR. 6. Among and included in the advertisements as aforesaid, but not limited thereto, were advertisements of respondents, which appeared in issues of the Boston Herald, Boston American and Boston Traveler, newspapers published in the city of Boston, State of Mas-

sachusetts, and having a wide circulation in said State and various other States of the United States.

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

(a) Represented prices of fur products as having been reduced from regular or usual prices where the so-called regular or usual prices were in fact fictitious in that they were not the prices at which said merchandise was usually sold by respondents in the recent regular course of business, in violation of Section 5(a)(5) of the Fur Products Labeling Act and Rule 44(a) of said Rules and Regulations.

(b) Represented through percentage savings claims such as "Save ⅓ to ½ off and even more" that prices of fur products were reduced in direct proportion to the percentage of savings stated when such was not the fact, in violation of Section 5(a)(5) of the Fur Products Labeling Act.

PAR. 7. Respondents in advertising fur products for sale as aforesaid, made claims and representations respecting prices and values of fur products. Said representations were on the types covered by subsections (a), (b), (c), and (d) of Rule 44 of the Rules and Regulations promulgated under the Fur Products Labeling Act. Respondents in making such claims and representations failed to maintain full and adequate records disclosing the facts upon which such claims and representations were based in violation of Rule 44(e) of said Rules and Regulations.

PAR. 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 and unfair methods of competition in commerce under the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act and the Fur Products Labeling Act, and the respondents having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the complaint, a statement that the signing of said agreement is for settlement

purposes only and does not constitute an admission by respondents that the law has been violated as set forth in the complaint, and waivers and provisions as required by the Commission's rules; and

The Commission, having considered the agreement, hereby accepts same, issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent I. J. Fox, 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 411 Washington Street, Boston, Mass.

Respondent Alfred H. Lilienthal is president of the said corporate respondent and his office and principal place of business is the same as that of the said corporate respondent.

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

ORDER

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

1. Falsely or deceptively invoicing fur products by:

A. Failing to furnish invoices to purchasers of fur products showing in words and figures plainly legible 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.

C. Setting forth the term "assembled" or any term of like import as part of the information required under Section 5(b)(1) of the Fur Products Labeling Act and the Rules and Regulations promulgated

thereunder to describe fur products composed of any of the pieces or parts specified in Rule 20 of said Rules and Regulations.

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

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

B. Represents directly or by implication through percentage savings claims that the prices of fur products are reduced in direct proportion to the percentage of savings stated when such is not the fact.

3. Making claims and representations of the types covered by subsections (a), (b), (c), and (d) of Rule 44 of the Regulations promulgated under the Fur Products Labeling Act unless there are maintained by respondents full and adequate records disclosing the facts upon which such claims and representations are based.

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

IN THE MATTER OF

L. CHESTER, INC., ET AL.

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

Docket C-74. Complaint, Feb. 12, 1962—Decision, Feb. 12, 1962

Consent order requiring furriers in Fort Wayne, Ind., to cease violating the Fur Products Labeling Act by substituting non-conforming labels for those affixed to fur products by the manufacturer; falsely labeling furs as to the names of the producing animal, and as "natural" when they were artificially colored; labeling fur products with fictitious prices represented thereby as usual retail prices; failing to show on labels and invoices and in advertising the true animal name of fur, when fur was artificially colored, and when fur products were composed of cheap and waste fur; failing to show on invoices the country of origin of imported furs; by advertising which represented prices of fur products as reduced from regular prices which were in fact fictitious, and as "at cost or below cost" when such was not the fact; and by failing to maintain adequate records as a basis for price and value claims.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that L. Chester, Inc., a corporation, and L. Chester Franckowiak and Emily Franckowiak, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Fur Products Labeling Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent L. Chester, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Indiana. Individual respondents L. Chester Franckowiak and Emily Franckowiak are President and Secretary-Treasurer, respectively, of the corporate respondent. Said individual respondents cooperate in formulating, directing and controlling the acts, policies and practices of the corporate respondent including the acts and practicies hereinafter referred to. All respondents have their office and principal place of business at 2428 Broadway, Fort Wayne, Ind.

PAR. 2. Subsequent to the effective date of the Fur Products Labeling Act on August 9, 1952, and more especially since 1953, 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; and have sold, advertised, offered for sale and processed fur products which have been shipped and received in commerce and upon which fur products substitute labels have been placed by respondents, as the terms "commerce", "fur" and "fur products" are defined in the Fur Products Labeling Act.

PAR. 3. Respondents in selling, advertising, offering for sale and processing fur products which have been shipped and received in commerce, have misbranded such fur products by substituting thereon, labels which did not conform to the requirements of Section 4 of the Fur Products Labeling Act, for the labels affixed to said fur products by the manufacturer or distributor pursuant to Section 4 of said Act, in violation of Section 3(e) of said Act.

PAR. 4. Respondents, in substituting labels as provided for, in Section 3(e) of the Fur Products Labeling Act, have failed to keep and preserve the records required, in violation of such Section and Rule 41 of the Rules and Regulations promulgated under the said Act.

PAR. 5. Certain of said fur products were misbranded in that they were falsely and deceptively labeled or otherwise falsely and deceptively identified as to the name or names of the animal or animals that produced the fur from which said fur products had been manufactured, in violation of Section 4(1) of the Fur Products Labeling Act.

PAR. 6. Certain of said fur products were misbranded in that they were falsely or deceptively labeled to show that the fur contained in such fur products was natural, when, in fact, such fur was bleached, dyed or otherwise artificially colored, in violation of Section 4(1) of the Fur Products Labeling Act.

PAR. 7. Certain of said fur products were misbranded in that labels affixed thereto contained fictitious prices and misrepresented the regular retail selling prices of 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 business, in violation of Section 4(1) of the Fur Products Labeling Act.

PAR. 8. 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.

Among such misbranded fur products, but not limited thereto, were fur products with labels which failed:

1. To show the true animal name of the fur used in the fur products.

2. To disclose that the fur contained in the fur products was bleached, dyed, or otherwise artifically colored when such was the fact.

PAR. 9. 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 by law, in violation of Rule 8 of the Rules and Regulations.

(b) Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated there-

under was not completely set out on one side of labels, in violation of Rule 29(a) of said Rules and Regulations.

(c) The disclosure that fur products were composed in whole or substantial part of paws, tails, bellies, sides, flanks, gills, ears, throats, heads, scrap pieces or waste fur was not set forth on labels, in violation of Rule 20 of the said Rules and Regulations.

PAR. 10. Certain of said fur products were falsely and deceptively invoiced by the respondents in that they were not invoiced as required by Section 5(b)(1) of the Fur Products Labeling Act and the Rules and Regulations promulgated under such act.

Among such falsely and deceptively invoiced fur products, but not limited thereto, were invoices pertaining to such fur products which failed:

1. To show the true animal names of the fur used in the fur products.

2. To disclose that the fur contained in the fur products was bleached, dyed, or otherwise artificially colored when such was the fact.

3. To show that the fur products were composed in whole or in substantial part of paws, tails, bellies or waste fur, when such was the fact.

4. To show the country of origin of the imported furs used in the fur products.

PAR. 11. Certain of said fur products were falsely and deceptively invoiced in that the invoices contained misrepresentations as to the name or names of the animal or animals that produced the fur from which the said fur products had been manufactured, in violation of Section 5(b)(2) of the Fur Products Labeling Act.

PAR. 12. Certain of said fur products were falsely and deceptively invoiced in violation of the Fur Products Labeling Act in that they were not invoiced in accordance with the Rules and Regulations promulgated thereunder in the following respects:

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

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

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

(d) Information required under Section 5(b)(1) of the Fur Products Labeling Act and the Rules and Regulations promulgated there-

under was not set forth separately on invoices 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.

(e) The disclosure that fur products were composed in whole or in substantial part of paws, tails, bellies, sides, flanks, gills, ears, throats, heads, scrap pieces or waste fur, was not set forth on invoices, in violation of Rule 20 of said Rules and Regulations.

PAR. 13. Certain of said fur products were falsely and deceptively advertised in violation of the Fur Products Labeling Act in that respondents caused the dissemination in commerce, as "commerce" is defined in said Act, of certain newspaper advertisements, concerning said products, which were not in accordance with the provisions of Section 5(a) of the said Act and the Rules and Regulations promulgated thereunder; and which advertisements were intended to aid, promote and assist, directly or indirectly, in the sale and offering for sale of said fur products.

