ORDER DISMISSING THE COMPLAINT

This matter having been heard by the Commission upon the appeal of the respondent from the hearing examiner's initial decision, and the Commission having considered the briefs and oral argument:

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

By the Commission, Commissioners Kern and MacIntyre dissenting.

IN THE MATTER OF

OHMLAC PAINT & REFINING CO., INC., ET AL.

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

Docket 8081. Complaint, Aug. 19, 1960—Decision, Feb. 24, 1962

Order requiring a seller of paint products in Long Island City, N.Y., to cease misrepresenting its prices in newspaper advertising by such statements as "2 for 1 Sale—Buy one gallon or quart—Get One Free", "Quality Paint at Factory Prices", etc., when the customary retail prices were substantially lower than the amounts listed, two gallons were always sold for $6.98, the price specified for one, and the advertised prices were two to four times as much as factory prices.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Ohmlac Paint & Refining Co., Inc., a corporation and Charles A. Jacobs, individually and as an officer of Ohmlac Paint & Refining Co., Inc., and Betty Jordan Paint Factories, Inc., a corporation, and Irving Rubin, Sidney Jacobs and Charles A. Jacobs, individually and as officers of Betty Jordan Paint Factories, Inc., 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 as follows:

PARAGRAPH 1. Respondent Ohmlac Paint & Refining Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 41-40 Crescent Street, Long Island City, N.Y. Individual respondent Charles A. Jacobs is an officer of Ohmlac Paint & Refining Co., Inc., and his address is the same as that of said corporate respondent. Respondent Betty Jordan Paint Factories, 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 24-13 Bridge Plaza North, Long Island City, N.Y. Individual respondents Irving Rubin, Sidney Jacobs, and Charles A. Jacobs are officers of Betty Jordan Paint Factories, Inc., and their addresses are the same as that of said corporate respondent.

Respondent Betty Jordan Paint Factories, Inc., is a wholly owned subsidiary of respondent Ohmlac Paint & Refining Co., Inc., and the individual respondents, Charles A. Jacobs, Irving Rubin, and Sidney Jacobs, cooperate in formulating, directing and controlling the policies, acts and practices of the said corporate respondents, including the acts and practices hereinafter set forth.

PAR. 2. Respondents are now, and for more than two years last past have, engaged in the business of selling and distributing paint and related products to the public under the label or trade name of "Betty Jordan" through retail outlets located in the States of Connecticut and New York.

PAR. 3. In the course and conduct of their business respondent Ohmlac Paint & Refining Co., Inc., manufactures Betty Jordan Paint in a factory owned and operated by it in Newark, New Jersey, and upon order by respondent Betty Jordan Paint Factories, Inc., the parent corporation ships or causes such paint products to be shipped from the State of New Jersey to the Betty Jordan paint stores in the States of Connecticut and New York, where said products are sold at retail, and respondents thereby maintain, and at all times mentioned herein have maintained, a substantial course of trade in said paint products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Respondents advertise their paints in various newspapers. Among and typical, but not all inclusive, of the statements contained in such advertisements are the following:

for the Gal with Home Decorating on Her Mind

NOW . . . PAINT TWO ROOMS

FOR THE PRICE OF ONE!

(picture of a girl pointing a pencil at certain words in the advertisement)

during BETTY JORDAN'S

2 for 1 SALE

BUY ONE

GALLON

or quart

GET ONE

FREE

There's no time to lose while the 2-for-1 Sale is on.
* * * Only Betty Jordan can make this offer because
only Betty Jordan sells direct-to-you through
factory branches. There are no middlemen
profits * * * no fancy stores or selling
fixtures * * * PLUS TREMENDOUS SAVINGS during
the 2-for-1 Sale. So make your selections now. . .
BUY ONE gallon or quart. GET ONE FREE!
SATISFACTION GUARANTEED
Your Money Back On Unused Portion of Your Paint
Purchase If You Are Not Completely Satisfied
QUALITY PAINT AT FACTORY PRICES (And NOW the Second
Gal. or Qt. is FREE)

(Picture of
can of
paint)

ALKYD FLAT ENAMEL FREE TINTING SERVICE! NOW 2-For-The-Price-Of-1! $5.98 * * * * *	Exterior House Paint FREE TINTING SERVICE NOW 2-For-The-Price-Of-1! $5.98 * * * * *	Decor-Tex LATEX FLAT NOW 2-For-The-Price-Of-1! In-colors Slightly Higher. $6.98
Cement and Stucco Paint FREE TINTING SERVICE NOW 2-For-The-Price-Of-1! $6.98 * * * * *	SEMI-GLOSS ENAMEL FREE TINTING SERVICE! NOW 2-For-The-Price-Of-1! $6.98	Floor and Deck Enamel NOW 2-For-The-Price-Of-1! $6.98 * * * * *

SOLD ONLY IN FACTORY BRANCHES
BETTY JORDAN
PAINT FACTORY

(Picture of
can of paint)

PAR. 5. Through the use of said advertisements, and other similar thereto not specifically set out herein, respondents represented, directly or by implication, that the usual and customary retail price of each can of Betty Jordan paint is the price designated in the advertisement; that this advertised price is a factory price; and that if one can of Betty Jordan paint is purchased at the advertised price, a second can will be given "free", that is, as a gift or gratuity without cost to the retail purchaser.

PAR. 6. The aforesaid advertisements referred to in paragraph 4 were false, misleading and deceptive. In truth and in fact, the usual and customary retail price of each can of Betty Jordan paint was not the price designated in the advertisements but was substantially less than such price. The advertised prices were not the prices charged by the factory for said paints, but were substantially in excess thereof. The second can of paint was not "free", that is, was not a gift or gratuity, and was not given without cost to the retail purchaser since the purchaser paid the advertised price which was the usual and regular retail selling price for two cans of Betty Jordan paint.

PAR 7. In the conduct of their business, at all times mentioned herein, respondents have been, and are now, in substantial competition, in commerce, with corporations, individuals and firms engaged in the sale of paint and related products of the same general kind and nature as that sold by respondents.

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

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

Mr. Arthur B. Edgeworth for the Commission.
Mr. Murray Glantz, of New York, N.Y., for the respondents.

INITIAL DECISION BY HARRY R. HINKES, HEARING EXAMINER

By complaint issued August 22, 1960, the respondents in this proceeding were charged with violation of Section 5 of the Federal Trade Commission Act in the sale and distribution of paint and related products under the label or trade name of "Betty Jordan." By answer filed December 27, 1960, respondents admitted certain of the allegations of the complaint, but denied that any of their actions constituted violations of the Act and asked that the complaint be dismissed. Hearings were held and all parties given an opportunity to file proposed findings and briefs. Counsel supporting the complaint has filed such findings and brief, but none of the respondents has done so.

FINDINGS OF FACT

1. Respondent Ohmlac Paint & Refining Co., Inc., hereinafter referred to as Ohmlac, 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 41–40 Crescent Street, Long Island City, N.Y. Individual respondent Charles A. Jacobs is the president of Ohmlac, and his address is the same as that of the corporation.

2. Respondent Betty Jordan Paint Factories, Inc., hereinafter referred to as Betty Jordan, 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 24–13 Bridge Plaza North, Long Island City, N.Y. Individual respondents Irving Rubin, Sidney Jacobs, and Charles A. Jacobs are officers of Betty Jordan, and their addresses are the same as that of said corporation.

3. Betty Jordan is a wholly-owned subsidiary of Ohmlac, and the individual respondents, Charles A. Jacobs, Irving Rubin, and Sidney Jacobs, formulated, directed and controlled the business activities of Betty Jordan from the date of its incorporation until October 1960; thereafter, respondent Irving Rubin ceased to be an employee of Betty Jordan, while continuing as an officer.

4. Respondent Betty Jordan and the individual respondents are, and since September 1957 have been, engaged in the business of selling and distributing paint and related products to the public under the label or trade name of "Betty Jordan" through retail distribution outlets located in the States of Connecticut and New York.

5. Respondent Ohmlac manufactures paints and upon order by Betty Jordan ships or causes paints to be shipped from the Ohmlac factories in New Jersey to the Betty Jordan Paint stores in the States of Connecticut and New York, where such products are sold at retail and respondents thereby maintain, and at all times mentioned herein have maintained, a substantial course of trade in such trade products in commerce as "commerce" is defined in the Federal Trade Commission Act.

6. Respondent Irving Rubin, as president and store supervisor of Betty Jordan, visited all the Betty Jordan retail stores to check on their operations and placed some of the advertising in question for Betty Jordan in various local newspapers. In his work at Betty Jordan between 1957 and 1960, he was supervised by the other individual respondents, Sidney Jacobs and Charles A. Jacobs. Mr. Rubin

was also plant manager of Ohmlac at one time, but not while employed by Betty Jordan.

7. Respondent Charles A. Jacobs is the president and principal operator of Ohmlac, as well as an officer of Betty Jordan who supervised, among other things, the advertising activities of respondent Rubin as store supervisor of Betty Jordan.

8. Respondent Sidney Jacobs is an officer of Betty Jordan who at times also supervised the activities of respondent Rubin while employed at Betty Jordan.

9. Respondents Ohmlac and Betty Jordan utilized the same office space. Betty Jordan, however, has its own bookkeeper and sales force. Ohmlac also has its own clerical staff, although Ohmlac's invoices for paint shipped to Betty Jordan stores are prepared by Betty Jordan's bookkeeper.

10. Betty Jordan and the individual respondents have advertised Betty Jordan paints in various newspapers and over television and radio. Among and typical of the statements contained in newspaper advertising are the following:

for the Gal with Home Decorating on Her Mind
NOW . . . PAINT TWO ROOMS
FOR THE PRICE OF ONE!
during BETTY JORDAN'S

(picture of a girl pointing a pencil at certain words in the advertisement) 2 for 1 SALE

BUY ONE
GALLON
or quart
GET ONE
FREE

There's no time to lose while the 2-for-1 Sale is on. * * * Only Betty Jordan can make this offer because only Betty Jordan sells direct-to-you through factory branches. There are no middlemen profits . . . no fancy stores or selling fixtures * * * PLUS TREMENDOUS SAVINGS during the 2-for-1 Sale. So make your selections now . . BUY ONE gallon or quart. GET ONE FREE! (Picture of can of paint)

SATISFACTION GUARANTEED

Your Money Back on Unused Portion of Your Paint
Purchase If You Are Not Completely Satisfied

QUALITY PAINT AT FACTORY PRICES (And NOW the Second Gal. or Qt. is FREE).

ALKYD FLAT ENAMEL FREE TINTING SERVICE NOW 2-for-The Price-of-1. $5.98 * * * * *	Exterior House Paint FREE TINTING SERVICE NOW 2-For-The Price-Of-1! $5.98 * * * * *	Decor-Tex LATEX FLAT NOW 2-For-The Price-of-1! In—Colors Slightly Higher $6.98 * * * * *
Cement and Stucco Paint FREE TINTING SERVICE! NOW 2-For-The Price-Of-1! $6.98 * * * * *	SEMI-GLOSS ENAMEL FREE TINTING SERVICE! NOW 2-For-The Price-Of-1! $6.98 * * * * *	Floor and Deck Enamel Now 2-For-The Price-Of-1! $6.98 * * * * *

SOLD ONLY IN FACTORY BRANCHES

(Picture of can of paint) BETTY JORDAN PAINT FACTORY

11. Through the use of said advertisements Betty Jordan and the individual respondents represented, directly or by implication, that the usual and customary retail price of one can of Betty Jordan paint is the price designated in the advertisement; that this advertised price is a factory price; and that if one can of Betty Jordan paint is purchased at the advertised price, a second can will be given free to the purchaser.

12. The advertisements referred to were false, misleading and deceptive. In truth and in fact the usual, customary retail price of one can of Betty Jordan paint was not the price designated in the advertisement but was substantially less than such price. Nor was the second can of paint "free." Whereas the advertisements specified a price for one gallon of paint (e.g. $6.98 for semi-gloss), in fact it was sold for half that price, inasmuch as *two* gallons were always sold for $6.98. Moreover, the use of such words in the advertisement as "sale" "buy now" "now two for the price of one" confirmed the impression that the $6.98 price for one gallon was the usual and regular price, whereas the $6.98 price was really the customary price for two gallons.

13. The advertised prices were not factory prices. Despite the corporate name of Betty Jordan (Betty Jordan Paint Factories,

Inc.), the only factory involved in this proceeding is the factory of Ohmlac, the manufacturer. Betty Jordan's advertised price for one can of paint was, however, not the same as Ohmlac's factory price, but about four times as much. Even Betty Jordan's actual sales price for two cans of paint was about twice Ohmlac's factory price. Betty Jordan's claim "there are no middlemen profits" is patently false.

14. In the course of their business at all times mentioned herein respondents have been, and are now, in substantial competition in commerce with corporations, individuals, and firms engaged in the sale of paint and related products of the same general kind and nature as that sold by respondents.

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

DISCUSSION

During the course of the hearings, counsel for the respondents urged that the complaint should be dismissed inasmuch as the company had always sold two cans "for the price of one" and that, therefore, the advertisements referred to represented the actual and truthful state of affairs. The test, however, is not the language used or the exact meaning properly attributable to that language, but the "net impression which the advertisement is likely to make upon the general populace." *Charles of the Ritz Distributors Corp.* v. *Federal Trade Commission*, 143 F. 2d 676 (2d Cir. 1944). Here the advertisements certainly conveyed the impression that a special sale was being conducted by Betty Jordan (see finding 11 above). Some of the advertisements spoke of "no time to lose while the two for one sale is on." Actually, however, this was not a special sale. The advertised prices were the usual and regular prices for two cans of paint. The customer was not getting two for the price of one. Company records do not indicate that any one can of paint was ever sold for the advertised price of one can. The situation here is quite similar to that found *In the Matter of Louis Shapiro trading as Puro Company*, Federal Trade Commission Docket 5710, where the Commission issued a cease and desist order (50 F.T.C. 454, November 19, 1953).

Respondents also argue that the customer is actually getting a factory price. They claim that the price paid by the customer was the price charged by a factory to a retailer on comparable products. Counsel for the respondents, however, freely admitted that such evidence was not in the record and could not be used and that the only paint prices in the record were those for the Betty Jordan line. The only factory whose price may be considered from this record is the Ohmlac factory which manufactures the paint. Its prices, however, are approximately half those charged by Betty Jordan for two cans and one-fourth those advertised by Betty Jordan as the regular price of one can.

I have concluded, however, that the complaint must be dismissed as to respondent Ohmlac. Ordinarily the acts of one corporation cannot be charged to a parent corporation absent unusual circumstances. In *National Lead Company* v. *Federal Trade Commission* 227 F. 2d 825 (7th Cir. 1955), reversed on other grounds 352 U.S. 419 (1957), the court held:

> . . . there must be evidence of such complete control of the subsidiary by the parent as to render the former a mere tool of the latter, and to compel the conclusion that the corporate identity of the subsidiary is a mere fiction.