PAR. 14. Among and included in the advertisements as aforesaid, but not limited thereto, was an advertisement of respondents, which appeared in the Fort Wayne News Sentinel, a newspaper published in the city of Fort Wayne, State of Indiana, and having a wide circulation in said State and various other States of the United States.

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

(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 set forth the term "Persian Lamb" in the manner required, in violation of Rule 8 of said Rules and Regulations.

(c) Failed to disclose that fur products were composed in whole or in substantial part of paws, tails, bellies, sides, flanks, gills, ears, throats, heads, scrap pieces, or waste fur, in violation of Rule 20 of said Rules and Regulations.

(d) Represented prices of fur products as having been reduced from regular or usual prices where the so-called regular or usual prices were in fact fictitious in that they were not the prices at which said merchandise was usually sold by respondents in the recent, regular course of its business, in violation of Section 5(a)(5) of the Fur Products Labeling Act and Rule 44(a) of said Rules and Regulations.

(e) Represented prices of fur products to be "at cost or below cost"

when such was not the fact, in violation of Section 5(a)(5) of the Fur Products Labeling Act and Rule 44(a) of said Rules and Regulations.

PAR. 15. Respondents in advertising fur products for sale as aforesaid, made claims and representations respecting prices and values of fur products. Said representations were of the types covered by subsections (a), (b), (c), and (d) of Rule 44 of Rules and Regulations promulgated under the Fur Products Labeling Act. Respondents in making such claims and representations failed to maintain full and adequate records disclosing the facts upon which such claims and representations were based, in violation of Rule 44(e) of said Rules and Regulations.

PAR. 16. 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 and unfair methods of competition in commerce under the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act and the Fur Products Labeling Act, and the respondents having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondents of all the jurisdictional facts set forth in the complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as set forth in the complaint, and waivers and provisions as required by the Commission's rules; and

The Commission, having considered the agreement, hereby accepts same, issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent L. Chester, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Indiana, with its office and principal place of business at 2428 Broadway, Fort Wayne, Ind.

Respondents L. Chester Franckowiak and Emily Franckowiak are officers of said corporation and their address is the same as that of said corporation.

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

ORDER

It is ordered, That respondents L. Chester, Inc., a corporation, and its officers, and L. Chester Franckowiak and Emily Franckowiak, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the sale, advertising or offering for sale, in commerce, or the transportation or distribution in commerce, of any fur product; or in connection with the sale, advertising, offering for sale, transportation or distribution, or any fur product which is made in whole or in part of fur which has been shipped and received in commerce; or in connection with the sale, advertising, offering for sale or processing of any fur product which has been shipped and received in commerce, and upon which fur product a substitute label has been placed by the respondents, 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. Placing thereon substitute labels for labels affixed to such fur products pursuant to Section 4 of the Fur Products Labeling Act and which substitute labels do not conform to the requirements of Section 4 of the said Act.

B. Falsely and deceptively labeling or otherwise identifying such fur products as to the name or names of the animal or animals that produced the furs from which such fur products were manufactured.

C. Representing directly or by implication that the fur contained in fur products is natural, when such is not the fact.

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

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

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

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

H. Failing to disclose that fur products are composed in whole or substantial part of paws, tails, bellies, sides, flanks, gills, ears, throats, heads, scrap pieces or waste fur.

2. Falsely or deceptively invoicing fur products by:

A. Failing to furnish invoices to purchasers of fur products showing in words and figures plainly legible 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 any misrepresentation as to the name or names of the animal or animals that produced the fur from which the said fur product has been manufactured.

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

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

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

F. Failing to set forth information required under Section 5(b)(1) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder with respect to each section of fur products composed of two or more sections containing different animal furs.

G. Failing to disclose that fur products are composed in whole or in substantial part of paws, tails, bellies, sides, flanks, gills, ears, throats, heads, scrap pieces or waste fur.

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

A. Fails to disclose the name or names of the animal or animals producing the fur or furs contained in the fur products, as set forth in the Fur Products Name Guide, and as prescribed under the Rules and Regulations.

B. Fails to set forth the term "Persian Lamb" in the manner required where an election is made to use that term instead of the word "Lamb".

C. Fails to disclose that the fur products are composed in whole or in substantial part of paws, tails, bellies, sides, flanks, gills, ears, throats, heads, scrap pieces or waste fur.

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

E. Represents directly or by implication that prices of fur products are "at cost" or "below cost", when such is not the fact.

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

4. Making claims and representation of the types covered by subsections (a) (b), (c), and (d) of Rule 44 of the Rules and Regulations promulgated under the Fur Products Labeling Act unless there are maintained by respondents full and adequate records disclosing the facts upon which such claims and representations are based.

5. Failing to keep and preserve the records required by the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder when making the substitution of labels on fur products as provided for in Section 3(e) of the said act.

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

IN THE MATTER OF

LAKE CHARM FRUIT COMPANY

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

Docket C-75. Complaint, Feb. 12, 1962—Decision, Feb. 12, 1962

Consent order requiring Oviedo, Fla., citrus fruit packers to cease violating Sec. 2(c) of the Clayton Act by granting commissions or brokerage on a large number of purchases made by brokers and other direct buyers for their own accounts for resale.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondent named in the caption hereof, and hereinafter more particularly described, has been and is now violating the provisions

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

PARAGRAPH 1. Respondent Lake Charm Fruit Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida with its offices and principal place of business located at Oviedo, Fla.

PAR. 2. Respondent is now and for the past several years has been engaged in the business of packing, selling and distributing citrus fruit, such as oranges, tangerines and grapefruit, all of which are hereinafter sometimes referred to as citrus fruit or fruit products. Respondent sells and distributes its citrus fruit directly, and in many instances through brokers, to buyers located in various sections of the United States. When brokers are utilized in making sales, respondent pays said brokers for their services a brokerage or commission, usually at the rate of 5 cents per carton or 10 cents per 1⅗ bushel box or equivalent. Respondent's annual volume of business in the sale and distribution of citrus fruit is substantial.

PAR. 3. In the course and conduct of its business over the past several years, respondent has sold and distributed and is now selling and distributing citrus fruit, in commerce, as "commerce" is defined in the aforesaid Clayton Act, as amended, to buyers located in the several states of the United States other than the State of Florida in which respondent is located. Respondent transports, or causes such citrus fruit, when sold, to be transported from its place of business or packing plant in the State of Florida, or from other places within said state, to such buyers or to the buyers' customers located in various other states of the United States. Thus there has been, at all times mentioned herein, a continuous course of trade in commerce in citrus fruit across state lines between said respondent and the respective buyers thereof.

PAR. 4. In the course and conduct of its business, as aforesaid, respondent has been and is now making substantial sales of citrus fruit to some, but not all, of its brokers and direct buyers purchasing for their own account for resale, and on a large number of these sales respondent paid, granted or allowed, and is now paying, granting or allowing to these brokers and other direct buyers on their purchases a commission, brokerage, or other compensation, or an allowance or discount in lieu thereof, in connection therewith.

PAR. 5. The acts and practices of respondent in paying, granting or allowing to brokers and direct buyers a commission, brokerage or other compensation, or an allowance or discount in lieu thereof, on

their own purchases, as above alleged and described, are in violation of subsection (c) of Section 2 of the Clayton Act, as amended (U.S.C. Title 15, Section 13).

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondent named in the caption hereof with violation of subsection (c) of Section 2 of the Clayton Act, as amended, and the respondent having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the complaint to issue herein, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as set forth in such complaint, and waivers and provisions as required by the Commission's rules; and

The Commission, having considered the agreement, hereby accepts same, issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Lake Charm Fruit Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida, with its office and principal place of business located at Oviedo, Fla.

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

ORDER

It is ordered, That the respondent Lake Charm Fruit Company, a corporation, and its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the sale of citrus fruit, or fruit products, in commerce, as "commerce" is defined in the Clayton Act, as amended, do forthwith cease and desist from:

Paying, granting, or allowing, directly or indirectly, to any buyer or to anyone acting for or in behalf of or who is subject to the direct or indirect control of such buyer, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, upon or in connection with any sale of citrus fruit or fruit products to such buyer for his own account.

It is further 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 this order.

IN THE MATTER OF

LAKE REGION PACKING ASSOCIATION

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

Docket C-76. Complaint, Feb. 12, 1962—Decision, Feb. 12, 1962

Consent order requiring Tavares, Fla., packers of citrus fruit to cease violating Sec. 2(c) of the Clayton Act by granting commissions or discounts on a large number of sales made to brokers and other direct buyers purchasing for their own accounts for resale.

COMPLAINT

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

PARAGRAPH 1. Respondent Lake Region Packing Association is a cooperative association and a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida, with its office and principal place of business located at 11 South Barrow Avenue, Tavares, Fla., with mailing address as P.O. Box 1047, Tavares, Fla.

PAR. 2. Respondent is now and for the past several years has been engaged in the business of packing, selling and distributing citrus fruit, such as oranges, tangerines and grapefruit, all of which are hereinafter sometimes referred to as citrus fruit or fruit products. Respondent sells and distributes its citrus fruit directly, and in many instances through brokers, to buyers located in various sections of the United States. When brokers are utilized in making sales, respondent pays said brokers for their services a brokerage or commission, usually at the rate of 5 cents per carton or 10 cents per 1⅗ bushel box or equivalent. Respondent's annual volume of business in the sale and distribution of citrus fruit is substantial.

PAR. 3. In the course and conduct of its business over the past several years, respondent has sold and distributed and is now selling and distributing citrus fruit, in commerce, as "commerce" is defined in the aforesaid Clayton Act, as amended, to buyers located in the several states of the United States other than the State of Florida in which respondent is located. Respondent transports, or causes such citrus fruit, when sold, to be transported from its place of business or packing plant in the State of Florida, or from other places within said state, to such buyers or to the buyers' customers located in various other states of the United States. Thus there has been, at all times mentioned herein, a continuous course of trade in commerce in citrus fruit across state lines between said respondent and the respective buyers thereof.

PAR. 4. In the course and conduct of its business, as aforesaid, respondent has been and is now making substantial sales of citrus fruit to some, but not all, of its brokers and direct buyers purchasing for their own account for resale, and on a large number of these sales respondent paid, granted or allowed, and is now paying, granting or allowing to these brokers and other direct buyers on their purchases, a commission, brokerage, or other compensation, or an allowance or discount in lieu thereof, in connection therewith.

PAR. 5. The acts and practices of respondent in paying, granting or allowing to brokers and direct buyers a commission, brokerage or other compensation, or an allowance or discount in lieu thereof, on their own purchases, as above alleged and described, are in violation of subsection (c) of Section 2 of the Clayton Act, as amended (U.S.C. Title 15, Section 13).

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondent named in the caption hereof with violation of subsection (c) of Section 2 of the Clayton Act, as amended, and the respondent having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the complaint to issue herein, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as set forth in such complaint, and waivers and provisions as required by the Commission's rules; and

The Commission, having considered the agreement, hereby accepts same, issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Lake Region Packing Association is a cooperative association and a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida, with its office and principal place of business located at 11 South Barrow Avenue, Tavares, Fla., with mailing address as P. O. Box 1047, Tavares, Fla.

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

ORDER

It is ordered, That the respondent Lake Region Packing Association, a corporation, and its officers agents, representatives and employees, directly or through any corporate or other device, in connection with the sale of citrus fruit, or fruit products, in commerce, as "commerce" is defined in the Clayton Act, as amended, do forthwith cease and desist from:

Paying, granting, or allowing, directly or indirectly, to any buyer or to anyone acting for or in behalf of or who is subject to the direct or indirect control of such buyer, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, upon or in connection with any sale of citrus fruit or fruit products to such buyer for his own account.

It is further 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 this order.

IN THE MATTER OF

ALSCAP, INC., ET AL.

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

Docket 8292. Complaint, Mar. 2, 1961—Decision, Feb. 14, 1962

Order requiring New York City importers to cease misrepresenting the fiber content of wool products, including fabrics and skirts, imported from Italy.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Alscap, Inc., a corporation, and Luba Scapa and Joseph Scapa, individually and as officers of said corporation; and Lopa of Italy, Ltd., a corporation, and Bernard Kaplan and Joseph Scapa, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Wool Products Labeling Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondents Alscap, Inc., and Lopa of Italy, Ltd., are corporations organized, existing and doing business under and by virtue of the laws of the State of New York. Respondents Luba Scapa and Joseph Scapa are officers of corporate respondent Alscap, Inc.; and respondents Bernard Kaplan and Joseph Scapa are officers of corporate respondent Lopa of Italy, Ltd. Respondents Luba Scapa and Joseph Scapa formulate, direct and control the acts, policies, and practices of corporate respondent Alscap, Inc., including the acts and practices hereinafter referred to. Respondents Bernard Kaplan and Joseph Scapa formulate, direct and control the acts, policies and practices of corporate respondent Lopa of Italy, Ltd., including the acts and practices hereinafter referred to. All respondents have their office and principal place of business at 97 Fifth Avenue, New York, N.Y.

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

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

by Alscap, Inc., "60% Rep. wool, 5% nylon, 35% wool", "95% Rep. wool, 5% nylon" and "30% Rep. wool, 70% rayon" and said ladies' skirts being labeled or tagged by Lopa of Italy, Ltd., as consisting of "95% reprocessed wool, 5% nylon", whereas, in truth and in fact said woolen fabrics and ladies' skirts in each instance contained substantially less woolen fiber than was represented.

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

PAR. 5. The respondents in the course and conduct of their business as aforesaid were and are in substantial competition in commerce with corporations, firms and individuals likewise engaged in the importation and sale of said wool products, including imported woolen fabrics and ladies' skirts.

PAR. 6. The acts and practices of the respondents as set forth in paragraphs 3 and 4 above were, and are, in violation of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, and constituted, and now constitute, unfair and deceptive acts and practices and unfair methods of competition in commerce, within the intent and meaning of the Federal Trade Commission Act.

Mr. Charles W. O'Connell and *Mr. Arthur Wolter* for the Commission.

Mr. Leo Giltlin, of New York, N.Y., for the respondents.

INITIAL DECISION BY HERMAN TOCKER, HEARING EXAMINER

In a complaint issued March 2, 1961, the Federal Trade Commission charged all the respondents herein with violating the Federal Trade Commission Act and the Wool Products Labeling Act of 1939. The respondents are Alscap, Inc., a New York corporation, its officers Luba Scapa and Joseph Scapa, and Lopa of Italy, Ltd., also a New York corporation, its officers Bernard Kaplan and Joseph Scapa, all doing business at 97 Fifth Avenue, New York, N.Y.

Although it is not at once apparent from the complaint, the two corporations are not joined together in all the transactions with respect to which the violations are alleged. Alscap and its officers are charged with violations concerned with the labeling or tagging of cloth imported by them from Italy; Lopa of Italy, Ltd., and its officers (Joseph Scapa being common to both corporations) are charged with violations concerned with the labeling or tagging of skirts imported

by them from Italy. During the course of the hearing it appeared, however, that for accommodation purposes, while the skirt importation was a Lopa transaction, Alscap had initiated the purchase for Lopa's account.

It was alleged that the cloth which Alscap "imported from Italy and introduced into commerce, sold, transported, distributed, delivered for shipment and offered for sale in commerce" was "falsely and deceptively labeled or tagged . . . '60% Rep. wool, 5% nylon, 35% wool', '95% Rep. wool, 5% nylon' and '30% Rep. wool, 70% rayon'." It was also alleged that Lopa had similarly imported and distributed or sold ladies' skirts deceptively tagged or labeled " '95% reprocessed wool, 5% nylon'." The deception, it was alleged, arose from the fact that in each instance substantially less woolen fiber was contained than represented and that these misbrandings constituted violations of Sections 4(a)(1) and 4(a)(2) of the Wool Products Labeling Act and the Regulations promulgated thereunder. The respondents, being in competition with others engaged in the importation and sale of wool products such as those involved herein, were charged also with engaging in 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 respondents appeared herein by counsel and filed two answers—one on behalf of the corporations and the other on behalf of the individuals. The corporations, while admitting that they imported certain wool products from Italy, denied all other material allegations of the complaint insofar as they were concerned. They alleged, in addition, three defenses. The first was that the goods referred to in the complaint were sold only to purchasers in the State of New York and consequently had not been introduced into commerce, as that term is defined in the Wool Products Labeling Act. The second defense was, in effect, a good faith reliance on the manufacturers in Italy and their agent in Italy who were concerned with the labeling and checking of the labels to make certain that they truthfully stated the wool content. Respondents alleged that the labels had been placed on the goods by the manufacturers, not by them, and that they had done nothing which would result in violation of the Act. They alleged further that they had paid import duties in accordance with the higher wool content representation set forth on the labels. The third defense was that they exercised due care and that any variation in the amount of wool content of the goods imported from the representations set forth on the labels or tags "resulted from unavoidable variation in manufacture" and, therefore, was subject to the defense afforded

by the proviso in subparagraph (A) of subdivision (2) of Section 4(a) of the Act. The individual respondents alleged similar defenses and, in addition, contended that the importations were by the corporations, not by them as individuals or officers, and that they, as individuals and officers, had nothing to do with the labeling and tagging.