Supporting the possibility that Betty Jordan is a mere tool of Ohmlac are the facts that both corporations used the same office space, individual respondent Charles A. Jacobs was an officer and leading figure in both firms, and that the Betty Jordan bookkeeper prepared the Ohmlac invoices for paints bought by Betty Jordan. On the other hand, however, the record is silent as to the identity of the other officers of Ohmlac and their functions, the identity of the directors of the two corporations and their functions, the identity of the stockholders of Ohmlac, the behavior of the two companies vis-a-vis each other, or any direction of Betty Jordan by officers or employees of Ohmlac who hold no official position with Betty Jordan.

In the Matter of American News Company, et al., Federal Trade Commission Docket No. 7396, the decision of the Commission dated January 10, 1961, found that the American News Company dominated and controlled its wholly-owned subsidiary, Union News Company. The opinion recited:

> Its president, secretary and treasurer hold the same positions in Union and the directors of American for the most part serve as directors of Union. The two corporations have the same address. American appears to consider Union as one of its integral parts for its 1958 annual report to stockholders refers to Union as a "division" and to Union's activities as the acts of "your company." But more important than these considerations is the substantial evidence that

officers of American, some of whom hold no official position with Union, actually participate in the management and conduct of the affairs of Union.

None of these criteria, with the exception of the same address, are to be found here. The advertising was placed by an employee of Betty Jordan. There is nothing to indicate that Ohmlac controlled the nature of such advertising or dictated it in any way. Although this employee worked principally under the supervision of Charles A. Jacobs, who was also president of Ohmlac, he was subject to the instructions of Sidney Jacobs who was not shown to have any connection with Ohmlac. Under the circumstances, insufficient evidence has been introduced to justify a conclusion that the Betty Jordan corporation was a mere tool of the Ohmlac corporation in that its activities were completely dominated by its parent.

CONCLUSION OF LAW

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

ORDER

It is ordered, That respondent Betty Jordan Paint Factories, Inc., a corporation, and its officers and Irving Rubin, Sidney Jacobs, and Charles A. Jacobs, individually and as officers of Betty Jordan Paint Factories, Inc., and their agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of paint, or any other merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication:

(a) That any amount is respondents' customary and usual retail price of any merchandise when said amount is in excess of the price at which such merchandise is customarily and usually sold by respondents, at retail, in the recent regular course of business;

(b) That any merchandise is sold or offered for sale at factory prices, when such is not the fact;

(c) That any article of merchandise is being given free or as a gift or without cost or charge, when such is not the fact.

It is further ordered, That the complaint be dismissed as to respondents Ohmlac Paint & Refining Co., Inc., a corporation, and Charles A. Jacobs as an officer of said corporation.

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 24th day of February 1962, become the decision of the Commission; and, accordingly:

It is orderd, That respondents Betty Jordan Paint Factories, Inc., a corporation, and its officers, and Irving Rubin, Sidney Jacobs, and Charles A. Jacobs, individually and as officers of Betty Jordan Paint Factories, Inc., shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist.

By the Commission, Commissioner MacIntyre not concurring.

IN THE MATTER OF

AMERICAN STRATIGRAPHIC COMPANY ET AL.

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

Docket 8417. Complaint, June 1, 1961—Decision, Feb. 24, 1962

Consent order requiring a Denver corporation engaged in the sale, on a subscription basis, of lithologic logs used in planning oil drilling exploration activities, to cease discriminating in price among competing customers in violation of Sec. 2(a) of the Clayton Act by giving to customers who increased their subscription coverage for the same sized log to additional areas among the four they covered, a lower subscription price for each area, while continuing to charge other customers the higher price.

COMPLAINT

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

PARAGRAPH 1. Respondent American Stratigraphic Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Colorado, with its principal office and place of business located at 1820 Broadway, Denver, Colo.

PAR. 2. Respondents James G. Mitchell and C. E. Brehm are the principal officers of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. The address of respondent James G. Mitchell is the same as that of the corporate respondent. The address of respondent C. E. Brehm is Mount Vernon, Ill.

PAR. 3. Said respondent corporation is now and has been extensively engaged primarily in the sale of lithologic logs which products are used by oil companies and others to evaluate rock conditions favorable to the accumulation of oil as an aid in their further oil drilling exploration activities. These logs provide a geologic interpretation of the earth stratum as penetrated by particular well drillings in different locations. Respondent sells said products in both a narrow (3 inch) and wide (6 inch) log, primarily on a monthly subscription basis, for such product use. The sale of its products is divided by said corporate respondent generally into, and cover, four different operational areas, which include: (1) the Montana-Dakota area; (2) the Wyoming-Idaho area; (3) the Southern Rocky Mountain area, covering Nevada, the northwest part of Colorado, the Panhandle of Nebraska and the northern half of Utah; and (4) the area commonly described as the "Four Corners area", consisting of Arizona, the southwest corner of Colorado, the northwest part of New Mexico and the southern half of Utah.

Said corporate respondent is the leader in sales of said logs in the aforementioned areas where it operates, with its total sales volume exceeding $250,000 for its fiscal year ending May 31, 1959, and $290,000 for its fiscal year ending May 31, 1960.

PAR. 4. Said corporate respondent is now, and for many years past has been, selling said logs from the states of location of its various places of business to the purchasers thereof located in states other than the states wherein said sales originated, and it causes such products to be shipped and transported from its various places of business to purchasers located in other states, and respondent corporation, in the sale of its products, has at all times relevant herein been and now is engaged in commerce, as "commerce" is defined in the Clayton Act, as amended.

PAR. 5. In the course and conduct of its aforesaid business in commerce, respondent corporation has been and now is discriminating in price between different purchasers of its logs of like grade and quality, by selling said products at higher and less favorable prices to some purchasers than the same are sold to other purchasers.

Included among said corporate respondent's customers are various oil companies and others, operating in one or more of the various aforementioned areas where respondent sells its said products, who purchase the same on a subscription basis for one or more of the said areas for which respondent corporation prepares its said logs. Prior to 1960 respondent sold its narrow and wide logs for each of the said areas to all customers at the basic subscription price for each size, regardless of whether the customer purchased said logs for one or more of said areas.

Commencing in 1960 and pursuant to a sliding price scale plan applicable to both sizes, customers who increased their subscription coverage for the same sized log to additional areas received a lower subscription price for such size in each area covered, while at the same time customers who did not so increase their subscription coverage continued to pay the higher subscription price for the size and area purchased.

For example, respondent's sliding price scale covering its narrow log size, includes additional discounts from the basic subscription price for all customers increasing their area coverage, as follows:

1 subscription—50,000 ft. of log per mo.—$185.00/monthly
2 subscriptions—50,000 ft. of log per mo.—180.00/ea. monthly
3 subscriptions—50,000 ft. of log per mo.—170.00/ea. monthly
4 subscriptions—50,000 ft. of log per mo.—160.00/ea. monthly

The granting of these additional discounts, by respondent, to those customers increasing their area subscription purchases of said products, results in the charging of lower and more favorable prices to said customers than the higher and less favorable prices charged other customers who did not increase their area subscription coverage purchase of said products. In the offering for sale and sale of said products as aforestated, respondent was and is in competition with other sellers.

PAR. 6. The effect of respondents' aforesaid discriminations in price between the said different purchasers of its said products of like grade and quality, sold in manner and method and for purposes as aforestated, has been or may be substantially to lessen competition, or tend to create a monopoly, or to injure, destroy or prevent competition between respondent and its competitors in the sale and distribution of such products.

PAR. 7. The aforesaid acts and practices of respondents constitute violations of subsection (a) of Section 2 of the Clayton Act (U.S.C. Title 15, Sec. 13), as amended by the Robinson-Patman Act, approved June 19, 1936.

Mr. Herbert I. Rothbart for the Commission.

Ely, Duncan & Bennett, by *Mr. Elmer F. Bennett* for the respondents.

INITIAL DECISION BY HERMAN TOCKER, HEARING EXAMINER

In a complaint issued June 1, 1961, the Federal Trade Commission charged respondents, American Stratigraphic Company, a corporation, and James G. Mitchell and C. E. Brehm, individually and as officers of said corporation, with having violated Section 2(a) of the Clayton Act, as amended, by unlawfully discriminating in price between different purchasers of informational material known as lithologic logs sold by them in commerce. The corporation is organized under the laws of the State of Colorado and its business is conducted under the direction of James G. Mitchell at 1820 Broadway, Denver, Colo.

After the issuance of the complaint, respondents with the advice and agreement of their attorneys, and counsel supporting the complaint entered into an agreement providing (a) for the issuance of a consent order to cease and desist and (b) for the dismissal, without prejudice, of the complaint against C. E. Brehm as an individual, on the basis of an affidavit of James G. Mitchell, submitted in connection with and incorporated by reference into the agreement, thus disposing of all the issues in this proceeding.

In the agreement it is expressly provided that the signing thereof is for settlement purposes only and does not constitute an admission by the respondents that they have violated the law as in the complaint alleged.

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

By the agreement, the respondents expressly waive any further procedural steps before the Hearing Examiner and the Commission, the making of findings of fact or conclusions of law, and all rights they may have to challenge or contest the validity of the order to cease and desist to be entered in accordance therewith.

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

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

The hearing examiner has considered the agreement, the affidavit submitted therewith, and the order therein contained, and, it appearing that said agreement (as supplemented by the affidavit) and order provide for an appropriate disposition of this proceeding, the same are hereby accepted and shall be filed upon becoming part of the Commission's decision in accordance with Sections 3.21 and 3.25 of the Rules of Practice applicable to this case.

Now, in consonance with the terms thereof, the Hearing Examiner finds that the Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents named herein, and that this proceeding is in the interest of the public, and issues the following order:

ORDER

It is ordered, That respondent, American Stratigraphic Company, a corporation, and respondent James G. Mitchell, individually and as an officer of respondent American Stratigraphic Company, and any of respondents' officers, representatives, agents and employees, directly or through any corporate, partnership, sole proprietorship, or any other device, in, or in connection with, the sale of lithologic logs and related products of like grade and quality, in commerce, as "commerce" is defined in the Clayton Act, as amended, do forthwith cease and desist from discriminating directly or indirectly in price, between different purchasers of said products:

By selling such products to any purchaser who purchases for one, or more than one, area at lower net prices than those granted for the same area or areas to any other purchaser, where, in the sale of said products, respondent is in competition with any other seller in one or more of the areas for which the said purchasers have purchased said products.

It is further ordered, That the complaint be, and it hereby is, dismissed, as to C. E. Brehm, individually, without prejudice to the right of the Commission to take any further action in the matter in the future which may be warranted by the then existing circumstances.

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 24th day of February 1962, become the decision of the Commission; and, accordingly:

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

IN THE MATTER OF

KOSTER-PEARL FURS, INC., ET AL.*

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

Docket 8450. Complaint, Nov. 9, 1961—Decision, Feb. 24, 1962

Order requiring manufacturing furriers in New York City to cease violating the Fur Products Labeling Act by failing to disclose on labels and invoices that certain furs were dyed, and invoicing fur products falsely to show that artificially colored fur was natural and that they had a continuing guaranty on file with the Commission.

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 Koster-Pearl Furs, Inc., a corporation, and Larry Koster, Bernard Pearl, David Koster, and Ralph Immeglueck, 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. Koster-Pearl Furs, Inc., is a corporation organized 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 150 West 28th Street, New York, N.Y.

Larry Koster, Bernard Pearl, David Koster and Ralph Immeglueck are officers of the 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 corporate respondent.

---

*Released January 3, 1963.

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

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

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 dyed when such was the fact.

PAR. 4. 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 which failed to disclose that the fur contained in the fur products was dyed when such was the fact.

PAR. 5. 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. 6. Certain of said fur products were falsely and deceptively invoiced in that such invoices contained statements to the effect that the respondents have a continuing guaranty on file with the Federal Trade Commission when such is not the fact in violation of Section 5(b)(2) of the Fur Products Labeling Act.

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

Mr. Robert W. Lowthian for the Commission.

No appearance for respondents.

INITIAL DECISION BY EARL J. KOLB, HEARING EXAMINER

The complaint in this proceeding charged the respondents Koster-Pearl Furs, Inc., a New York corporation located at 150 West 28th Street, New York, N.Y., and Larry Koster, Bernard Pearl, David Koster and Ralph Immeglueck, individually and as officers of said corporation, with the use of unfair and deceptive acts and practices in interstate commerce, in violation of the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder.

After the issuance of said complaint, the respondents filed their answer thereto wherein they admitted all the material allegations set forth in said complaint and waived any hearings in this matter.

This proceeding is now before the undersigned hearing examiner for final consideration upon said complaint and answer thereto, and the hearing examiner having duly considered the record herein, makes the following findings as to the facts, conclusion drawn therefrom and order:

PARAGRAPH 1. Respondent Koster-Pearl Furs, Inc., is a corporation organized 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 150 West 28th Street, New York, N.Y.

Respondents Larry Koster, Bernard Pearl, David Koster and Ralph Immeglueck are officers of the 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 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 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 dyed when such was the fact.

PAR. 4. 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 which failed to disclose that the fur contained in the fur products was dyed when such was the fact.

PAR. 5. 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. 6. Certain of said fur products were falsely and deceptively invoiced in that such invoices contained statements to the effect that the respondents have a continuing guaranty on file with the Federal Trade Commission when such is not the fact in violation of Section 5(b) (2) of the Fur Products Labeling Act.

CONCLUSION

The aforesaid acts and practices of respondents, as herein found, 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.

ORDER

It is ordered, That Koster-Pearl Furs, Inc., a corporation, and its officers, and Larry Koster, Bernard Pearl, David Koster and Ralph Immeglueck, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, manufacture for introduction, 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.

2. Falsely or deceptively invoicing fur products by:

A. Failing to furnish to purchasers of fur products invoices 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. Representing directly or by implication that the fur contained in fur products is natural, when such is not the fact.

C. Representing directly or by implication that respondents have a continuing guaranty on file with the Federal Trade Commission, when such is not the fact.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 4.19 of the Commission's Rules of Practice, effective July 21, 1961, the initial decision of the hearing examiner shall on the 24th day of February 1962, become the decision of the Commission; and, accordingly:

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

IN THE MATTER OF

THE PROCTER & GAMBLE COMPANY

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

Docket C-84. Complaint, Feb. 26, 1962—Decision, Feb. 26, 1962

Consent order requiring the manufacturer of "Crest" toothpaste to cease representing falsely in advertising in newspapers and magazines and by television that in tests referred to, "Crest" was compared with competing brands of commercially available toothpaste when, in fact, it was compared with a formulation substantially the same as "Crest" but minus the ingredient stannous fluoride.

Complaint

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

Paragraph 1. Respondent The Procter & Gamble Co. 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 301 East 6th Street, Cincinnati, Ohio.

Par. 2. Respondent is now, and has been for more than one year last past, engaged in the manufacture, advertising, offering for sale, sale and distribution of various products, including a dentifrice designated "Crest" which comes within the classification of drugs and cosmetics as the terms "drug" and "cosmetic" are defined in the Federal Trade Commission Act.

Par. 3. Respondent causes the said dentifrice, when sold, to be transported from its 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. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said dentifrice in commerce as "commerce" is defined in the Federal Trade Commission Act. The volume of business in such commerce has been and is substantial.

Par. 4. In the course and conduct of its said business, respondent has disseminated, and caused the dissemination of, certain advertisements concerning the said dentifrice by the United States mails and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, including, but not limited to, advertisements inserted in newspapers, magazines and other advertising media, and by means of television broadcasts transmitted by television stations located in various states of the United States, and in the District of Columbia, having sufficient power to carry such broadcasts across state lines, for the purpose of inducing, and which were likely to induce, directly or indirectly, the purchase of said dentifrice; and has disseminated, and caused the dissemination of, advertisements concerning said dentifrice by various means, including but not limited to the aforesaid media, for the purpose of inducing and which were likely to induce directly or indirectly, the purchase of said dentifrice in commerce, as "commerce" is defined in the Federal Trade Commission Act.

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

Patti: "We joined a toothpaste test."

Reimers: "With mother's permission, of course."

Mrs. Timms: "Well, I *did* feel that all toothpastes were alike. But if one *could* reduce cavities . . . the test would be worthwhile."

Reimers: "And *was* it? Here's a film report, by Patti. The test divided you into two groups?"

Patti: "Right . . . My group used Crest toothpaste and the other group used regular toothpaste. They told us to brush as usual."

Reimers: "How'd your group do?"

Patti: "Really great! After one year, my group had forty-nine percent fewer cavities with Crest!"

Reimers: "Still think all toothpastes are alike, Mrs. Timms?"

Mrs. Timms: "Not with results like those from the Crest group."

Reimers: "Crest with Fluoristan . . . so different, it's patented . . . * * *"

* * * * * * *

Laraine: "Did everyone use Crest, Jim?"

Jim: "No. No, we used Crest . . . the others used regular toothpaste."

Laraine: "Any special rules, Mrs. Clayton?"

Mrs. Clayton: "No . . . they all brushed as usual for two years."

Laraine: "And what were the results, Jim?"

Jim: "We got twenty-five percent fewer cavities with Crest."

Laraine: "Wonderful! You were in another test, weren't you?"

Cynthia: "Yes."

Laraine: "Well, Cynthia, did your Crest group do as well as Jim's?"

Cynthia: "Even better."

Laraine: "*Better?* Was it run the same?"

Cynthia: "Uh-huh and we had forty-nine percent fewer cavities with Crest after a year."

Laraine: (To Camera) "Are you still using regular toothpaste . . . when you could be reducing cavities with Crest."

* * * * * * *

Blair: "The tests were of Crest against regular toothpaste. * * *"

* * *

"And half the group used Crest, and the other half regular toothpaste?"

Gary: "Yes, sir. The Dentist told everybody to brush the same way as always, at home, and my side got 25 percent fewer cavities."

* * *

Blair: "Now, your half of the test group used Crest, Cheryl?"

Cheryl: "Yes, that's right, and the other group used regular toothpaste."

* * *

Blair: "And the Crest users got . . ."

Cheryl: "Forty-nine percent fewer cavities after one year."

* * *

Blair: "Are you still using regular toothpaste when you could be reducing cavities with Crest?"

* * * * * * *

Tests in which Crest had to prove its superiority over regular toothpaste. And did in test after test.

* * * * * * *

Are you still using regular toothpaste when you could be reducing cavities with Crest?

* * *

In a clinical test with 382 children, half used regular toothpaste for two years, half used Crest.

* * * Crest gives you protection no other toothpaste can provide. * * * Crest can mean fewer cavities for your family. Isn't it time you switched?

* * *

Again, conditions were identical for both Crest users and regular toothpaste users. * * * So don't expect miracles from Crest. Just fewer cavities.

* * *

As always . . . conditions were identical. Half used Crest. Half used regular toothpaste. * * * In every test Crest made the difference. Because in every test conditions were identical for both the Crest users and those who used regular toothpaste.

PAR. 6. The expression, "regular toothpaste", used in the above advertisements may be understood to refer to brands of commercially available toothpaste competing with Crest. Through the use of said advertisements and others similar thereto, not specifically set out herein, respondent has represented, directly or by implication, that in the tests referred to in said advertisements Crest was tested in comparison with competing brands of commercially available toothpaste.

PAR. 7. The aforesaid advertisements were and are misleading in material respects and constituted and now constitute "false advertisements" as that term is defined in the Federal Trade Commission Act. In truth and in fact, in the tests referred to in the aforesaid advertisements Crest was not tested in comparison with competing brands of commercially available toothpaste. In such tests Crest was tested in comparison with a formulation which was the same or substantially the same as Crest but minus the ingredient stannous fluoride, which formulation was not the same as that used in some makes or brands of commercially available toothpaste which are used by a substantial portion of the consuming public. Furthermore, the toothpaste with which Crest was compared in the aforesaid tests was not a commercially available brand of toothpaste.

PAR. 8. The dissemination by the respondent of the false advertisements, as aforesaid, constituted and now constitutes, unfair and deceptive acts and practices, in commerce within the intent and meaning of the Federal Trade Commission Act.

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, 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 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, The Procter & Gamble Company, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its office and principal place of business located at 301 East Sixth Street, Cincinnati, Ohio.

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 The Procter & Gamble Company, a corporation, and its officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of any dentifrice or any other drug or cosmetic product, do forthwith cease and desist from:

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

(a) Represents, directly or indirectly, that any drug or cosmetic product has been tested in comparison with competing products, when such is not the fact;

(b) Misrepresents the manner in which any such drug or cosmetic product has been tested.

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

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

O. JACK MILLER

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

Docket C-85. Complaint, Feb. 28, 1962—Decision, Feb. 28, 1962

Consent order requiring a Milwaukee seller of contact lenses designated "Occulettes" to cease representing falsely in newspaper and other advertising that his said contact lenses did not rest upon the eye and were thus more comfortable than other lenses; that they could be worn all day, without discomfort, by anyone in need of visual correction; and that wearers of his lenses could discard eyeglasses.

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 O. Jack Miller, 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 O. Jack Miller is an individual with his principal office and place of business located at 736 West Wisconsin Avenue, Milwaukee, Wis.

PAR. 2. Respondent is now, and has been for more than one year last past, engaged in the sale and distribution of contact lenses which are designated and sold under the trade name "Occulettes". Contact lenses are designed to correct errors and deficiencies in the vision of the wearer and are devices as "device" is defined in the Federal Trade Commission Act.

PAR. 3. In the course and conduct of his business, respondent has disseminated, and caused the dissemination of, certain advertisements concerning the said contact lenses by the United States mails, and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, including, but not limited to advertisements inserted in newspapers and other advertising media for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said contact lenses; and has disseminated, and caused the dissemination of, advertisements concerning said contact lenses by various means, including but not limited to the aforesaid media, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said devices in commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Among and typical, but not all inclusive, of the statements and representations contained in said advertisements disseminated as hereinabove set forth are the following:

See without Glasses.

Wouldn't you rather see without glasses? Of course you would and you probably can.

You see Occulettes are here, those amazing new invisible lenses that don't touch the eyes.

You've heard of contact lenses. Now The Big News is contact-less lenses—Occulettes.

They don't touch the eye.

The most wonderfully comfortable invisible lenses are tiny Occulettes.

The contact has been taken out of contact lenses, and now contact-less lenses are here: Just imagine what this can mean to you if you've wanted to throw away your glasses, but doubted your ability to wear contact lenses. Imagine the new fun and freedom, the new comfort and convenience that can now be yours with Occulettes, contact-less lenses.

Yes, you can try Occulettes without delay . . . You've everything to gain . . . in fact day long, even life long comfort.

PAR. 5. Through the use of said advertisements and others of similar import not specifically set out herein, respondent has represented and is now representing directly and by implication

1. That respondent's contact lenses are designed so they do not rest upon the eye while other contact lenses do and that they are therefore more comfortable and better fitting than other contact lenses.

2. That respondent's contact lenses can be worn all day.

3. There is no discomfort in wearing respondent's contact lenses.

4. All persons in need of visual correction can successfully wear respondent's contact lenses.

5. Respondent's lenses can replace eyeglasses to the extent that eyeglasses can be discarded.

PAR. 6. The said advertisements were, and are misleading in material respects and constituted, and now constitute, "false advertisements" as that term is defined in the Federal Trade Commission Act. In truth and in fact

1. Respondent's lenses are not more comfortable or better fitting than any other contact lenses for the reason that they do not rest upon the eye, since all contact lenses rest upon the eye.

2. Many persons cannot wear respondent's lenses all day and no person can wear said lenses all day until such person has become fully adjusted thereto and many persons can never become so adjusted to contact lenses.

3. Practically all persons will experience some discomfort when first wearing respondent's lenses. In a significant number of cases discomfort will be prolonged.

4. A significant number of persons in need of visual correction cannot successfully wear respondent's contact lenses.

5. Said lenses cannot replace eyeglasses for all purposes for all persons. Some persons cannot discard their eyeglasses upon the purchase of respondent's lenses but must continue to use them for substantial periods of time.

PAR. 7. The dissemination by the respondent of the false advertisements, as aforesaid, constituted and now constitutes unfair and deceptive acts and practices, in commerce, within the intent and meaning of the Federal Trade Commission Act.

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, 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 or order; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondent 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 respondent 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, O. Jack Miller, is an individual with his office and principal place of business located at 736 West Wisconsin Avenue in the city of Milwaukee, State of Wisconsin.

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 O. Jack Miller and respondent's representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of contact lenses sold under the name "Occulettes" or under any other name or names, or any other contact lenses of substantially the same construction or properties, do forthwith cease and desist from directly or indirectly:

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

A. Respondent's lenses do not rest upon the eye or that said lenses are more comfortable than other contact lenses.

B. Respondent's contact lenses can be worn by everyone all day or that anyone can wear them all day unless it is clearly revealed that this is possible only after the wearer has become fully adjusted thereto.

C. There is no discomfort in wearing respondent's contact lenses unless it is clearly revealed that practically all persons will experience some discomfort when first wearing respondent's lenses, and that in a significant number of cases discomfort will be prolonged.

D. All persons in need of visual correction can successfully wear respondent's contact lenses.

E. Respondent's lenses can replace eyeglasses to the extent that eyeglasses can be discarded by all persons.

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

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

CECIL T. JENKINSON DOING BUSINESS AS WASHINGTON TRAINING INSTITUTE

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

Docket C-86. Complaint, Feb. 28, 1962—Decision, Feb. 28, 1962

Consent order requiring a Plymouth, Ind., seller of a correspondence course purporting to prepare purchasers for U.S. Civil Service examinations, to cease using—by direct mail solicitation and newspaper advertising followed by personal contact—false job-assurance claims and other misrepresentations, as in the order below indicated, to sell his courses; and to cease using the word "Institute" in his trade name or in the name of his school.

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 Cecil T. Jenkinson, an individual doing business as Washington Training Institute, 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 as follows:

PARAGRAPH 1. Respondent Cecil T. Jenkinson is an individual trading and doing business as Washington Training Institute, with his office and principal place of business located in the Lauer Building, Plymouth, Ind.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the sale and distribution, through the United States mails, of a correspondence course of study and instructions purporting to prepare purchasers thereof for United States Civil Service examinations and positions with the United States Government.

Respondent causes, and has caused, his said course of study and instructions to be sent from his place of business in the State of Indiana to purchasers thereof located in various other states of the United States, and at all times mentioned herein has maintained a course of trade in said course of study and instructions, in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 3. Respondent's method of doing business is through direct mail solicitations and newspaper advertising, followed by personal contact by respondent, who delivers a sales talk and undertakes to consummate the sale of said course of study and instructions. Typical, but not all inclusive, of such representations made in such mail solicitations and advertising are the following:

NOW!

GOVERNMENT POSITIONS

for MEN and WOMEN 18 to 50

START HIGH AS $4750.00

CIVIL SERVICE offers permanent employment, paid vacations, paid sick leave, pay raises, promotions, excellent pensions. SECURITY! Prepare for examinations in your area. Complete instructions available if you qualify.

CIVIL SERVICE INCLUDES

Storekeepers	Post Office Clerks	Railway Mail Clerks
Rural Mail Carriers	Warehousemen	Truck Drivers
Border Patrolmen	Typists	Mechanics
Stenographers	Forest Service	Highway Mail
Customs Service	Immigration Service	Bookkeepers
Ass't Meat Inspectors	Postmasters	Livestock Inspectors
Internal Revenue Service	Clerks	Custodians
Deputy U.S. Marshals	City Mail Carriers	
	Guards	

HUNDREDS OF OTHERS!

SEND CARD TODAY!!

For qualifications and information

HIGH SCHOOL NOT ALWAYS NECESSARY.

BUSINESS REPLY CARD

First Class Permit No. 53, Plymouth, Indiana

WASHINGTON TRAINING INSTITUTE

P.O. BOX 644

PLYMOUTH, INDIANA

I understand that I am entitled to receive, without further cost, complete training for the following Examination.

* * * is entitled to all instructions, services, rights and privileges of membership in this institute during lifetime.

Our purpose is to supply you with all available information.

Permanent employment

MEN . . . WOMEN

From Ages 18 to 51 Prepare now for US Civil Service Job.

Openings in this area during the next 12 months.

But to get one of these jobs you must pass a test. * * * Washington Service helps many prepare for these tests every year * * *.

For FREE information on Government Jobs including list of positions and salaries fill out coupon and mail at once. TODAY. You will also get full details on how you can qualify yourself to pass these tests.

PAR. 4. Through the use of the foregoing statements and other statements appearing in his mail solicitations, advertising and form letters, respondent has represented, and now represents, directly or by implication, that:

1. There are many vacancies in the United States Civil Service positions listed and in numerous others.

2. There are now Civil Service positions open in the prospective customer's area or that there will be such positions open within the next 12 months for men and women in their local areas.

3. Respondent will furnish complete instructions or training for Civil Service examinations or all the information necessary to obtain a Civil Service position.

4. Purchasers of respondent's course will receive instructions or service for life.

5. Prospective purchasers of respondent's course must pass a test and have special qualifications before they will be permitted to enroll in or purchase respondent's course of instructions.

PAR. 5. In the course and conduct of his said business, respondent calls upon prospective purchasers of his course and by means of oral statements repeats the statements made in the printed advertising, cards and form letters, and, in addition, represents, directly and by implication, to said prospective purchasers that:

1. Anyone who completes respondent's course will pass a Civil Service examination and qualify for a Civil Service position, or be assured of securing such a position.

2. Unless one enrolls in the course within a limited or specified time he will not be permitted to purchase or take the course.

3. Specific amounts, such as $5,000 annually, are the starting salaries in Civil Service positions for which respondent's course purports to train or prepare.

4. Prospective purchasers of respondent's course must pass a test and have special qualifications before they will be permitted to purchase, or enroll in, respondent's course.