The case has been fully heard, the parties have submitted requests to find and proposed conclusions and orders and the case is now fully submitted.

Insofar as the individual respondents contend that they should not, in any event, be held involved in this matter because they personally had nothing to do with the labeling and tagging and because their only connection was as officers or directors of the corporations which engaged in the importations and sales, it is my finding and ruling that the two corporations are closed corporations wholly owned by the individuals or their families (although Alscap is separate from Lopa and Bernard Kaplan has no interest in Alscap). Luba Scapa is Joseph Scapa's wfe. Joseph Scapa owns 40% of Alscap, Luba, 30% and Joseph's brother, Michael, the remaining 30%. Bernard Kaplan and Joseph Scapa each own 50% of the stock of Lopa. Joseph is secretary and treasurer and a director of both Alscap and Lopa. Luba is president and a director of Alscap. Kaplan is president and a director of Lopa. They formulate, direct and control the acts, policies and practices of their respective corporations and as such are subject to remedial action if the allegations of the complaint are sustained against the corporations. Consequently, wherever reference is made hereafter either to Alscap or to Lopa, such reference in the case of Alscap shall be deemed to include both Luba and Joseph Scapa and, in the case of Lopa, both Bernard Kaplan and Joseph Scapa.

Because of the great sincerity and earnestness with which respondents' counsel has pleaded the case on behalf of the respondents, at the risk of being laborious, I shall develop in some detail my reasons for making the conclusions hereinafter set forth.

Fundamentally, a misbranding or deceptive labeling case is not very much different from cases such as *Glanzer* v. *Shepard*, 223 N.Y. 236, 135 N.E. 275; and *Ultramares Corp.* v. *Touche*, 255 N.Y. 170, 174 N.E. 441, involving negligence of words. The main difference is that in cases such as *Glanzer* and *Ultramares*, the injured person is given the remedy, while in the cases under the Wool Products Labeling Act, the public in injured and the remedial action is taken on behalf of the public by the Federal Trade Commission. In such cases as *Glanzer* and *Ultramares*, the obligation may be self-assumed or imposed by

reason of the relationship of the party charged to the person injured. In our case, the obligation is imposed by law.[1]

These respondents are charged with introducing into commerce goods which were misbranded or deceptively labeled. Under the statute they must be deemed to have made the representations set forth in the branding or labeling. We might say here, paraphrasing Justice Cardozo, then Chief Judge of the New York State Court of Appeals, in *Ultramares* (at p. 189 N.Y. Reports and p. 448 in the N.E. Reporter), the respondents certified as a fact, true to their own knowledge, that the wool contents of the goods involved were in accordance with the labels. If the labels were false, the respondents are not to be exonerated because they believed them to be true.

Here, not like in *Lambert* v. *California*, 355 U.S. 225, but as suggested in that case, the respondents, by engaging in the business with respect to which this legislation was enacted, must at their peril become informed of its requirements and do all that is required of them under the legislation. This legislation imposes on persons engaged in the business of introducing into and selling or distributing wool products in commerce the obligation not only to label such products as to their wool content, but to make certain that the labeling is truthful and within the requirements of the statute.

The purpose of the statute, as stated in its title, is "To protect producers, manufacturers, distributors and consumers from the unrevealed presence of substitutes and mixtures in spun, woven, knitted, felted, or otherwise manufactured wool products, ..." Alscap's purpose in importing the cloth was to sell to manufacturers who ultimately would sell to consumers or both to distributors and consumers. These were persons sought to be protected by the Act. Lopa's purpose in importing the skirts was to sell to a distributor who, in turn, would sell to consumers. These were persons sought to be protected by the Act. The protection afforded by the Act to manufacturers and distributors, as distinguished from consumers, is additional in that not only should these manufacturers and distributors be certain that what they think they are buying actually is what they are buying, but they should be protected from, in turn, unwittingly making false representations to their purchasers by adopting the representations made to them by their suppliers.

Insofar as it is contended on behalf of the respondents that they were not engaged in commerce, both the Federal Trade Commission Act and the Wool Products Labeling Act define commerce as being that "with foreign nations . . . or between . . . any state or foreign

[1] We are not here concerned with willful, intentional deception, fraud or misbranding.

nation, ..." Both Alscap and Lopa caused the goods involved to be exported from Italy and imported into the United States. In addition, it appears that Alscap made at least three sales of either of the fabrics imported by it from Italy to purchasers outside the State of New York. Consequently, the defense that the respondents were not engaged in commerce within the meaning of the Acts is overruled.

As stated above, Alscap imported cloth while Lopa imported skirts. The importations of cloth will be discussed first.

The first of the Alscap importations consisted of two lots of cloth costing $291.16—one, 156¾ yards called "SARA"; the other, 312⅞ yards called "MIRELLE." Both lots were brought into the United States late in February or early March 1959 under Customs Entry 916693 and were tagged as consisting of 30% reprocessed wool and 70% nylon. Respondents were requested by Customs to submit samples. After testing by the Federal Trade Commission expert, it was found that "SARA" contained 13.8% acetate, 63.0% residue (rayon, nylon, some cotton) and 23.2% wool, while "MIRELLE" contained 8.3% acetate, 68.1% residue (mostly rayon, some nylon) and 23.6% wool. Although the difference between 23 plus percent and 30% is less than 7% of the entire fabric content, the difference between the actual wool content and the represented wool content is 22⅔% in one instance and 21⅓% in the other. Consequently, there was a misbranding and deceptive labeling as to the importation of these two lots.

Alscap imported from Italy in about September 1959 35 bales of flannel cloth, identified as "PISA", consisting of 13,725⅜ yards, valued at over $10,000. This was labeled or branded as consisting of 95% reprocessed wool and 5% nylon. On analysis, a swatch thereof obtained from one of Alscap's customers was found to contain 85.1% wool, 0.9% acetate, 14.0% residue (mostly nylon, traces of miscellaneous). Although the wool differential amounted to 9.9% of the entire fabric, the differential in the actual wool content from the represented wool content amounted to 10.4%.

In about January 1960, Alscap imported into the United States from Italy 10,578¾ yards of flannel fabric valued at about $7,300. This fabric was labeled or branded as 60% reprocessed wool, 5% nylon and 35% wool. A swatch of this fabric obtained from one of Alscap's customers was found to contain 89.3% wool, 0.5% acetate and 10.2% residue (nylon, some rayon, orlon, cotton). Although the wool differential in the entire fabric amounted to 5.7%, the differential in the

actual wool content from the represented wool content amounted to 6%.

The only objections made by respondents to the tests were, first, that too small a piece from the swatches involved had been used and second, that, in any event, Alscap had not imported the fabrics identified as "SARA" and "MIRELLE" for sale in commercial quantities. They said that these had been imported only for the purpose of obtaining and providing for prospective customers samples of the materials.

The objection that the tests of the small pieces from the swatches involved was not a correct testing procedure has been decided adversely in *Milwaukee Allied Mills, Inc., et al.*, Docket 7112. There the Commission said:

> The respondents claim the testing procedure was incorrect, not because of the type of test performed and not because of the professional competence of the person making the test, but only because the test consisted of a small corner from each exhibit. The respondents' contention is premised on the basis that they are under no duty to produce a homogenous mixture so that the woolen content of the batting will be evenly distributed throughout. We must reject this contention. This is the very situation that the legislation was designed to correct.

The objection based on the contention that the importations involved consisted only of materials intended for samples is not well taken in view of 16 CFR 300.22, which provides that samples, swatches or specimens subject to the Act and used to promote sales must be "labeled or marked to show their respective fiber contents and other information required by law." Apart from the fact that one lot of over 156 yards and another lot over 312 yards were imported and thereby became subject to the Act, the Regulation promulgated under the Act extends to samples the same marking or labeling obligations as are required for sales in commercial quantities. Pursuing this objection, respondents' counsel insisted on the production by Commission counsel of a piece of material (and the test related thereto) which was sampled from later importations which had been the subject of sales in commercial quantities. When Commission counsel was directed to produce this sample and test, it developed that, although the differential in wool content based on the entire fiber content amounted only to 4.1%, the percentage differential of the actual wool content from the represented wool content amounted to 13⅔%. Thus, although not injected as an issue by Commission counsel, it developed that the goods subsequently imported and sold in commercial quantities also had a large differential of wool content.