5. It is necessary to take a correspondence course before being able to pass a Civil Service examination.

6. Education is the only requirement or qualification for obtaining a Civil Service position.

7. Respondent will continue to train a purchaser of his course until the purchaser has passed an examination and received a Civil Service position.

8. Respondent will give personal training or assistance to purchasers of his course, will notify them of approaching Civil Service examinations, and will assist them in filling out applications for such examinations.

PAR. 6. All of said statements and representations are false, misleading and deceptive. In truth and in fact:

1. There are no vacancies in the United States Civil Service for many of the positions represented by respondent to be open to the prospective purchasers of his course.

2. Seldom, if ever, are any of the positions open in the home locality of the prospective purchaser, as represented by the respondent.

3. Respondent does not furnish complete instructions or training for successful passing of Civil Service examinations or for securing Civil Service positions, nor does he notify purchasers of his course when and where such examinations will be held.

4. Respondent does not furnish instructions or service for life of the purchaser of his course, nor does he give any personal instructions or furnish any service except the course of instructions which he sells; neither does he continue to instruct or train purchasers of his course until they secure Civil Service appointments.

5. The only required qualifications to enroll in respondent's said course are that the prospective purchaser will sign a contract and make the down payment.

6. Completion of respondent's course or the passing of a Civil Service examination for the position desired does not assure or guarantee an appointment to such a position.

7. Other requirements, such as experience, accomplishments, and physical condition, as well as the educational requirement, must be met before a person is qualified to take a Civil Service examination for many of the positions listed by the respondent.

8. There is no limit to the time in which a person may purchase the respondent's said course of study and instructions.

9. It is not necessary to purchase or enroll in respondent's or in any other correspondence course in order to qualify for and pass a Civil Service examination.

PAR. 7. The use of the word "Institute" in respondent's trade name implies the existence and operation of a resident institution of higher learning, with a staff of competent, experienced and qualified educators, offering instructions in the arts, sciences and subjects of higher learning. The primary object of the work of an institute is that of scientific investigation or instruction, and not that of a commercial promotion for profit.

In truth and in fact, respondent's business is not an "institute" within the generally accepted meaning of the term. Respondent's said business is that of selling a course of study and instructions purporting to prepare a person for Civil Service examinations, which does not involve study of subjects in higher education or arts and sciences; in fact, respondent does not require any education for the taking of his course. Respondent's business is operated for the sole purpose of financial gain for himself.

PAR. 8. Respondent is now, and at all times mentioned herein has been, in substantial competition with other individuals, corporations, partnerships and firms engaged in the sale, in commerce, of courses of instructions by correspondents.

PAR. 9. 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 respondent's said course of study and instructions by reason of said erroneous and mistaken belief.

PAR. 10. The aforesaid acts and practices of respondent, as herein alleged, were, and are, all to the prejudice of the public and of respondent's 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 respondent named in the caption hereof with violation of the Federal Trade Commission Act, 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, Cecil T. Jenkinson, is an individual trading and doing business as Washington Training Institute, with his office and principal place of business located in the Lauer Building, in the city of Plymouth, State of Indiana.

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 Cecil T. Jenkinson, individually and trading and doing business under the name of Washington Training Institute, or under any other name, and his agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of a course of study and instructions, do forthwith cease and desist from:

1. Representing, directly or indirectly, that:

(a) Completion of respondent's course of study assures passing a Civil Service examination or assures the purchaser of said course of qualifying for or securing a Civil Service position.

(b) There are vacancies in any United States Civil Service positions when such vacancies do not exist.

(c) Vacancies exist in United States Civil Service positions in any specified locality when such vacancies do not exist.

(d) It is necessary to take a correspondence course, or any other course of study, before a person will be able to pass a Civil Service examination, when such is not the fact.

(e) Positions in the United States Civil Service, which are restricted to any group, or otherwise restricted, or require certain qualifications, are open unless such restrictions or qualifications are clearly disclosed.

(f) Passing an examination for a Civil Service position guarantees or assures an appointment to such a position.

(g) Prospective purchasers must pass a test or have special qualifications before they may enroll for respondent's course.

(h) Respondent's offer of sale of his course is limited as to time.

(i) Respondent furnishes complete information as to and notifies the purchaser of his course when and where a Civil Service examination will be held, or will assist in filing an application to take a Civil Service examination.

2. Using the word "Institute" or any abbreviation or simulation thereof as part of said respondent's trade name or as a part of the name of respondent's school; or otherwise representing, directly or indirectly, that respondent's school is an institute.

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

DUOTONE COMPANY, INC., ET AL.

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

Docket C-87. Complaint, Feb. 28, 1962—Decision, Feb. 28, 1962

Consent order requiring Keyport, N.J., manufacturers of phonograph needles and accessories to disclose clearly the country of origin of imported needles; to cease representing falsely that synthetic needle points were made of jewels or sapphires, that excessive list prices and printed amounts on retail packages were the usual retail prices for the needles, and that their diamond needle was guaranteed in every respect.

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 Duotone Company, Inc., a corporation, and Stephen Nester and Virginia Nester, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Duotone 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 office and place of business located at Locust Street, Keyport, State of New Jersey.

Respondents Stephen Nester and Virginia Nester are officers of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their address is 56 Ocean Avenue, Ideal Beach, N.J.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the manufacture and importation, advertising, offering for sale, sale and distribution of phonograph needles and phonograph accessories to wholesalers or distributors for sale to retailers, and in some instances directly to retailers for resale to the public.

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

PAR. 4. In the course and conduct of their business, as aforesaid, and for the purpose of inducing the sale of their said phonograph needles, respondents have made certain statements and representations with respect to the origin, composition, price and guarantee of said products.

Among and typical of such statements and representations, but not all inclusive thereof, as set forth in respondents' Catalog, Replacement Needle Wall Reference Charts, Counter Sales Cards, and other point of sale materials, including the individual retail packages or containers in which said merchandise is displayed for retail sale, are the following:

(A) Duotone Phonograph Needle
Duotone (followed by the Arabic numbers such as) 724, or 725, or 738.
Duotone Co. Locust St. Keyport, N.J.
1960 DUOTONE 1960
Locust Street Keyport, N.J.
Replacement Needle Wall Reference Chart
COPYRIGHT 1961

(B) Duotone Needles are Color-Coded:
Diamonds: Sapphires: . . . .

All twin point Sapphire needles are available in .001 both sides at no additional cost.

A section of manufacturing operations. Employees are engaged in processing material for phonograph needles and mounting stones both jewel and diamond to needle shanks.

OSMIUM JEWEL DIAMOND

Needle Number	List Price	Needle Number	List Price	Needle Number	**List Price**

PHONOGRAPH MODEL NEEDLE GUIDE

Sapphire diamond

THE DUOTONE SAPHIRE
SONOTONE
TWIN-POINT
SAPPHIRE

(C) (*Catalog: Page 4*)

No.	Cartridge Type	Point size in mills	List Price
508D	Philco	1	$9. 95
515	R.C.A.	1	1. 50
519	Shure	2	1. 50
524	Philco	3	2. 50
534D	Electro-Voice	1	9. 95
DUOTONE 694 Replacement for Zenith Jewel Tip (Yellow)		$5. 00 142–72 All Speed	
DUOTONE 631	(WE022)	$1. 50 Standard	

(*Display Card*):
DUOTONE
SONOTONE
TWIN POINT
Sapphire Needle $3. 50

(*Individual Needle Retail packaging*):

DUOTONE	735	(Stereo)	$3. 50
DUOTONE	694		5. 00
DUOTONE	631	(WE022)	1. 50

(D) DUOTONE GUARANTEES THE *WHOLE* DIAMOND NEEDLE FOR EITHER MONOPHONIC OR STEREOPHONIC REPRODUCTION, AT NO EXTRA COST

PAR. 5. By and through the use of the aforementioned statements and representations, and others similar thereto but not specifically set forth herein, respondents have represented, and are now representing, directly or by implication:

1. That all of said products are manufactured or originate in the United States.

2. That their phonograph needles have points made of jewels or sapphires.

3. That said "list prices", available for inspection by the general public, are the usual and regular retail selling prices of said merchandise in the trade area or areas where the representations are made.

4. By printing or causing to be printed, certain amounts on the individual phonograph needle retail packages or containers, thereby representing, directly or by implication, that said imprinted amounts are the usual and customary retail prices for said phonograph needles in the trade area or areas where the representations are made.

5. That said diamond phonograph needle is guaranteed in every respect.

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

1. All of said phonograph needles are not manufactured in the United States. Some of said phonograph needles are manufactured in Japan or other foreign countries and this fact is not clearly or adequately disclosed so as to give the purchasing public notice of the countries of origin of said phonograph needles.

There are among members of the purchasing public a substantial number who have a preference for products originating in the United States over products originating in foreign countries, including phonograph needles originating in Japan.

2. The tips or points of the phonograph needles designated as jewel or sapphire are not made of the precious stones known as sapphires or jewels, but said tips or points are in fact composed of synthetic material.

3. Respondents' "list prices" are fictitious and in excess of the usual and customary retail prices for said phonograph needles in the trade area or areas where the representations are made.

4. The printed amounts on the individual phonograph needle retail packages or containers are not the usual and customary retail prices for said phonograph needles in the trade area or areas where the representations are made.

5. Respondents' products are not guaranteed in every respect. The guarantee provided was limited and the nature and extent of such limitations were not disclosed.

PAR. 7. By the aforesaid acts and practices, respondents place in the hands of dealers and retailers means and instrumentalities by and through which they may mislead the public as to origin, composition, guarantee and usual and customary retail selling price of said products.

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 phonograph needles and related phonograph accessories of the same general kind and nature as that sold by the respondents.

PAR. 9. The use by the respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of respondents' 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 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 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, Duotone 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 Locust Street, in the city of Keyport, State of New Jersey.

Respondents Stephen Nester and Virginia Nester are officers of said corporation, and their address is 56 Ocean Avenue, Ideal Beach, N.J.

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 Duotone Company, Inc., a corporation, and its officers, and Stephen Nester and Virginia Nester, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of phonograph needles, or any other products, in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Offering for sale, selling or distributing any such product which is packaged or otherwise placed in a container unless the country or place of origin is clearly and conspicuously disclosed on such package or container.

2. Offering for sale, selling or distributing any such product in such a manner that the country or place of origin of the product is not clearly disclosed to prospective purchasers.

3. Disseminating, or causing to be disseminated, any display or point of sale material with respect to any such product which fails to clearly and conspicuously disclose the country or place of origin of the product.

4. Advertising or representing in any manner and in any medium including point of sale material that the points or tips of respondents' phonograph needles are jewel, jeweled, sapphire, or, using any other term descriptive of precious stone, unless such points or tips are in truth and in fact composed of precious stone.

5. Offering for sale, selling or distributing phonograph needles containing points or tips of synthetic nature, unless there is a clear and conspicuous disclosure of the synthetic nature thereof.

6. Representing, directly or by implication, by means of preticketing, use of the words "list price" or in any other manner, or by any other means, that any amount is the usual and regular retail price of merchandise when such amount 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.

7. Representing that any merchandise offered for sale is guaranteed, unless the nature and extent of the guarantee and the manner in which

the guarantor will perform thereunder are clearly and conspicuously disclosed.

8. Furnishing to others any means or instrumentalities by and through which they may misrepresent the origin, composition, guarantee or usual and customary retail prices of respondents' 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

ALAN HOFBERG ET AL. DOING BUSINESS AS HOBART STEEL COMPANY, ETC.

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

Docket C-88. Complaint, Mar. 2, 1962—Decision, Mar. 2, 1962

Consent order requiring a North Hollywood, Calif., partnership to cease using false offers of employment, deceptive pricing and guarantee claims and other misrepresentations to sell their waterless cookware, in letters and other promotional material sent to prospective purchasers and in newspaper advertisements.

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 Alan Hofberg and Norman Best, as individuals and as copartners doing business as Hobart Steel Company and as Western States Claim Adjusters, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondents Alan Hofberg and Norman Best are individuals and are copartners doing business under various trade names including Hobart Steel Company and Western States Claim Adjusters. Their principal office and place of business is located at 5653 Lankershim Boulevard, North Hollywood, Calif.

PAR. 2. Respondents are now, and for several years last past have been, engaged in the sale and distribution of a variety of products, including waterless cookware, to retailers and others for resale to the public and to members of the purchasing public.

PAR. 3. Respondents, in the course and conduct of their business, ship their said products from their place of business in the State of California to purchasers thereof located in various other states of the United States. Respondents also ship their merchandise to public warehouses and storage companies located in various states other than the State of California for storage and sale to members of the purchasing public located in various other states of the United States.

Respondents maintain, and have maintained, a substantial course of trade in said products, in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Respondents, in the course and conduct of their business, are engaged in substantial competition in commerce with corporations, firms, and individuals engaged in the sale and distribution of waterless cookware and other products.

PAR. 5. Respondents, in the course and conduct of their business, and for the purpose of inducing the purchase of their said products, advertise by means of form letters, circulars and promotional material, sent to prospective purchasers, and by means of advertisements inserted in newspapers and other periodicals of general circulation.

PAR. 6. Among and typical, but not all inclusive, of the statements and representations appearing in said advertisements are the following:

In the Ardmore, Oklahoma, "DAILY ARDMOREITE" issue of April 4, 1960, under the classified heading: "HELP—MALE & FEMALE":

> COOKWARE Waterless 17 pc. Set 3-ply Stainless. Sells for $199. Your sample set $48.60 . . . .

In the Columbia, Missouri, "TRIBUNE" issue of August 10, 1960, under the classified heading: "ARTICLES FOR SALE":

> MUST LIQUIDATE Brand new 17 piece stainless steel waterless cookware sets. Sells for $200, take $45.00. See at Benton Moving & Storage . . . .

PAR. 7. Among and typical, but not all inclusive, of the statements and representation set forth in respondents' form letters, circulars, and promotional material, are the following:

> RE: *UNCLAIMED FREIGHT* Dear Sir: This letter is being sent to you in regards to an unclaimed shipment of stainless steel waterless cookware sets now being held at (Name of local warehouse) . . . this shipment can be released to you for the C.O.D. balance only. These sets are sold exclusively on The-Home-Dinner-Party-Plan for $199.50 . . . This entire shipment has been released as *UNCLAIMED FREIGHT* for $45.00 per set . . . .

CLAIM #574036 ACCOUNT: HOBART STEEL COMPANY Gentlemen: We have on hand at our Los Angeles warehouse 2,178, cartons of stainless steel waterless cookware . . . These sets must be disposed of immediately to settle a claim against Hobart Steel Co. In the past, unclaimed sets . . . were disposed of through transfer and storage houses by placing a small ad in the classified section of their local newspaper . . . (There is set forth what purports to be a suggested form of advertisement, under the classified heading: FREIGHT DISPOSAL . . . Sells for \$200. Sacrifice for \$65 . . . ") This is Hobart Steel Company's finest . . . and carry a full guarantee from the manufacturer. These sets are available for immediate delivery at \$35.00 per set. (Signed) Arnold Whittaker WESTERN STATES CLAIM ADJUSTERS.

PAR. 8. Through the use and by means of the foregoing statements, and others of similar import not specifically set forth herein, respondents represented, and now represent, directly or by implication:

(a) That respondents were soliciting for prospective employees.

(b) That said products are distress merchandise and must be sold, and were from a business in the state of liquidation.

(c) That said products were unclaimed freight and would be sold for the balance due for freight or storage charges thereon.

(d) That said products are usually and customarily sold by respondents for \$199.50 (or \$200.00).

(e) That said products were being offered at a special reduced price of \$45.00 (or of \$35.00, or \$48.60).

PAR. 9. The aforesaid statements and representations are false, misleading, and deceptive. In truth and in fact:

(a) Respondents were not soliciting for prospective employees and have not employed persons responding to said advertisements. To the contrary, respondents were soliciting for sales of their said products.

(b) The said products were not distress merchandise and respondents did not have to sell them, nor were such products from a business in the state of liquidation. To the contrary, respondents sold substantial quantities of such products in this manner.

(c) The price at which respondents offered such sets of cookware did not constitute only the balance due for freight and storage charges on each set. To the contrary, such sets were being offered at prices in excess of respondents' freight and storage costs.

(d) Said products have never been sold by respondents for \$199.50 (or for \$200.00). To the contrary, the said prices are greatly in excess of the prices usually and customarily charged by respondents for such products in the usual course of their business.

(e) Said products were not being offered for sale by respondents at special or reduced prices. To the contrary, the said prices were those usually and customarily charged by respondents in the usual course of their business.

PAR. 10. Respondents, in the course and conduct of their business as aforesaid, sent brochures and other promotional material to prospective purchasers of their said products. Among and including, but not limited to, the said material sent by respondents is a brochure which illustrates and describes their waterless cookware. Said brochure purports to depict respondents' guarantee form, utilizing such type and format that the only conspicuous word in the said brochure is the word "GUARANTEE". Said brochure also contains the statement: "FACTORY GUARANTEE and full color recipe and instruction book included." Furthermore, certain of respondents' form letters, as aforesaid, contain reference to a "full guarantee from the manufacturer".

The actual guarantee form or document included with the sets of waterless cookware, when sold and distributed by respondents as aforesaid, sets forth under the word "GUARANTEE" the following: "This Waterless Cookware set is guaranteed to be free of manufacturing defects. . . ." None of the other matter set forth in the said form or otherwise provided to purchasers of said products, sets forth the provisions, terms, conditions or limitations of such guarantee.

PAR. 11. The said statements, representations, and depictions concerning respondents' guarantee are false, misleading, and deceptive. The guarantee form or document furnished to purchasers of respondents' said products does not set forth the nature or extent of any guarantee nor of any limitations or conditions upon such guarantee. Furthermore, neither the name of the guarantor nor the manner in which the guarantor undertakes to perform under said guarantee are disclosed therein.

PAR. 12. By the aforesaid practices, respondents place in the hands of retailers and others means and instrumentalities by and through which they may mislead the public as to the nature of and the usual and customary prices of the said products.

PAR. 13. The use by respondents of the foregoing false and misleading statements, representations and practices has had, and now has, the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the mistaken and erroneous belief that such statements and representations were, and are, true and to induce a substantial portion of the purchasing public, because of such mistaken and erroneous beliefs, to purchase such products.

PAR. 14. 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 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 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. Respondents Alan Hofberg and Norman Best are individuals and are copartners doing business under various trade names including Hobart Steel Company and Western States Claim Adjusters. Their principal office and place of business is located at 5653 Lankershim Boulevard, North Hollywood, Calif.

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 Alan Hofberg and Norman Best, as individuals or as copartners doing business as Hobart Steel Company, Western States Claim Adjusters, or under any other trade name or names, and respondents' representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of waterless cookware or any other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication:

1. (a) That employment is being offered, when in fact the purpose or effect of such representation is the solicitation of sales of such products.

(b) That such products are distress merchandise, or must be sold, or are from the stock of a business in the state of liquidation.

(c) That such products are unclaimed freight, or that they are being offered for the balance due for freight, storage, or other charges thereon.

(d) That any amount is respondents' usual and customary price of merchandise when it is in excess of the price at which the merchandise has been usually and customarily sold by respondents in the recent, regular course of business.

(e) That any price is a reduced price unless it constitutes a reduction from the price at which respondents have usually and customarily sold such merchandise in the recent regular course of their business.

(f) That such products are guaranteed, unless the nature, extent, terms, and conditions of such guarantee, the name of the guarantor, and the manner and form in which the guarantor will perform thereunder, are clearly set forth.

2. Placing in the hands of others the means and instrumentalities by and through which they may mislead the public as to any of the matters set forth in paragraph 1 above.

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

GOODSTEIN BROTHERS & COMPANY, INC., ET AL.

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

Docket C-89. Complaint, Mar. 2, 1962—Decision, Mar. 2, 1962

Consent order requiring New York City manufacturers to cease violating the Wool Products Labeling Act by labeling as "90% Reprocessed Cashmere—10% Nylon", topcoats which contained a substantial quantity of fibers other than those represented, and by failing to label topcoats with the true generic names of the constituent fibers and the percentage thereof.

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 Goodstein Brothers & Company, Inc., a corporation, Albert Goodstein, Lawrence Goodstein, and William Goodstein, 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. Respondent Goodstein Brothers & 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 10 West 20th Street, New York, N.Y.

Individual respondents Albert Goodstein, Lawrence Goodstein and William Goodstein are President, Treasurer and Secretary, respectively, of corporate respondent. The individual respondents formulate, direct and control the acts, practices and policies of corporate respondent Goodstein Brothers & Company, Inc., including those hereinafter set forth. The office and principal place of business of the individual respondents is the same as that of the corporate respondent.

PAR. 2. Subsequent to the effective date of the Wool Products Labeling Act of 1939 and more especially since 1960, respondents have manufactured for introduction into commerce, 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 product" is defined therein.

PAR. 3. Certain of said wool products were misbranded by the respondents within the intent and meaning of Section 4(a)(1) of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, in that they were falsely and deceptively labeled, tagged or otherwise identified with respect to the character and amount of the constitutent fibers contained therein.

Among such misbranded wool products, but not limited thereto, were topcoats labeled or tagged by respondents as 90% Reprocessed Cashmere—10% Nylon, whereas, in truth and in fact, said products contained a substantial quantity of fibers other than those 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 under said Act.

Among such misbranded wool products, but not limited thereto, were topcoats with labels which failed: (1) to disclose the true generic names of the fibers present and (2) to disclose the percentage of such fibers.

PAR. 5. 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.

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 Wool Products Labeling Act of 1939, 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 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 Goodstein Brothers & 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 10 West 20th Street, in the city of New York, State of New York.

Respondents Albert Goodstein, Lawrence Goodstein and William Goodstein 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, Goodstein Brothers & Company, Inc., a corporation, and its officers, and Albert Goodstein, Lawrence Goodstein and William Goodstein, 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 offering for sale, sale, transportation, delivery for shipment or distribution, in commerce, of coats or other wool products, as "commerce" and "wool product" are defined in 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 constituent fibers contained therein.

2. 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.

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

ROMEX INTERNATIONAL, LTD., ET AL.

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

Docket C-90. Complaint, Mar. 2, 1962—Decision, Mar. 2, 1962

Consent order requiring associated distributors in New York City to cease labeling and invoicing as "90% reprocessed cashmere, 10% nylon", fabrics which contained a substantial quantity of other fibers, and failing to disclose on fabric labels the true generic name of the constituent fibers and the percentage thereof.

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, Romex International, Ltd., a corporation, and Bini Bino D'Italia, Ltd., a corporation, and Morton L. Gordon, individually and as an officer of said corporations, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under 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. Respondents Romex International, Ltd., and Bini Bino D'Italia, Ltd., are corporations organized, existing and doing business under and by virtue of the laws of the State of New York, with their office and principal place of business located at 330 Fifth Avenue, in the city of New York, State of New York.

Individual respondent Morton L. Gordon is president and treasurer of both corporate respondents and formulates, directs and controls the acts, practices and policies of the corporate respondents, including those hereinafter set forth. The address and principal place of business of the individual respondent is the same as that of the corporate respondents.

PAR. 2. Subsequent to the effective date of the Wool Products Labeling Act of 1939 and more especially since 1948, 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 product" is defined therein.

PAR. 3. Certain of said wool products were misbranded by the respondents within the intent and meaning of Section 4(a)(1) of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, in that they were falsely and deceptively labeled or tagged with respect to the character and amount of the constituent fibers contained therein.

Among such misbranded wool products, but not limited thereto, were fabrics labeled or tagged by respondents as "90% reprocessed cashmere—10% nylon", whereas, in truth and in fact, said fabrics contained a substantial quantity of fibers other than those 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 of 1939 and in the manner and form as prescribed by the Rules and Regulations promulgated under said Act.

Among such misbranded wool products, but not limited thereto, were fabrics with labels which failed: (1) to disclose the true generic names of the fibers present and (2) to disclose the percentage of such fibers.

PAR. 5. 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.

PAR. 6. Respondents in the course and conduct of their business, as aforesaid, have made statements on invoices and shipping memoranda to their customers misrepresenting the fiber content of certain of their said products. Among such misrepresentations were statements representing fabrics to be "90% reprocessed cashmere, 10% nylon" whereas in truth and in fact the said fabrics contained substantially less reprocessed cashmere than was represented.

PAR. 7. The acts and practices set out in Paragraph Six have had and now have the tendency and capacity to mislead and deceive purchasers of said products as to the true content thereof and to cause them to misbrand products manufactured by them in which said materials are used.

PAR. 8. The acts and practices of the respondents set out in Paragraph Six 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

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 Wool Products Labeling Act of 1939, 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 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. Respondents Romex International, Ltd., and Bini Bino D'Italia, Ltd., are corporations organized, existing and doing business under and by virtue of the laws of the State of New York, with their office and principal place of business located at 330 Fifth Avenue, in the City of New York, State of New York.

Respondent Morton L. Gordon is an officer of both said corporations and his address is the same as that of said corporations.

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, Romex International, Ltd., a corporation, and its officers, and Bini Bino D'Italia, Ltd., a corporation, and its officers, and Morton L. Gordon, individually and as an officer of both corporations, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the offering for sale, sale, transportation, delivery for shipment, or distribution, in commerce, of fabrics or other wool products, as "commerce" and "wool product", are defined in 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 constituent fibers contained therein.

2. 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.

It is further ordered, That respondents Romex International, Ltd., a corporation, and its officers, and Bini Bino D'Italia, Ltd., a corporation, and its officers, and Morton L. Gordon, individually and as an officer of both corporations, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of fabrics or any other products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting the character or amount of constituent fibers contained in such products on invoices or shipping memoranda applicable thereto or in any other manner.

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

BERNARD KRIEGER & SON, INC., ET AL.

ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION AND THE TEXTILE FIBER PRODUCTS IDENTIFICATION ACTS

Docket 8368. Complaint, Apr. 20, 1961—Decision, Mar. 3, 1962

Order requiring New York City jobbers to cease violating the Textile Fiber Products Identification Act by failing to label handkerchiefs with the required information.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Textile Fiber Products Identification Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Bernard Krieger & Son, Inc., a corporation, and A. Joseph Krieger, individually and as an officer of said corporation, hereinafter referred to as respondents have violated the provisions of such Acts and the Rules and Regulations under the Textile Fiber Products Identification 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. Bernard Krieger & Son, 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 105 Orchard Street, New York, N.Y.

A. Joseph Krieger is an officer 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 Textile Fiber Products Identification Act on March 3, 1960, respondents have been and are now engaged in the introduction, sale, advertising and offering for sale, in commerce, and in the transportation or causing to be transported in commerce, and in the importation into the United States, of textile fiber products; and have sold, offered for sale, advertised, delivered, transported and caused to be transported, textile fiber products, which had been advertised or offered for sale in commerce; and have sold, offered for sale, advertised, delivered, transported and caused to be transported, after shipment in commerce, textile fiber products, either in their original state, or which have been made into other textile fiber products so shipped in commerce, as the terms "commerce", and "textile fiber products" are defined in the Textile Fiber Products Identification Act.

PAR. 3. Certain of said textile fiber products to wit: handkerchiefs, were misbranded by respondents in that they were not stamped, tagged, or labeled with the information required under Section 4(b) of the Textile Fiber Products Identification Act, and in the manner and form prescribed by the Rules and Regulations promulgated under such Act.

PAR. 4. The respondents, in the course and conduct of their business, as aforesaid, were and are in substantial competition with other corporations, firms and individuals likewise engaged in the manufacture and sale of textile fiber products including handkerchiefs, in commerce.

PAR. 5. The acts and practices of respondents, as set forth herein, were and are in violation of the Textile Fiber Products Identification Act and the Rules and Regulations 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. DeWitt T. Puckett for the Commission.
Respondents not represented by counsel.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

1. The complaint in this matter charges the respondents with violation of the Textile Fiber Products Identification Act, and the Rules and Regulations promulgated thereunder, and the Federal Trade Commission Act, in connection with the sale of handkerchiefs. After the filing of respondents' answer, a hearing was held at which respondent A. Joseph Kreiger, both for himself and for the corporate respondent, admitted all of the material allegations in the complaint. Thereafter proposed findings and conclusions and order were submitted by counsel supporting the complaint, respondents having elected

not to submit such proposals, and the case is now before the hearing examiner for final consideration. Any proposed findings or conclusions not included herein have been rejected.

2. Respondent Bernard Krieger & Son, Inc., is a New York corporation with its office and principal place of business located at 105 Orchard Street, New York, N.Y. Respondent A. Joseph Krieger is an officer of the corporate respondent and formulates, controls, and directs its policies, acts, and practices.

3. Subsequent to the effective date of the Textile Fiber Products Identification Act on March 3, 1960, respondents have been engaged in the introduction, sale, advertising, and offering for sale, in commerce, and in the transportation or causing to be transported in commerce, and in the importation into the United States, of textile fiber products; and have sold, offered for sale, advertised, delivered, transported and caused to be transported, textile fiber products which had been advertised or offered for sale in commerce; and have sold, offered for sale, advertised, delivered, transported and caused to be transported, after shipment in commerce, textile fiber products, either in their original state or contained in other textile fiber products; as the terms "commerce" and "textile fiber products" are defined in the Textile Fiber Products Identification Act.

4. Certain of such textile fiber products, to wit: handkerchiefs, were misbranded by respondents in that they were not stamped, tagged, or labeled with the information required under Section 4(b) of the Textile Fiber Products Identification Act, and in the manner and form prescribed by the Rules and Regulations promulgated under such Act.

5. In justice to respondents it should be added that statements made by respondent, A. Joseph Krieger, at the hearing indicate a desire on the part of respondents to comply fully with all of the requirements of the Textile Fiber Products Identification Act and the Rules and Regulations promulgated thereunder. Respondents are jobbers only, not manufacturers, and it appears that the violations referred to above were due to respondents' reliance upon their sources of supply to label properly all products requiring such labeling.