Sometime during 1959, Lopa considered the possibility of developing a business in skirts. Because Alscap had the connection with the supplier in Italy, it, on behalf of Lopa, purchased in October 1959 and imported into the United States in November, 200 dozen skirts labeled or marked as being made of fabric containing 95% reprocessed wool and 5% nylon. One of these skirts so labeled was obtained from one of Lopa's customers. A small piece was cut out of it (to which procedure respondents objected as before) and this fabric, after test, was found to contain 84.9% wool, 0.5% acetate and 14.6% residue (mostly nylon, some orlon, trace miscellaneous). (It should be noted here that this skirt appears to have been made of the same material as "PISA" to which reference is made on page 281.) The percentage differential which the actual wool content bore to the entire fiber content was 10.1%, while the percentage differential from the represented wool content was 10.6%.

The differentials in wool content so found are substantial. While the statute does not expressly set forth what amount of differential is to be regarded as a violation, and it provides a defense of allowable variation, which will be discussed below, it does provide that if the wool product is misbranded within the meaning of the Act or the Rules and Regulations thereunder, its introduction or sale, etc. in commerce is unlawful, is an unfair method of competition and is an unfair or deceptive act or practice in commerce under the Federal Trade Commission Act. Section 4(a) defines a misbranded product as one which is "falsely or deceptively stamped, tagged, labeled or otherwise identified", or one on or to which a stamp, tag, label or other means of identification is not affixed and does not show "the percentage of the total fiber weight of the wool product, exclusive of ornamentation not exceeding 5 per centum of said total fiber weight, of (1) wool; (2) reprocessed wool; (3) reused wool; (4) each fiber other than wool if said percentage by weight of such fiber is 5 per centum or more; and (5) the aggregate of all other fibers: . . ." The references to 5% in Section 4(a)(2)(A) and in Section 5 would indicate that the Congress intended that whatever variation or deviation might be permitted under the proviso, which will be discussed later, was not to exceed 5%. Consequently, it would seem that, as a matter of law, since an affirmative obligation exists to disclose 5% or more of any foreign element, such a differential or variation in wool content, as a matter of law, must be regarded as being in violation.

The proviso, to which reference has been made from time to time, is:

* * * *Provided*, That deviation of the fiber contents of the wool products from percentages stated on the stamp, tag, label, or other means of identification,

shall not be misbranding under this section if the person charged with misbranding proves such deviation resulted from unavoidable variations in manufacture and despite the exercise of due care to make accurate the statements on such stamp, tag, label, or other means of identification.

This recognizes that in the manufacturing process there could be a deviation of the actual fiber contents from the percentages stated. The amount of the deviation is not specified and I have indicated above the reason for my opinion that a deviation, to be considered as subject to this proviso, ought to be less than 5%. Respondents sought to show, by an application to take testimony in Italy, that the deviations appearing in this case were due to "unavoidable variations in manufacture," and they contended that in any event they exercised "due care to make accurate the statements" on the tags or labels. They thus sought to read into this proviso not one, but two, possible defenses—the first, an unavoidable variation in the manufacturing process, and the second, an exercise of due care.

A correct interpretation or construction of the proviso is that the possibility of deviation in the manufacturing process exists, that this possibility must be anticipated, that tests or analyses of the fabric, once manufactured, are to be made, and that the consequent and indicated care be exercised to make sure that the labels or brandings state, as accurately as possible, the true wool content. Right within the record of this case is illustrated the sort of manufacturing deviation which could occur. A certain cloth tested out at 85.1% wool content when the labeling called for 95%. The deficiency was 9.9% of the whole or 10.4% of the represented wool content. The same or similar cloth, also represented as having 95% wool content was made up into skirts. The cloth in one of these skirts tested out at 84.9% wool content. The deficiency was 10.1% of the whole or 10.6% of the represented wool content. This is the sort of manufacturing deviation contemplated by the statute—84.9% *vs.* 85.1% or 10.1% *vs.* 9.9% or 10.6% *vs.* 10.4%. In the absence of both a deviation such as is contemplated by the statute *and* a showing of due care in the labeling, the defense is not available. Where the facts of a case are such that it is apparent either one or the other does not exist, it is not necessary and would be a waste of the time and money of all concerned to take evidence in Italy of the premanufacturing, manufacturing, and postmanufacturing procedures in that foreign country.

As a matter of fact, in support of their claims of due care, respondents were unable to show that they subjected the materials to tests to determine whether the statements utilized by them were in fact correct. The statute does not permit blind reliance by persons subject

thereto on the conduct of others. Reliance on spotchecks or investigations made by others does not serve to absolve a vendor from erroneous or incorrectly stated representations adopted and consequently made by him. The statute recognizes, however, that persons may rely on manufacturers from whom they receive goods in which they trade (Section 9(a)). For the protection of such persons, it is provided that they may rely on "a guaranty received in good faith signed by and containing the name and address *of the person residing in the United States by whom the wool product guaranteed was manufactured and/or from whom it was received*, that said wool product is not misbranded under the provisions of this Act" (emphasis mine). By the rule *expressio unius est exclusio alterius*, this is the *only* method by which a dealer in the United States can protect himself when relying on his supplier. Obviously, since respondents in this case did not purchase the goods involved from a manufacturer in the United States, they could not and did not obtain such a guarantee. It is also obvious that the requirement that the guarantee be signed by a person "residing in the United States" is imposed because only such a person would be subject to the requirements of and remedial action under the law.

Respondents contended also that they had paid Customs duties based on the represented amount of wool content, that such duties were greater than those which would have been payable on the actual wool content found in the tests, and that this should be taken into consideration in determining whether, in fact, there was a violation. (Although not relevant, the mere fact that a person pays a higher duty based on an exaggerated wool content is not indicative of his belief that the wool content is correctly described. One might willingly pay such higher duty in order to obtain the higher price which a higher wool content might command. To counter this sort of argument, respondent Joseph Scapa testified that whether the fabric contained 30% wool or 23% wool was not a factor in its selling price.) For the purpose of permitting the respondents to develop this defense fully, a Deputy Appraiser of Customs was asked to make the computations to provide a comparison of the duties payable under the actual wool content as distinguished from the represented wool content of the "SARA" and ''MIRELLE" importations. For "SARA" the computation was $64.43 as opposed to $65.26, while for "MIRELLE" the computation was $133.10 as opposed to $135.95. This is practically *de minimis*.

Respondents argue that since the manufacturers in Italy and not they placed the tags and labels on the products, they should not be held

responsible for the representations contained thereon. While it may be assumed and the evidence suggests that the manufacturers affixed the tags and labels at the request of and on the direction of the respondents and thereby became respondents' agents in that respect, it is not material who affixes the tags or labels. Respondents, by utilizing the tags or labels so affixed, adopted the representations therein contained and became bound thereby and responsible therefor. To conclude otherwise would make the statute a nullity.

Respondents argue that "the intent of the Act" has not been violated, but in support of this refer inaccurately to the evidence.

They claim that they made no effort to falsify the wool content and had no intention to deceive or defraud. These are elements which do not go to the issue. The use in the statute of words like "falsely or deceptively" does not thereby require a showing of intent to deceive in order to make out a violation. The deception or fraud resulting from a mislabeling or misbranding is no different than that resulting in *Ultramares* v. *Touche*, 255 N.Y. 170, 174 N.E. 441, and other like cases. There is nothing novel about something being fraudulent in law without intent.

Finally, respondents urge that there has been no showing of any necessity for a cease and desist order in this case in view of their otherwise good record, the time which has elapsed without additional violation, and the relatively few instances of violation shown in the record. The statute with which we are here concerned is a remedial statute. It is not, as here applied, punitive and its purpose, as stated in the preamble, is protection of members of the public. The very fact that respondents, who appear to be reputable business folk, are here found in violation demonstrates the desirability and need for a public order to cease and desist. Publicizing of such an order, apart from the fact that the order will have a deterrent effect on respondents, has a real value because of the educational factor involved. The need is increased particularly in a case of this nature where an importer relies on labeling or branding by a foreign manufacturer who is not subject to the jurisdiction of the United States. It is the importer who introduces the goods for consumption in the United States. If importers are not made aware of their obligations under the Act, the door will be opened wide to great, if unwitting, deception of the public because of the continuing increases in importations from abroad.