6. In the course and conduct of their business, respondents are in substantial competition with other corporations, firms, and individuals engaged in the sale of handkerchiefs in commerce.

CONCLUSION

The acts of respondents, as set forth above, are in violation of the Textile Fiber Products Identification Act, and the Rules and Regulations promulgated thereunder, and constitute unfair and deceptive acts and practices and unfair methods of competition in commerce in violation of the Federal Trade Commission Act. The present proceeding is in the public interest.

ORDER

It is ordered, That the respondents Bernard Krieger & Son, Inc., a corporation and its officers, and A. Joseph Krieger, 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, delivery for introduction, sale, advertising, or offering for sale, in commerce, or the transportation or causing to be transported, in commerce, or the importation into the United States of textile fiber products; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, of textile fiber products which have been advertised or offered for sale in commerce; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, after shipment in commerce, of textile fiber products, whether in their original state or contained in other textile fiber products, as the terms "commerce" and "textile fiber products" are defined in the Textile Fiber Products Identification Act, do forthwith cease and desist from:

Misbranding textile fiber products by failing to affix labels to such products showing each element of information required to be disclosed by Section 4(b) of the Textile Fiber Products Identification Act.

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 3d day of March 1962, become the decision of the Commission; and, accordingly:

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

IN THE MATTER OF

MINUTE MAID CORPORATION ET AL.

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

Docket 7517. Complaint, June 11, 1959—Decision, Mar. 7, 1962

Consent order requiring The Coca-Cola Company, legal successor through merger to Minute Maid Corp., processors and packers of citrus fruit, to cease violating Sec. 2(c) of the Clayton Act by paying a brokerage or commission to brokers and other buyers on purchases for their own accounts for resale, usually at the rate of 10 cents per 1⅗ bushel box and 5 cents per half box of fresh fruit and 3% of the net selling price of frozen citrus concentrates and frozen foods.

COMPLAINT

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

PARAGRAPH 1. Respondent Minute Maid Corporation 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 1200 West Colonial Drive, Orlando, Fla.

Respondent Minute Maid Groves Corp. 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 also located at 1200 West Colonial Drive, Orlando, Fla. Respondent Minute Maid Groves Corporation is a wholly owned subsidiary of respondent Minute Maid Corporation and both respondents operate from the same principal office.

Minute Maid Groves Corporation is presently considered and operates as the Fresh Fruit Division of the Parent Company, Minute Maid Corporation; and for the past few years has been doing business, for all intents and purposes, in the same manner as, and in many instances in the name of, the parent corporation. No particular effort is made by the two corporations in the course of doing business to distinguish the subsidiary from the parent corporation. Respondent Minute Maid Corporation exercises authority and control over respondent Minute Maid Groves Corporation, including its sales and distribution policies. Therefore both respondents will hereinafter be referred to jointly in this complaint as seller respondents or as respondents.

PAR. 2. Respondents, and each of them, are now, and for the past several years have been, engaged in the business of growing, packing, selling and distributing fresh citrus fruit, such as oranges, tangerines and grapefruit, as well as frozen citrus fruit concentrates and frozen foods, all of which are hereinafter sometimes referred to as food products. They sell and distribute these food products both through brokers and direct to customers located throughout the United States and in Canada.

Respondents operate refrigerated warehouses and processing plants as well as fresh fruit packing plants in the various cities or other places in the State of Florida. They also operate a plant at Lewiston, Idaho, for processing frozen food products. Respondents also maintain refrigerated warehouses throughout the country from which local deliveries are made to distributors. Respondents are substantial factors in the sale and distribution of fresh citrus fruits, frozen citrus concentrates and frozen foods, with gross sales well in excess of $100,000,000 annually.

PAR. 3. Respondents sell and distribute their food products through brokers, commission merchants, on consignment, and to some customers direct. In the sale of fresh fruit through brokers, the brokers are paid for their service at the rate of 10 cents per box for a full 1⅗ bushel Bruce box and 5 cents for a ⅘ bushel Bruce box, or half box. In the sale of frozen citrus concentrates and frozen foods through brokers, the brokers are paid for their services usually at the rate of 3% of the net selling price of the particular product.

PAR. 4. In the course and conduct of their business over the past several years, respondents, and each of them, have sold and distributed and are now selling and distributing their food products in commerce, as "commerce" is defined in the aforesaid Clayton Act, as amended, to buyers for resale located in the several states of the United States other than the State of Florida in which respondents are located. Respondents, and each of them, transport or cause such food products, when sold, to be transported from their place of business warehouses, or packing plants in the State of Florida, or elsewhere, to such buyers located in various other states of the United States. There has been at all times mentioned herein a continuous course of trade in commerce in said food products across state lines between said respondents and the respective buyers of such food products.

PAR. 5. In the course and conduct of their business as aforesaid, respondents, and each of them, have made substantial sales to some, but by no means all, of their brokers, as well as other buyers, who were and are purchasing for their own account for resale, and on a large number of these sales respondents paid, granted or allowed, and are now paying, granting or allowing to these brokers and other buyers on said purchases, a commission, brokerage, or other compensation, or an allownace or discount in lieu thereof, in connection therewith.

PAR. 6. The acts and practices of respondents 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).

Mr. *Cecil G. Miles* for the Commission.

Gurney, Gurney & Handley, by *Mr. J. Thomas Gurney*, of Orlando, Fla., for the respondents.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

The Federal Trade Commission (sometimes also hereinafter referred to as the Commission) on June 11, 1959, issued its complaint herein, charging the above-named respondents with having violated the provisions of § 2(c) of the Clayton Act, as amended (U.S.C., Title 15, § 13), in certain particulars, and respondents were duly served with process.

On January 22, 1962, there was submitted to the undersigned hearing examiner of the Commission, for his consideration and approval, an "Agreement Containing Consent Order To Cease And Desist", which had been entered into by and between respondents and counsel for both parties, under date of January 22, 1962, subject to the approval of the Bureau of Restraint of Trade of the Commission, which had duly approved the same.

On due consideration of such agreement, the hearing examiner finds that said agreement, both in form and in content, is in accord with § 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings, dated March, 1960, and that by said agreement the parties have specifically agreed to the following matters:

1. Respondent Minute Maid Corporation, at the time complaint was issued by the Commission on June 11, 1959, was a corporation existing and doing business under and by virtue of the laws of the State of Florida, with its office and principal place of business located at 1200 Colonial Drive, in the city of Orlando, State of Florida. On December 30, 1960, respondent Minute Maid Corporation merged with The Coca-Cola Company, a Delaware corporation with its principal office located at 515 Madison Avenue, New York, N.Y., and since that time Minute Maid Corporation has ceased to be a corporation and has been operating as Minute Maid Company, a division of The Coca-Cola Company. However, its place of business for the sale and distribution of fresh citrus fruit remained at 1200 West Colonial Drive,

Orlando, Fla. The Coca-Cola Company, as the legal successor of Minute Maid Corporation, herewith and hereby assumes all of the obligations and duties of Minute Maid Corporation, including compliance with the order to cease and desist contained herein.

2. Respondent Minute Maid Groves Corporation is a corporation existing and doing business under and by virtue of the laws of the State of Florida, with its office and principal place of business located at 1200 West Colonial Drive, in the city of Orlando, State of Florida. Since December 30, 1960, respondent Minute Maid Groves Corporation has been operating as a wholly-owned corporate subsidiary of The Coca-Cola Company, with address and principal office remaining at 1200 West Colonial Drive, Orlando, Fla.

3. The Coca-Cola Company, as legal successor of Minute Maid Corporation, hereby waives amendment of the complaint and service of process and agrees that the service of the complaint on Minute Maid Corporation shall have the same legal force and effect as though it were served upon The Coca-Cola Company.

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

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

6. Respondents waive:

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

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

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

7. The record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint, this agreement, and the attached stipulation which is made a part of this agreement by reference the same as if quoted herein verbatim.

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

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

10. The following order to cease and desist may be entered in this proceeding by the Commission without further notice to respondents. When so entered it shall have the same force and effect as if entered after a full hearing. It may be altered, modified or set aside in the

manner provided for other orders. The complaint may be used in construing the terms of the order.

11. For the purpose of this proceeding, it is agreed that the allegation of paragraph 3 of the complaint relating to the sale of frozen citrus concentrates and frozen foods cannot be supported by substantial evidence and is not included in or covered by the order contained herein.

Upon due consideration of the complaint filed herein and the said "Agreement Containing Consent Order To Cease And Desist", the hearing examiner approves and accepts this agreement, and finds that the Commission has jurisdiction of the subject matter of this proceeding and of the respondents herein; that the complaint states a legal cause for complaint under § 2(c) of the Clayton Act, as amended (U.S.C., Title 15, § 13), against the respondents, both generally and in each of the particulars alleged therein, except the allegation contained in paragraph 3 of the complaint; that this proceeding is in the interest of the public; that the order proposed in said agreement is appropriate for the just disposition of all the issues in this proceeding as to all of the parties hereto; and that said order therefore should be, and hereby is, entered as follows:

It is ordered, That respondents The Coca-Cola Company (successor through merger to Minute Maid Corporation, and operating through Minute Maid Company, a division of The Coca-Cola Company) and Minute Maid Groves Corporation, a corporation, and respondents' 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.

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 7th day of March 1962, become the decision of the Commission; and, accordingly:

It is ordered, That respondents The Coca-Cola Company, a corporation, successor to respondent Minute Maid Corporation, and Minute

Maid Groves Corporation, a corporation, shall, within sixty (60) days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist.

IN THE MATTER OF

BRIDGEPORT BRASS COMPANY

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

Docket 7842. Complaint, Mar. 23, 1960—Decision, Mar. 7, 1962

Consent order requiring the legal successor through merger of a manufacturer of brass, copper, and aluminum products, including tubular plumbing brass goods and copper water tubing, with annual sales in excess of $135,000,000, to cease discriminating among competing purchasers of its plumbing products in violation of Sec. 2(d) of the Clayton Act by paying sums amounting to $4,950 to the American Radiator and Standard Sanitary Corp. for promoting products on television programs in the four trading areas of Dallas, Tex.; St. Louis, Mo.; New Orleans, La.; and Pittsburgh, Pa., without making comparable payments available to competitors of American Radiator.

COMPLAINT

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

PARAGRAPH 1. Respondent Bridgeport Brass Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Connecticut, with its principal office and place of business located at 30 Grand Street, Bridgeport, Conn.

PAR. 2. Respondent is now and has been engaged in the manufacture, sale and distribution of brass, copper and aluminum products, including tubular plumbing brass goods and copper water tubing.

Respondent sells its products of like grade and quality to a large number of customers located throughout the United States for use or resale therein. Respondent's sales of its products are substantial, exceeding $135,000,000 annually.

PAR. 3. Respondent, in the course and conduct of its business as aforesaid, has caused and now causes its said products to be shipped and transported from the state or states of location of its various manufacturing plants, warehouses and places of business, to purchasers thereof located in states other than the state or states wherein said shipment or transportation originated. There has been at all times mentioned herein a continuous course of trade in commerce, as "commerce" is defined in the Clayton Act as amended.

PAR. 4. In the course and conduct of its business in commerce, since January 1, 1957, respondent has paid or contracted for the payment of something of value to or for the benefit of certain of its customers as compensation or in consideration for services or facilities furnished by or through such customers in connection with their offering for sale or sale of products sold to them by respondent, and such payments have not been offered or otherwise made available on proportionally equal terms to all other customers competing in the sale and distribution of respondent's products.

PAR. 5. For example, between May, 1957, and April, 1959, respondent contracted to pay, and periodically did pay, sums amounting to $4,950.00 to the American Radiator and Standard Sanitary Corporation for services and facilities furnished it by American Radiator and Standard Sanitary Corporation in promoting the sale of respondents' products through television programs sponsored by American Radiator and Standard Sanitary Corporation in the trading areas of Dallas, Tex.; St. Louis, Mo.; New Orleans, La.; and Pittsburgh, Pa. Such payments were not offered or otherwise made available on proportionally equal terms to all other customers competing with American Radiator and Standard Sanitary Corporation in the sale and distribution of products of like grade and quality purchased from respondent.

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

Mr. John Perry supporting the complaint.

Donovan Leisure Newton & Irvine, by *Mr. Walter R. Mansfield* for respondent.

INITIAL DECISION BY WALTER K. BENNETT, HEARING EXAMINER

The complaint in this matter was issued March 23, 1960. It charged respondent Bridgeport Brass Company [1] (to which name the appendage Inc. was erroneously added) with paying sums aggregating $4,950

[1] Erroneously described as Bridgeport Brass Company, Inc., in the complaint.

to American Radiator and Standard Sanitary Corporation for services and facilities in furnishing television programs in four designated trading areas. Such payments allegedly were not made available on proportionally equal terms to all other customers in violation of subsection (d) of Section 2 of the Clayton Act.

On January 17, 1962, counsel presented to the undersigned an agreement dated January 5, 1960, executed by respondent's successor, its counsel, and counsel supporting the complaint. Said agreement was duly approved by the Director of the Bureau of Restraint of Trade, the Assistant Director and the Chief of the Division of Discriminatory Practices.

On August 25, 1961, the parties filed a notice with the Secretary that they wished to avail themselves of the privilege of disposing of this matter by the execution of an agreement containing a consent order to cease and desist. Under the Rules of Practice, prior proceedings were had which caused the case to remain with the hearing examiner.

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

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

B. Provisions that:

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

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

3. The agreement shall not become a part of the official record of the proceeding unless and until it becomes a part of the decision of the Commission;

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

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

C. Waivers of:

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

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

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

In addition the agreement contains the following provisions:

A. 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.

B. National Distillers & Chemical Corporation is the legal successor to Bridgeport Brass Company, and as such it herewith and hereby assumes all of the obligations and duties of Bridgeport Brass Company, including compliance with the order to cease and desist contained herein.

C. Pursuant to the provisions of subsection (d) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act (U.S.C. Title 15, Sec. 13), the Federal Trade Commission, on March 23, 1960, issued its complaint in this proceeding against Bridgeport Brass Company, and a true copy of said complaint was duly served on the aforenamed Bridgeport Brass Company. Respondent National Distillers & Chemical Corporation, as legal successor of Bridgeport Brass Company, herewith and hereby waives amendment of the complaint and service of process and agrees that the service of a true copy of the complaint against Bridgeport Brass Company shall have the same legal force and effect as though it were served upon respondent National Distillers & Chemical Corporation, and that respondent National Distillers & Chemical Corporation, as such legal successor, shall be and is legally bound by the service of a true copy of the complaint upon Bridgeport Brass Company, as though a copy of said complaint was served upon National Distillers & Chemical Corporation.