It is my belief that the order hereinafter set forth is proper in this case and is necessary and appropriate to achieve effective enforcement of the law.

Respondents have submitted proposed findings of fact and conclusions of law. With minor variations, I would say that proposed findings numbered 1–14, inclusive, 17, 18, 21, 26, 28, 31, 32, 37–40, inclusive, 43, 44, could be found as supported by the evidence in the record. I do not adopt them for the reasons stated in *Capital Transit Co.* v. *United States*, 97 F. Supp. 614, 621. I reject requests to find numbered 15, 16, 19, 20, 22–25, inclusive, 27, 29, 30, 33–36, inclusive, and 41–42, for reasons stated during the course of the discussion above or because they do not correctly set forth the facts or are irrelevant. The proposed conclusions consequently must be rejected.

The following are my findings of fact.

FINDINGS OF FACT

1. Respondents Alscap, Inc., and Lopa of Italy, Ltd., are corporations organized, existing and doing business under and by virtue of the laws of the State of New York. These two corporations are closed corporations wholly owned by the individuals or their families (although Alscap, Inc., is separate from Lopa of Italy, Ltd., and Bernard Kaplan has no interest in Alscap, Inc.). Luba Scapa is Joseph Scapa's wife. Joseph Scapa owns 40% of Alscap, Inc., Luba Scapa 30% and Joseph Scapa's brother, Michael Scapa, the remaining 30%. Bernard Kaplan and Joseph Scapa each own 50% of the stock of Lopa of Italy, Ltd. Joseph Scapa is secretary and treasurer and a director of both Alscap, Inc., and Lopa of Italy, Ltd. Luba Scapa is president and a director of Alscap, Inc. Bernard Kaplan is president and a director of Lopa of Italy, Ltd. They formulate, direct and control the acts, policies and practices of their respective corporations which include the acts and practices hereinafter set forth. All respondents have their office and principal place of business at 97 Fifth Avenue, New York, N.Y.

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

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

misbranded wool products were woolen fabrics and ladies' skirts imported from Italy by respondents, the fabrics being labeled or tagged by Alscap, Inc., "60% Rep. wool, 5% nylon, 35% wool", "95% Rep. wool, 5% nylon" and "30% Rep. wool, 70% rayon" and the ladies' skirts being labeled or tagged by Lopa of Italy, Ltd., as consisting of "95% reprocessed wool, 5% nylon," whereas, in truth and in fact said woolen fabrics and ladies' skirts in each instance contained substantially less woolen fiber than was represented.

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

5. The respondents in the course and conduct of their business as aforesaid were and are in substantial competition in commerce with corporations, firms and individuals likewise engaged in the importation and sale of such wool products, including imported woolen fabrics and imported ladies' skirts.

And, from the foregoing, the following is my

CONCLUSION

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

ORDER

It is ordered, That respondents Alscap, Inc., its officers, and Luba Scapa and Joseph Scapa, individually and as officers of said corporation, and Lopa of Italy, Ltd., its officers, and Bernard Kaplan and Joseph Scapa, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or indirectly or through any corporate or other device, in connection with the introduction into commerce, or the offering for sale, sale, transportation or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, of woolen fabrics and ladies' skirts, or other "wool products" as such products are defined in and subject to the Wool Products Labeling

Act of 1939, do forthwith cease and desist from misbranding such products by:

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

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

ORDER VACATING PRIOR ORDER, DECISION OF THE COMMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

The Commission having granted respondents' petition for review of the hearing examiner's initial decision by its order of December 26, 1961, and having set oral argument in this case for March 28, 1962; and

The respondents having failed to file their exceptions to the initial decision and brief in support thereof as provided by Section 4.21(a) of the Commission's Rules of Practice:

It is ordered, That the aforesaid order of the Commission granting the respondents' petition for review be, and it hereby is, vacated and set aside.

It is further ordered, That the oral argument scheduled for March 28, 1962, be, and it hereby is, cancelled.

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

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

IN THE MATTER OF

A. C. WEBER & COMPANY, INC., ET AL.

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

Docket 8425. Complaint, June 7, 1961—Decision, Feb. 14, 1962

Consent order requiring Chicago distributors of "Pfaff" sewing machines to cease representing falsely, in advertisements and advertising mats distributed to dealers for their use, that excessive amounts were the usual retail prices of their products and that the sewing machines were guaranteed for life or unconditionally; and to cease placing in the hands of their dealers,

circulars describing a sales plan involving bait advertising which represented falsely that they were making a bona fide offer to sell a low-priced machine not intended to be sold at the advertised price but described as "an excellent tool to enable you to 'step-up' your customer to the [higher-priced] model".

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 A. C. Weber & Company, Inc., a corporation, Albert C. Weber, individually and as an officer of said corporation, and Frank Dolven, individually and as Sales Manager 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. A. C. Weber & Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at 216 North Canal Street, in the city of Chicago, State of Illinois.

Respondent Albert C. Weber is President and respondent Frank Dolven is Sales Manager of said corporation, and their address is the same as that of the corporate respondent. These individual respondents formulate, direct and control the acts, practices and policies of said corporate respondent, including those hereinafter alleged.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of sewing machines to dealers. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said products, when sold, to be shipped from their place of business in the State of Illinois to purchasers thereof located in various other States of the United States and in the District of Columbia, and maintain, and at all times mentioned herein have maintained, a course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 3. Respondents, in the course and conduct of their business and for the purpose of inducing the purchase of their products, have produced and distributed to their dealers various advertisements and advertising mats to be used by said dealers in advertising and offering respondents' products to the public. Respondents have participated in the publication of such advertisements through sharing the

cost of the publishing of said advertisements in newspapers and otherwise. Among and tpyical, but not all inclusive, of the representations caused to be published are the following:

A Fabulous PFAFF $88
Valued at $176

A Fabulous PFAFF $139
Valued at $219

A Fabulous PFAFF
$98
Valued at $176

½ Price Sale
Only 6 days left
A Fabulous PFAFF $98
Valued at $176

Reg $289 this week $149 includes cabinet

Reg $99. This week only $68 Save $31

Reg $124.95 Save $25 $99.95

Reg. $379 No. 230 PFAFF } all three for only
Reg $26.90 Iron and Board } $299

With usual Pfaff Guarantee

Lifetime Guaranteed

Lifetime Guarantee

PAR. 4. Through the use of the statements and representations set forth hereinabove, respondents and their dealers have represented that:

1. The prices set forth in connection with the word "Valued" were the prices at which the sewing machines advertised were customarily and usually sold in the trade area or areas where the representations were made, and that the differences between such prices and the lower sales prices represented savings from said trade area prices.

2. The prices set forth in connection with the term "Reg" were the prices at which the dealers publishing the advertisements had sold the advertised machines in the recent regular course of business, and that the differences between said prices and the lower sales prices were savings from said dealers' usual and customary prices.

3. Their sewing machines are guaranteed for life, or are unconditionally or completely guaranteed.

PAR. 5. The above said representations are false, misleading and deceptive. In truth and in fact:

1. The prices set forth in connection with the word "Valued" were in excess of the prices at which the sewing machines advertised were

usually and customarily sold in the trade area or areas where the representations were made and the differences between such prices and the lower sales prices did not represent savings from trade area prices.

2. The prices set forth in connection with the term "Reg" were in excess of the prices at which the dealers publishing the advertisements had sold the advertised sewing machines in the recent regular course of business and the differences between such prices and the lower advertised prices did not represent savings from said dealers' usual and customary prices.

3. Respondents' machines are not guaranteed for life but, on the contrary, many of the essential parts of said machines are guaranteed for only one year, and the guarantee is subject to other limitations not disclosed in the advertisements in which such guarantee representations were made.

PAR. 6. Respondents have also engaged in unfair and deceptive practices, in commerce, through the use of a sales promotion plan which placed in the hands of their dealers the means of engaging in bait advertising. In connection therewith, respondents caused to be distributed to dealers of their sewing machines a form letter or circular stating as follows:

TO: ALL PFAFF DEALERS SERVICED BY THE CHICAGO OFFICE, A. C. WEBER & CO., INC.

SUBJECT: PFAFF #139 ZIG-ZAG MACHINE FOR CHRISTMAS PROMOTION AND NEW PRODUCTS.

GENTLEMEN:

We call your attention to the below-listed new products:

1. *Pfaff Model #139 for Christmas promotion:*

We have secured a limited number of this low-priced, three position, manual zig-zag machine just for 1960 Christmas promotion. This model is to be used strictly as a "leader" and quantity is limited to *two* (2) units per dealer. This model *will not* be available after January 1st, 1961.