D. Counsel supporting the complaint does not have available evidence in support of the complaint as to any of respondent's product lines other than plumbing goods, water tubing used for plumbing, and related plumbing products, nor is there available any evidence indicating that practices similar to those alleged to have been used in connection with the sale of plumbing goods, water tubing used for plumbing, and related plumbing products, exist as to any other of respondent's product lines. The complaint generally alleges that respondent is engaged in the manufacture, sale and distribution of brass, copper and aluminum products, and is specifically directed at tubular plumbing brass goods and copper water tubing. The following order prohibits the practices challenged in the complaint in connection with the offering for sale, sale or distribution of plumbing goods, water tubing used for plumbing, and related plumbing products. This constitutes complete coverage of the practices which formed the basis for issuance of the complaint. Although Bridgeport Brass Company was a multiple-product line company, and that fact is recognized in paragraph 2 of the complaint, wherein a complete listing was made of Bridgeport

Brass Company's products by type of metal used, the cause of action is actually centered only on the single product line of plumbing goods, water tubing used for plumbing, and related plumbing products, and the following order to cease and desist covers this product line completely.

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

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

1. Bridgeport Brass Company (erroneously named in the complaint as Bridgeport Brass Company, Inc.) was a corporation organized, existing and doing business under and by virtue of the laws of the State of Connecticut, with its office and principal place of business located at 30 Grand Street, Bridgeport, Conn.

2. National Distillers & Chemical Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Virginia, with its office and principal place of business located at 99 Park Avenue, New York, N.Y.

3. On June 30, 1961, Bridgeport Brass Company was merged into and with National Distillers & Chemical Corporation. From that time on, Bridgeport Brass Company ceased to exist as an independent corporation doing business under and by virtue of the laws of the State of Connecticut, and became instead a division of National Distillers & Chemical Corporation (the surviving corporation from the merger), known as Bridgeport Brass Company, Division of National Distillers & Chemical Corporation.

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

ORDER

It is ordered, That respondent, National Distillers & Chemical Corporation, a corporation (the legal successor to Bridgeport Brass Company), and its officers, employees, agents and representatives, directly or through any corporate or other device, in or in connection with the offering for sale, sale or distribution of plumbing goods, water tubing used for plumbing, and related plumbing products in commerce, as "commerce" is defined in the Clayton Act, as amended, do forthwith cease and desist from:

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

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

The Commission having considered the hearing examiner's initial decision, filed January 26, 1962, accepting an agreement containing a consent order theretofore executed by respondent and by counsel supporting the complaint; and

It appearing that the purported summarization of the charges in the complaint set forth in the first paragraph of the initial decision is in error; and that through inadvertence the date "January 5, 1960" is given in the initial decision as the date of the agreement; and

The Commission being of the opinion that these errors should be corrected:

It is ordered, That the initial decision be, and it hereby is, amended by striking the second and third sentences of the first paragraph of said decision and substituting therefor the following:

"It charged that respondent Bridgeport Brass Company (to which name the appendage 'Inc.' was erroneously added) in the course and conduct of its business in commerce has violated subsection (d) of Section 2 of the Clayton Act, as amended."

It is further ordered, That the initial decision be, and it hereby is, amended by striking the date "January 5, 1960" as it appears in the second line of the second paragraph of said decision and substituting therefor the date "January 5, 1962."

It is further ordered, That the inital decision, as so amended, shall, on the 7th day of March 1962, become the decision of the Commission.

It is further ordered, That the respondent, National Distillers & Chemical Corporation, a corporation, successor to respondent Bridgeport Brass Company, shall, within sixty (60) days after service upon it of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with the order to cease and desist.

IN THE MATTER OF

NEW YORK FASHION ET AL.

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

Docket C-91. Complaint, Mar. 7, 1962—Decision, Mar. 7, 1962

Consent order requiring Waterloo, Iowa, furriers to cease violating the Fur Products Labeling Act by failing to show on invoices and in newspaper advertising the true names of animals producing certain furs, and when fur products contained artificially colored or cheap or waste fur; failing to show the country of origin of imported furs on invoices; advertising prices of fur products falsely as reduced from regular prices when the latter were fictitious, and as "sale priced a fraction above wholesale cost"; failing to keep adequate records as a basis for price and value claims; and failing in other respects to comply with invoicing and advertising requirements.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act and by virtue of the authority vested in it by said Acts, the Federal Trade Commission having reason to believe that New York Fashion, a corporation, and Edmond Dantes, 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. New York Fashion is a corporation organized, existing and doing business under and by virtue of the laws of the State of Iowa with its office and principal place of business located at 220 East Fourth Street, Waterloo, Iowa. Edmond Dantes is vice president of the said corporate respondent and controls, formulates and directs the acts, practices and policies of the said corporate respondent.

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

PAR. 3. Certain of said fur products were 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 that the fur contained in the fur products was 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. 4. Certain of said fur products were falsely and deceptively invoiced in violation of the Fur Products Labeling Act in that they were not invoiced in accordance with the Rules and Regulations promulgated thereunder in that 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 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 Waterloo Daily Courier, a newspaper published in the city of Waterloo, State of Iowa, and having a wide circulation in said State and various other States of the United States.

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

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

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

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

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

(d) Failed to disclose that fur products were composed in whole or in substantial part of flanks when such was the fact, in violation of Rule 20 of said Rules and Regulations.

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

(f) 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.

(g) Represented prices of fur products to be "every item—sale priced a fraction above wholesale cost" 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 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. 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 New York Fashion is a corporation organized, existing and doing business under and by virtue of the laws of the State of Iowa, with its office and principal place of business located at 220 East Fourth Street, Waterloo, Iowa.

Respondent Edmond Dantes is an officer of said corporate respondent, and his 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 respondents New York Fashion, a corporation and its officers, and Edmond Dantes, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce, of any fur product; or in connection with the sale, advertising, offering for sale, transportation, or distribution, of any fur product which is made in whole or in part of fur which has been shipped and received in commerce, as "commerce", "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

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

A. Fails to disclose:

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

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

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

C. Fails to disclose that fur products are composed in whole or in substantial part of flanks, when such is the fact.

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

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

F. Represents directly or by implication that prices of fur products are "sale priced a fraction above wholesale cost" or words of similar import, 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 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.

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

LEC ELECTRIC COMPANY, INC., ET AL.

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

Docket C-92. Complaint, Mar. 7, 1962—Decision, Mar. 7, 1962

Consent order requiring Dallas, Tex., distributors of automobile parts to jobbers and retailers for resale to cease selling automobile parts which they had rebuilt or reconditioned without any marking or other disclosure to show their used nature, and with only small inconspicuous notice, if any, on cartons, far removed from the name of the parts; advertising such products without such disclosure as they did in "The Independent Garageman", a trade paper of wide circulation; and failing to make disclosure of used nature in invoices listing rebuilt parts.

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 Lec Electric Company, Inc., a corporation, and Lec Albert Wells, 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 Lec Electric Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Texas, with its principal office and place of business located at 2615 Good-Latimer Expressway, P.O. Box 9067, in the city of Dallas, State of Texas.

Respondent Lec Albert Wells is an officer of the corporate respondent. He formulates the policies and 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 automobile parts to distributors and jobbers and to retailers for resale to the public.

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

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

PAR. 4. In the course and conduct of their said business, respondents purchase used automobile parts which they rebuild or recondition and sell them to various dealers. When said parts are offered for sale and sold to dealers for resale to the ultimate purchaser they have the appearance of being new and unused. Some of said parts when offered for sale and sold as aforesaid bear no label, marking or other disclosure stamped thereon or attached thereto to show that they are in fact rebuilt or reconditioned parts. The cartons or packages in which said parts are offered for sale and sold feature in bold print the name of the parts contained therein. The fact that said parts are rebuilt or reconditioned, if disclosed at all, appears in small inconspicuous print far removed from the name of the parts involved.

PAR. 5. When articles which are assembled or manufactured in whole or in part from previously used materials in such a manner that they have the appearance of being assembled or manufactured from new and previously unused materials are offered to the purchasing public, and such articles are not clearly and conspicuously marked or labeled as having been assembled or manufactured from previously used materials, they are readily accepted by members of the purchasing public as having been assembled or manufactured entirely from new and previously unused materials.

PAR. 6. Respondents advertise their business and products in a trade paper of wide circulation called "The Independent Garageman". Some of respondents' said advertisements contain no reference to the fact that said parts are rebuilt or reconditioned parts.

PAR. 7. The invoices used by respondents in connection with the sale of their said parts contain the statement "Automotive Parts Rebuilders" and a reproduction of the Automotive Parts Rebuilding Association's membership symbol. However, no disclosure appears in the bodies of said invoices that the parts listed therein are rebuilt or reconditioned parts.

PAR. 8. By the aforesaid acts and practices, the respondents place in the hands of dealers and others the means and instrumentalities whereby said persons may deceive or mislead members of the purchasing public into the erroneous and mistaken belief that they are purchasing automobile parts manufactured entirely from new and previously unused component parts, when in fact said parts are composed wholly or in part of old or previously used component parts.

PAR. 9. 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 the business of manufacturing and selling automobile parts of the same general kind and nature as those sold by respondents.

PAR. 10. The failure of respondents to disclose in a clear, permanent and conspicuous manner in their advertising, on their invoices and cartons, and on the parts themselves that their said automobile parts are rebuilt or reconditioned parts, when such is the fact, has had and now has the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said parts sold by them were, and are, new parts assembled or manufactured entirely from new and previously unused parts, and to induce a substantial portion of the purchasing public to purchase substantial quantities of respondents' said parts because of such erroneous and mistaken belief.

PAR. 11. The aforesaid acts and practices of respondents, as herein alleged, were, and are, all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair 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, Lec Electric Company, 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 2615 Good-Latimer Expressway, P.O. Box 9067, in the city of Dallas, State of Texas.

Respondent Lec Albert Wells is an officer of said corporation. 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 Lec Electric Company, Inc., a corporation, and its officers, and Lec Albert Wells, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of automobile parts in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Offering for sale, selling or delivering to others for sale to the public, any used automobile part or any automobile part containing a used component part or parts, unless a clear and conspicuous disclosure of such prior use is made on the product in a location most readily noticeable to the purchaser and with sufficient permanency to remain thereon after installation for a reasonable period of time under ordinary conditions of use, and in such manner that said disclosure cannot be easily removed or obliterated; and unless there is clearly and conspicuously printed or marked on the box, carton, wrapper or other container in which said product is sold or offered for sale, a notice that said automobile part is a used part or contains a used component part or parts.

2. Representing that any used automobile part, or any automobile part containing a used component part or parts, is new by failing clearly and conspicuously to disclose such prior use in invoices, and in all advertising and sales promotional material disseminated therefor.

3. Furnishing means or instrumentalities to others by and through which they may mislead the public as to any of the matters and things prohibited in paragraphs 1 and 2 hereof.

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

MANCO WATCH STRAP CO., INC., ET AL.

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

*Docket 7785. Complaint, Feb. 24, 1960—Decision, Mar. 13, 1962 **

Order requiring Jersey City, N.J., distributors of imported metal expansion watch bands to jobbers, chain stores, and other retailers under the trade name "Topps", to cease selling the watch bands so packaged that the words "Hong Kong" or "Japan", stamped on a link on the inner side, were concealed and could not be seen without damaging the containers, and requiring them to clearly disclose the place of origin in a conspicuous place on the packages.

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 Manco Watch Strap Co., Inc., and Topps Products Corp., corporations, and Samuel Mandel, Marvin Mandel, Morris Mandel and Eugene Mandel, individually and as officers of said corporations, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondents Manco Watch Strap Co., Inc., and Topps Products Corp., are corporations organized, existing and doing business under and by virtue of the laws of the State of New York with their office and principal place of business located at 930 Newark Avenue, Postal Zone 6, in the city of Jersey City, State of New Jersey.

Respondents Samuel Mandel, Marvin Mandel, Morris Mandel and Eugene Mandel are officers of the corporate respondents. They formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondents.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the offering for sale, sale and distribution of metal expansion watch bands to jobbers, chain stores and other retail stores for resale to the public. Respondents' watch bands are sold under the trade name "Topps."

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said product,

*Reported with modifying orders of July 26, 1962 and April 8, 1963.

when sold, to be shipped from their place of business in the State of New Jersey to purchasers located in various other States of the United States and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products, in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Respondents import their watch bands from Japan and Hong Kong. After receipt of said watch bands they are packaged or mounted for retail sale by respondents. The packaging and mounting takes various forms depending upon the retail customer outlet. Some of the bands are mounted on individual cards and enclosed in separate cellophane envelopes. These are affixed to large counter display cards and are sold primarily to drugstores and other retailers who utilize this method of offering merchandise to the public. Other bands are packaged in individual containers for sale primarily through chain stores. Some are attached to cards and enclosed in boxes having a clear plastic "window"; others are enclosed in a clear plastic tube with a card inserted; while others are mounted on cards under a clear plastic "bubble". At no place on the packaging, container, or cards is the fact disclosed that respondents' bands are imported from Japan and Hong Kong. Stamped into the metal on a link on the inside of the bands is the word "Hong Kong" or "Japan" as the case may be. In many instances these words are so small, indistinct or made unnoticeable because of other impressions, that they do not constitute adequate notice that the bands are imported. Further, the manner of packaging conceals the inside of the band so that the words stamped thereon cannot be seen prior to purchase except by destroying or damaging the container or packaging.

PAR. 5. In the absence of an adequate disclosure that a product, including expansion watch bands, is of foreign origin, the public believes and understands that it is of domestic origin and there are among the members of the purchasing public a substantial number who have a preference for products originating in the United States over products originating in foreign countries or foreign places, including expansion watch bands originating in Japan and Hong Kong. Many domestic watch bands sell at higher prices than imported bands, including those originating in Japan and Hong Kong, and there are among the members of the purchasing public a substantial number who are willing to pay these higher prices to obtain such products of domestic origin.

PAR. 6. 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 watch bands of the same general kind and nature as those sold by respondents.

PAR. 7. The failure of respondents to disclose on the individual packages containing their watch bands, or on the packaging, or cards, that their watch bands are of foreign origin, and to clearly disclose that fact upon the bands themselves, has had, and now has, the tendency and capacity to mislead members of the purchasing public into the erroneous and mistaken belief that their watch bands are wholly of domestic manufacture and into the purchase of substantial quantities of respondents' product by reason of said erroneous and mistaken belief. As a consequence thereof, substantial trade in commerce has been, and is being, unfairly diverted to respondents from their competitors and substantial injury has thereby been, and is being, done to competition in commerce.

PAR. 8. The aforesaid acts and practices of respondents, as herein alleged, were, and are all, to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute unfair and deceptive acts and practices and unfair methods of competition, in commerce, within the intent and meaning of the Federal Trade Commission Act.

Mr. Charles W. O'Connell for the Commission.
Sperry, Weinberg & Cutler, of New York, N.Y., for the respondents.

INITIAL DECISION BY EDGAR A. BUTTLE, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on February 24, 1960, charging them with violating the provisions of the Federal Trade Commission Act by engaging in unfair and deceptive acts and practices in interstate commerce through the sale of watch bands not adequately marked in the packaging thereof or otherwise with the country of origin (i.e., Japan and Hong Kong). A copy of said complaint with notice of hearing was duly served on respondents. Respondents' answer is essentially a general denial and contains a further defense of *res judicata.* A motion was made by the respondents to dismiss the complaint premised upon this latter defense during the course of the hearing. Decision was reserved by the hearing examiner at that time pending a consideration of the evidence to be adduced.