Here's The Good News:

YOUR COST—*$99.00 in Complete Portable*

Step-Up To Higher Priced Models

The #139 is an excellent tool to enable you to "step-up" your customer to the model #259, #260A, * * *

Remember—anybody can sell this machine to a customer, so "nail it to the floor" and get the 260A and 360A sale.

We repeat, we *will not guarantee delivery* of over *two* #139 units to a dealer, so govern yourself accordingly.

How To Advertise The #139

Enclosed are two proof sheets of mats now available to promote this machine. Take your choice of how you wish to advertise it—in a base, in a complete portable, in a #105 cabinet, or in a #405 desk.

* * * * * * *

The advertising mats furnished dealers in connection with this promotion stated as follows:

(Dealer's name to be inserted) Breaks All Price Barriers 1961 Pfaff Zig Zags Automatically for the next 7 days only at this price

$000

With a Lifetime Guarantee

and

Mr. Dealer this is a 4-way ad. Take your choice of any of the following variations (1) Advertise with portable base only at $139 (2) Advertise with portable case at $159 (3) Advertise with console at $179 (4) Advertise with desk at $199

Through the use of this plan respondents placed in the hands of their dealers the means and instrumentalities whereby their dealers could, and did, represent that they were making a bona fide offer to sell the # 139 sewing machine at the advertised price and that there was a sufficient number of said machines on hand to meet the reasonable, anticipated demand.

PAR. 7. Said representations were false, misleading and deceptive. In truth and in fact, under said plan it was not intended that the dealers would sell the advertised machines at the advertised price, or any other price, but rather that they should refrain from selling the advertised machines and sell higher priced machines to persons who responded to said advertisement. Only two of the advertised machines were made available to dealers by respondents, which number under ordinary circumstances was insufficient to meet the reasonable, anticipated demand.

PAR. 8. Respondents' said acts and practices, as hereinabove set forth, serve to place in the hands of dealers means and instrumentalities whereby such dealers may mislead the public as to the usual and customary prices of respondents' sewing machines, the nature and extent of the guarantee of such machines, and the availability of certain specially priced machines.

PAR. 9. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that 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.

PAR. 10. The aforesaid acts and practices of respondents, as herein alleged, were, and are, all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute,

unfair and deceptive acts and practices in commerce, within the intent and meaning of the Federal Trade Commission Act.

DECISION AND ORDER

This matter having come on to be heard by the Commission upon a record consisting of the Commission's complaint charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act and an agreement by and between respondents and counsel supporting the complaint, which agreement contains an order to cease and desist, an admission by the respondents of all the jurisdictional facts alleged in the complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint, and waivers and provisions as required by the Commission's rules; and

The Commission having considered the agreement and order contained therein and being of the opinion that the agreement provides an adequate basis for appropriate disposition of the proceeding, the agreement is hereby accepted, the following jurisdictional findings are made, and the following order is entered:

1. Respondent A. C. Weber & Company, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at 216 North Canal Street, in the city of Chicago, State of Illinois.

Respondent Albert C. Weber is an individual and an officer of said corporation, and respondent Frank Dolven is an individual and Sales Manager of said corporation. Their address is the same as that of the corporate respondent.

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

ORDER

It is ordered, That respondent A. C. Weber & Company, Inc., a corporation, and its officers, and respondents Albert C. Weber, individually and as an officer of said corporation, and Frank Dolven, individually and as Sales Manager 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 in commerce, as "commerce" is defined in the Federal Trade Commission Act, of sewing machines and accessories, or any other product or products, do forthwith cease and desist from:

A. Representing, directly or by implication, that:

1. Any amount is the customary and usual retail price of merchandise in a trade area or areas when it is in excess of the price at which said merchandise is usually and regularly sold at retail in the trade area or areas where the representations are made.

2. Any savings are afforded in the purchase of merchandise from the price at which said merchandise is usually and customarily sold at retail in a trade area or areas where such representations are made, unless the price at which it is offered constitutes a reduction from the price at which said merchandise is usually and customarily sold at retail by respondents' dealers in such trade area or areas.

3. Any amount is respondents' dealers' usual and customary price of merchandise when it is in excess of the price at which said merchandise is usually and customarily sold by said dealers in the recent regular course of their business.

4. Any savings are afforded in the purchase of merchandise from respondents' dealers' usual and customary price, unless the price at which it is offered constitutes a reduction from the price at which said merchandise is usually and customarily sold by said dealers in the recent regular course of their business.

5. Any product is guaranteed unless the terms and conditions of the guarantee and the manner in which the guarantor will perform are clearly set forth.

B. Using the word "value" to describe or refer to the price of merchandise when such amount is not the price at which the merchandise has been usually and customarily sold at retail in the trade area or areas where the representation is made.

C. Using the word "Reg" or "Regular" to describe or refer to the price of merchandise when such amount is not the price at which said merchandise has been usually and customarily sold by respondents or their dealers in the recent regular course of business.

D. Misrepresenting in any manner the amount of savings available to the purchasers of respondents' merchandise; or the amount by which the price of said merchandise is reduced from the price at which it is usually and customarily sold by respondents or their dealers in the normal course of their business.

E(1) Placing in the hands of retailers or others any sales program or means of offering merchandise for sale when such offer is not a bona fide offer to sell the merchandise so offered.

(2) Representing in any manner that merchandise is being offered for sale when such offer is not a bona fide offer to sell the merchandise.

It is further ordered, That the respondents herein shall, within sixty

(60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF

SWISS LABORATORY INC., ET AL.

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

Docket C-77. Complaint, Feb. 14, 1962—Decision, Feb. 14, 1962

Consent order requiring Cleveland, Ohio, distributors of plastic metal menders designated "Black Magic" and "Black Jack" to jobbers for resale to autobody repair shops and automotive supply chains, to cease representing falsely in advertisements in magazines, in form letters and on labels, and otherwise, that the substances used in their metal menders were non-toxic and would not cause itching, that their said "Black Magic" metal mender was endorsed by a shop nurse, and that their said "Black Jack" product was a solder; and requiring them to label their products with warnings of dangers attendant on use thereof.

COMPLAINT

Pursuant to the provisions ofthe 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 Swiss Laboratory Inc., a corporation, and Leon W. Diamond, 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 Swiss Laboratory Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its principal office and place of business located at 1533 Hamilton Avenue, in the city of Cleveland, State of Ohio.

Respondent Leon W. Diamond is an officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of, among other things, plastic metal menders designated "Black Magic"

and "Black Jack" to jobbers for resale to autobody repair shops and automotive supply chains.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said products, when sold, to be shipped from their place of business in the State of Ohio to purchasers thereof located in various other States of the United States and in the District of Columbia, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said product 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 plastic metal menders designated "Black Magic" and "Black Jack", respondents have made certain statements and representations in advertisements in magazines of national circulation, in form letters and on labels, and by other media, of which the following are typical:

SHOP NURSE SAYS:
Remember, with
BLACK MAGIC
you're sure
there are
* * *
NO ITCH.

NON-TOXIC

BLACK MAGIC with its
original Non-Toxic Cream
Hardener.

BLACK JACK Flexible
SOLDER with NON-Toxic
CREAM HARDENER

PAR. 5. By and through the use of the aforesaid statements and representations, and others of similar import but not specifically set forth herein, respondents represented, directly or by implication:

(1) That the substances used in the putty and cream hardener composing the plastic metal menders are non-toxic and will not cause itching.

(2) That their plastic metal mender designated "Black Magic" is endorsed by a shop nurse.

(3) That the metal mender designated "Black Jack" is a solder.

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

(1) The putty and cream hardener are not non-toxic and may cause itching or skin irritation as the putty contains cobalt naph-

thenate and the cream hardener contains benzoyl peroxide, both of which are primary irritants and sensitizers to the skin.

(2) The plastic body mender has not been endorsed by any type of nurse.

(3) The metal mender designated "Black Jack" does not have the characteristics and effectiveness of a solder. Its effectiveness depends principally on its organic and non-metallic ingredients.

PAR. 7. The labels on the respondents' putty and cream hardener are misleading in that they fail to reveal facts material with respect to the consequences which may result from the use of said products as directed on the label for the putty and with respect to conditions of storage of the cream hardener. In truth and in fact, the cobalt napthenate contained in the putty and the benzoyl peroxide contained in the cream hardener may through prolonged or repeated contact with the skin irritate and sensitize the skin and, therefore, in case of contact should be flushed from the skin. Both the putty and cream hardener are toxic if taken internally and, therefore, should be kept out of reach of children. The benzoyl peroxide contained in the cream hardener may be flammable if coming in contact with heat or flame and this fact is not disclosed.

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

PAR. 9. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices and failure to warn the purchasing public on the labels of the products of the dangers attendant to the use of the products have had, and now have, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and that there is no danger in use of the products and into the purchase of substantial quantities of respondents' products by reason of said erroneous and mistaken beliefs.

PAR. 10. The aforesaid acts and practices of respondents, as herein alleged, were, and are, all to the prejudice and injury of the public and of the respondents' competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of Section 5(a)(1) of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act, and the respondents having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the complaint to issue herein, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as set forth in such complaint, and waivers and provisions as required by the Commission's rules; and

The Commission, having considered the agreement, hereby accepts same, issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent, Swiss Laboratory Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its office and principal place of business located at 1533 Hamilton Avenue, in the city of Cleveland, State of Ohio.

Respondent Leon W. Diamond is an officer of said corporation and his address is the same as that of said corporation.

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

ORDER

It is ordered, That respondent Swiss Laboratory Inc., a corporation, and its officers, and respondent Leon W. Diamond, 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 manufacturing, advertising and offering for sale, sale and distribution of plastic metal menders designated "Black Magic", and "Black Jack", or any other product or products of similar composition or possessing substantially similar properties under whatever name sold, do forthwith cease and desist from:

1. Representing, directly or by implication:

(a) That such products are non-toxic or will not cause itching or skin irritation.

(b) That the product designated "Black Magic" has been endorsed by a nurse or representing, contrary to fact, that said product has been endorsed or approved by any other person or organization.

2. Using the word "solder" to describe any product which is not a metallic compound or otherwise misrepresenting the composition of the product.

3. Failing to include on the label on the container for the putty the following statements:

CAUTION: Keep out of reach of children. If taken internally, induce vomiting; consult physician. Avoid prolonged or repeated contact with skin. In case of contact, flush skin with water.

4. Failing to include on the label on the container for the cream hardener the following statements:

CAUTION: Keep away from heat or flame. Keep out of reach of children. If taken internally, induce vomiting; consult physician. Avoid prolonged or repeated contact with skin. In case of contact, flush skin with water.

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

IN THE MATTER OF

JACK BERGER FURRIERS CORP. ET AL.

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

Docket C-78. Complaint, Feb. 14, 1962—Decision, Feb. 14, 1962

Consent order requiring manufacturing furriers in New York City to cease violating the Fur Products Labeling Act by failing to show on invoices the true animal name of fur, to disclose when fur was artificially colored, and to comply with other invoicing requirements; and by furnishing false guaranties that certain of their fur products were not misbranded, falsely invoiced, or falsely advertised.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Jack Berger Furriers Corp., a corporation, Jack Berger, individually and an officer of said corporation, and Louis Cohen, individually, hereinafter referred to as respondents, have vio-

lated the provisions of said Acts and the Rules and Regulations promulgated under the Fur Products Labeling Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Jack Berger Furriers Corp. 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 145 West 28th Street, New York, N.Y.

Individual respondent Jack Berger is president of the corporate respondent and formulates, directs, and controls its acts, practices, and policies. His address is the same as the corporate respondent.

Individual respondents Jack Berger and Louis Cohen formerly did business as co-partners trading as Berger & Cohen Co. at 145 West 28th Street, New York, N.Y. Said co-partnership was dissolved on or about February 28, 1961. The present address of individual respondent Louis Cohen is 51 Buchanan Place, Bronx, N.Y.

PAR. 2. Subsequent to the effective date of the Fur Products Labeling Act on August 9, 1952, respondents Jack Berger Furriers Corp., Jack Berger, and Louis Cohen have 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 has 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 individual respondents Jack Berger and Louis Cohen, doing business as Berger & Cohen Co., in that they were not invoiced as required by Section 5(b)(1) of the Fur Products Labeling Act, and the Rules and Regulations promulgated under such Act.

Among such falsely and deceptively invoiced fur products, but not limited thereto, were invoices pertaining to such fur products which failed to show the true animal name of the fur used in the fur product.

PAR. 4. Certain of said fur products were falsely and deceptively invoiced by individual respondents Jack Berger and Louis Cohen, doing business as Berger & Cohen Co., in that they were not invoiced in accordance with the Rules and Regulations promulgated thereunder

in that required item numbers were not set forth on invoices in violation of Rule 40 of said Rules and Regulations.

PAR. 5. Certain of said fur products were falsely and deceptively invoiced by corporate respondent Jack Berger Furriers Corp. and individual respondent Jack Berger in that they were not invoiced as required by Section 5(b)(1) of the Fur Products Labeling Act, and the Rules and Regulations promulgated under such Act.

Among such falsely and deceptively invoiced fur products, but not limited thereto, were invoices pertaining to such fur products which failed:

1. To show the true animal name of the fur used in the fur product.

2. To disclose that the fur contained in the fur products was bleached, dyed, or otherwise artificially colored, when such was the fact.

PAR. 6. Certain of said fur products were falsely and deceptively invoiced by corporate respondent Jack Berger Furriers Corp. and individual respondent Jack Berger in that they were not invoiced in accordance with the Rules and Regulations promulgated thereunder in that required item numbers were not set forth on invoices in violation of Rule 40 of said Rules and Regulations.

PAR. 7. Individual respondents Jack Berger and Louis Cohen, doing business as Berger & Cohen Co., furnished false guaranties that certain of their fur products were not misbranded, falsely invoiced, or falsely advertised, when said respondents in furnishing such guaranties had reason to believe that the fur products so falsely guaranteed would be introduced, sold, transported and distributed in commerce, in violation of Section 10(b) of the Fur Products Labeling Act.

PAR. 8. Corporate respondent Jack Berger Furriers Corp. and individual respondent Jack Berger furnished false guaranties under Section 10(b) of the Fur Products Labeling Act with respect to certain of their fur products by falsely representing in writing that they had a continuing guaranty on file with the Federal Trade Commission when said respondents in furnishing such guaranties had reason to believe that the fur products so falsely guaranteed would be sold, transported and distributed in commerce, in violation of Rule 48(c) of the Rules and Regulations promulgated under the Fur Products Labeling Act and Section 10(b) of said Act.

PAR. 9. The aforesaid acts and practices of respondents, as herein alleged, are in violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder and constitute unfair

and deceptive acts and practices and unfair methods of competition in commerce under the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act and the Fur Products Labeling Act, and the respondents having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondents of all the jurisdictional facts set forth in the complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as set forth in the complaint, and waivers and provisions as required by the Commission's rules; and

The Commission, having considered the agreement, hereby accepts same, issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent, Jack Berger Furriers Corp., 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 145 West 28th St., in the city of New York, State of New York.

Respondent Jack Berger is an officer of said corporation and his address is the same as that of said corporation.

Respondent Louis Cohen formerly did business as co-partner with respondent Jack Berger, trading as Berger & Cohen Co., at 145 West 28th Street, New York, N.Y. The said partnership was dissolved on or about February 28, 1961.

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

ORDER

It is ordered, That respondents Jack Berger Furriers Corp., a corporation, and its officers, and Jack Berger, individually and as an officer of said corporation, and Louis Cohen, individually, 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 or offering for sale in commerce, or the transportation or distribution in commerce, of any fur product; or in connection with the manufacture for sale, sale, advertising, offering for sale, transportation or distribution, of any fur product which is made in whole or in part of fur which has been shipped and received in commerce, as "commerce", "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

1. Falsely or deceptively invoicing fur products by:

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

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

2. Furnishing false guaranties that fur products are not misbranded, falsely advertised or falsely invoiced under the provisions of the Fur Products Labeling Act, when there is reason to believe that the fur products falsely guaranteed may be introduced, sold, transported or distributed in commerce.

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

IN THE MATTER OF

BEA WRIGHT, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION AND THE FLAMMABLE FABRICS ACTS

Docket C-79. Complaint, Feb. 16, 1962—Decision, Feb. 16, 1962

Consent order requiring New York City manufacturers to cease violating the Flammable Fabrics Act by selling ladies' dresses which were so highly flammable as to be dangerous when worn, and furnishing their customers with a guaranty that the required tests showed the dresses were not dangerously flammable.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Flammable Fabrics Act, and by virtue of the authority vested