Following a completion of the hearings in the above-entitled matter and pursuant to leave granted proposed findings, together with supporting briefs were thereafter filed by counsel for both sides. Counsel were also permitted to file replies to the proposals and briefs filed by opposing counsel. The examiner has carefully reviewed and considered the aforesaid proposed findings and briefs. Those proposed findings which are not herein adopted, either in the form proposed or in substance, are rejected as not supported by the record or as involving immaterial matters. Upon the entire record in the case the hearing examiner makes the following:

FINDINGS OF FACT

1. Respondents Manco Watch Strap Co., Inc., and Topps Products Corp. are corporations organized, existing and doing business under and by virtue of the laws of the State of New York with their office and principal place of business located at 930 Newark Avenue, Postal Zone 6, in the city of Jersey City, State of New Jersey.

Respondents Samuel Mandel, Marvin Mandel, Morris Mandel and Eugene Mandel are officers of the corporate respondents. They formulate, direct and control the acts and practices of the corporate respondent including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondents.

2. Respondents are now, and for some time last past have been, engaged in the offering for sale, sale and distribution of metal expansion watch bands to jobbers, chain stores and other retail stores for resale to the public. Respondents' watch bands are sold under the trade name "Topps."

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

4. Respondents import their watch bands from Japan and Hong Kong. After receipt of said watch bands they are packaged or mounted for retail sale by respondents. The packaging and mounting takes various forms depending upon the retail customer outlet. Some of the bands are mounted on individual cards and enclosed in separate cellophane envelopes. These are affixed to large counter display cards and are sold primarily to drug stores and other retailers who utilize this method of offering merchandise to the public. Other bands are packaged in individual containers for sale primarily through chain stores. Some are attached to cards and enclosed in boxes having a clear plastic "window"; others are enclosed in a clear plastic tube with a card inserted; while others are mounted on cards

under a clear plastic "bubble". At no place on the packaging, container, or cards is the fact disclosed that respondents' bands are imported from Japan and Hong Kong.

5. The manner of packaging conceals the inside of the band so that the words "Japan" or "Hong Kong," as the case may be, stamped thereon cannot be seen prior to purchase except by destroying or damaging the container or packaging.

6. Stamped into the metal on a link on the inside of respondents' bands is the word "Hong Kong" or "Japan" as the case may be. These words are distinct and constitute adequate notice that the bands are imported, when the bands are removed from the packages.

7. In the absence of an adequate disclosure that a product, including expansion watch bands, is of foreign origin, a substantial segment of the public believes and understands that it is of domestic origin.

8. There are, among the members of the purchasing public, a substantial number who have a preference for products originating in the United States over products originating in foreign countries or foreign places, including expansion watch bands originating in Japan and Hong Kong. There are among the members of the purchasing public substantial numbers of potential purchasers who are not concerned with the country of origin of low-priced watch bands.

9. A substantial number of the members of the purchasing public are willing to pay higher prices for metal expansion bands of domestic origin than for expansion bands made in Japan or Hong Kong. The preference of some consumers who are potential purchasers of respondents' watch bands is a preference as to price and appearance and not as to country of origin.

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

11. The failure of respondents to disclose on the individual packages containing their watch bands, or on the packaging, or cards, that their watch bands are of foreign origin has had, and now has, the tendency and capacity to mislead a substantial segment of the purchasing public into the erroneous and mistaken belief that their watch bands are wholly of domestic manufacture and into the purchase of substantial quantities of respondents' product by reason of said erroneous and mistaken belief. As a consequence thereof, substantial trade in commerce has been, and is being, unfairly diverted to respondents from their competitors and substantial injury has thereby been, and is being, done to competition in commerce.

719-603—64——33

COMMENTS ON THE FINDINGS

The evidence has indicated considerable difference in public opinion as to the factors buyers take into consideration incident to purchase. A substantial segment of the public appears to prefer American goods over imports for patriotic reasons or because they expect better repair service or guaranties on American manufactured goods. Other substantial segments of the buying public have no preference as regards national origin. On the other hand, a substantial number have a preference as to national origin but would not make this a deciding factor alone if a foreign product had good appearance and quality plus a more favorable price than a product made in the United States. Still others, representative of a substantial segment of the public, would pay more for American products than a foreign product. This public concept indicates competition between low priced imported watch bands and higher priced domestic bands.

Each segment of the public with these varying views appears to be substantial, and it is reasonably conceivable that with economic changes and changes in world events the variability of opinion would be further revised. The importance of full disclosure of the national origin of a product is to enable a purchaser to make a choice premised upon his inclination at the time of purchase regardless of the validity of any reason he may have.

It appears without doubt that there is a very substantial segment of the public, as evidenced, who are desirous of knowing the national origin of a product before choosing to purchase even though they may consider numerous other factors before making their election as to the product they may buy. The mere fact that there is a substantial segment of the public who are disinterested in a product's national origin is inconsequential in determining the issues in this case. Of importance in resolving the issues herein is the fact there is also a substantial segment of the public that is desirous of knowing the national origin of a product as information upon which they predicate in whole, or in part, their election to purchase. It would appear therefore that injunctive relief is justified since, as evidenced, the public assumes a product to be of domestic origin if it is not identified as being of foreign origin. The Commission is not required to establish that the public without exception is desirous of knowing the national origin of the product so that if this information is withheld the practice is a deceptive one. It is sufficient that a substantial segment of the public may reasonably be deceived in the event the national origin of a product is withheld or obscured by packaging as in the instant case.

THE ISSUE OF RES JUDICATA

The respondents in their answer set forth as a defense that the issues herein have previously been adjudicated in their favor and the Commission has been foreclosed from bringing action against respondents on the same issue.

The previous action to which respondents refer was commenced by complaint dated February 23, 1951, against *Manco Watch Strap Co., Inc.*, F.T.C., Docket No. 5854. In that case documentary evidence and testimony were presented in support of and in opposition to the complaint. The hearing examiner found that the charges had been sustained by the evidence and granted a cease and desist order. Respondent appealed the decision of the hearing examiner to the Commission and by order dated December 21, 1953, the Commission dismissed the complaint stating its reason as follows: "The evidence in the record indicates that there are no domestic watch or wrist bands which were sold at prices comparable to the prices at which respondent's imported bands are sold. There is no evidence in the record showing a preference of a substantial number of members of the purchasing public for the higher-priced domestic bands over respondent's lower priced imported bands."

The first *Manco* complaint which was issued February 23, 1951, charged that respondent's failure to disclose the fact that its watch bands were of foreign origin had the tendency and capacity to mislead middlemen and the purchasing public into the mistaken belief that its watch bands were of domestic manufacture and into the purchase of a substantial quantity of said bands because of such mistaken belief.

The same substantive issue is involved in the present Manco complaint which was issued by the Commission on February 24, 1960, except as to the period of time contemplated by the charges.

Res judicata is a judicial doctrine which holds that where a reasonable opportunity is given the parties to litigate a claim before a competent court which decides the controversy, the interest of the State and of the parties requires that the validity of the claim and any issue actually tried in the action shall not be relitigated by the parties. See *Restatement of the Law of Judgments*, Secs. 41–70 (American Law Institute).

It is clear when we consider the respective functions of courts and of administrative agencies, that the doctrine of *res judicata* should not be applicable to decisions of administrative bodies.

Courts normally apply law to past facts which remain static whereas administrative bodies work with changing facts and shifting policies. The traditional doctrine of *res judicata* makes a judgment binding so as to shut off further inquiry regardless of mistake of fact, misunderstanding of law, inadequacy of evidence or the unjustness of the consequences. *2 Davis Adm. Law* 545.

In private law suits only the parties thereto are affected by the application of *res judicata* and the desirability of putting an end to the litigation of the issues is plain. However, when an order of a public regulatory agency such as the Federal Trade Commission is set aside and the Commission is estopped by reason of the prior adjudication in a second proceeding, the protection of the public interest, rather than the interest of the adversaries is affected. *NLRB* v. *Thompson Products*, 130 F. 2d 363, 366 (1942). It is in the interest of the public that the alleged unlawful practices be stopped so as to prevent injury to the public and competitors. It is the function of the Federal Trade Commission to prevent injury incident to unfair methods of competition and unfair acts and practices in commerce. The application of the principle of estoppel would prevent the full and proper exercise of that function. As stated in *NLRB v. T. W. Phillips Gas & Oil Co.*, 141 F. 2d 304 (1944): "The doctrine of estoppel may not be invoked against the Board as long as it is acting in its administrative or judicial capacity. This is a fundamental conception of our law." In *NLRB* v. *Baltimore Transit Co.*, (1944) 140 F. 2d 51, 55, it was opinioned: "An administrative agency, charged with the protection of the public interest is certainly not precluded from taking appropriate action to that end because of mistaken action in the past . . . . Nor can the principle of equitable estoppel be applied to deprive the public of the protection of a statute because of mistaken action on the part of public officials."

The courts have often shown this reluctance to hold that the public interest is estopped by *res judicata*. For example, in *Panhandle Eastern Pipeline Co.* v. *FCC*, 236 F. 2d 289, 292, (1956) the court said "the doctrine of res judicata can have no application to a proceeding . . . which involves a determination of the present or future public convenience or necessity with respect to the continuance or abandonment of natural gas service." And in *People ex rel. Watchtower Bible & Tract Soc., Inc.* v. *Haring*, 146 N.Y.S. 2d 151 (1955), involving a tax assessment the court said: "It would clearly be against the public interest to foreclose the relitigation of an issue . . . by the public authorities in subsequent years merely because it had once been adversely decided with respect to a particular year." Furthermore, "an administrative agency is always required to reach the conclusion which the evidence justifies, regardless of prior determination between the same or different parties. Hence, an administrative agency is not estopped to determine an administrative question in a particular way, by a previous decision of the identical question to the contrary." Von Baur, Administrative Law, Vol. 1, page 162. It was also held in *Grandview Dairy Farm* v. *Jones*, 157 F. 2d 5, that *res judicata* does not apply to decisions of administrative agencies and boards. In *Wallace Corp.* v. *NLRB*, 141 F. 2d 87, 91, the court enunciates the concept that the principle of *res judicata* had no application to administrative orders and did not bar further action by the Board in respect to such orders.

Even assuming that the instant proceeding constitutes a relitigation of the same issue and that the doctrine of *res judicata* is applicable to Commission decisions the prior *Manco* decision is not a bar to this proceeding. In the case of the *Federal Trade Commission* v. *Raladam*, 316 U.S. 199 (1942), the Commission issued its complaint in 1929 and after hearings found that the company had employed unfair methods of competition in selling "Marmola", a fat reducing substance. An order to cease and desist was thereupon issued by the Commission. On appeal the Circuit Court of Appeals set aside the order and its judgment was affirmed by the Supreme Court on the ground that injury to competition had not been proved. In 1935, the Commission issued a new complaint on identical grounds and evidence of injury to competitors was established. Upon appeal to the Circuit Court respondent contended that the determination in the first proceeding that injury to competitors was not shown was *res judicata* on that point. The Supreme Court held that the Commission was not barred from instituting a new complaint stating: ". . . the reasons for refusing to enforce the Commission orders are grounded upon the inadequacy of the findings and proof as revealed in the particular record then before this Court. Hence, these reasons are not controlling in this case, arising as it does, out of different proceedings and presenting different facts and a different record for our consideration." The *Raladam* decision clearly implies that a proceeding by the Federal Trade Commission against respondents for the same practices is not barred if they relate to different periods of time.

The first *Manco* case was concerned with the acts and practices of the respondent prior to February 23, 1951. The instant proceeding relates to respondents' practices from approximately January 1, 1957, through February 24, 1960. On the reasoning of the *Raladam* decision, *supra*, the dismissal of the complaint by the Commission in the first proceeding would not preclude a valid filing of the present complaint even though it deals with a similar substantive issue. Since the Federal Trade Commission is concerned with continuing practices it is reasonably conceivable that practices coming within the Commission's jurisdiction which are considered legal during one period of time may, because of revised economic conditions or public experience be considered illegal at a subsequent period.

CONCLUSIONS

1. The aforesaid acts and practices of respondents to the extent indicated by the findings were, and are, all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair and deceptive acts and practices and unfair methods of competition, in commerce, within the intent and meaning of the Federal Trade Commission Act.

2. The respondents' defense of *res judicata* is without merit for the reasons hereinbefore set forth.

3. Accordingly, since this proceeding is in the public interest the following order shall issue:

It is ordered, That respondents, Manco Watch Strap Co., Inc., Topps Products Corp., corporations, and their officers, and respondents Samuel Mandel, Marvin Mandel, Morris Mandel, and Eugene Mandel, individually and as officers of said corporations, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of imported merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Offering for sale, selling or distributing said products in packages or containers in such a manner that the name of the country or place of origin on the product is concealed without clearly disclosing the country or place of origin of the product in a conspicuous place on the package or container.

2. Offering for sale, selling or distributing said products mounted or affixed to cards in such manner as to conceal the name of the country or place of origin without disclosing on such cards the name of the country or place of origin.

It is further ordered, That the allegations of the complaint, insofar as they charge as a deceptive practice that the respondents' unpackaged watch bands fail to have adequately identified thereon the country or place of origin, are herein and hereby dismissed for lack of evidence.

OPINION OF THE COMMISSION

By ELMAN, *Commissioner:*

This is an appeal from the intitial decision of the hearing examiner, ordering respondents to cease and desist from distributing imported merchandise packaged in such a way as to conceal from prospective purchasers the name of the country or place of origin of the merchandise, and requiring clear disclosure of such information in a conspicuous place on the package or container.

The specific products involved are metal expansion watch bands imported in bulk from Japan and Hong Kong. After arriving in the United States, the bands are packaged by respondents and sold under the trade name "Topps." The packaging takes various forms. Some bands are attached to cards and enclosed in boxes having a plastic "window"; others are enclosed in a plastic tube with a card inserted; while others are mounted on cards under a plastic "bubble".

The examiner found that, whatever the form of packaging used by respondents, at no place on the packages, containers, or cards is the fact disclosed that the watch bands were imported. To be sure, stamped into the metal on a link on the inner side of each band are the words "Hong Kong" or "Japan." As the examiner found, however, "The manner of packaging conceals the inside of the band so that the words 'Japan' or 'Hong Kong,' as the case may be, stamped thereon cannot be seen prior to purchase except by destroying or damaging the container or packaging."

The examiner also found that a substantial segment of the public prefers and is even willing to pay more for domestically-made metal expansion bands as compared with similar bands made in Japan or Hong Kong. Respondents' failure to disclose the foreign origin of their bands, in a clear manner and in a conspicuous place on the outside of the packages, containers or cards, has the tendency and capacity—the examiner found—"to mislead a substantial segment of the purchasing public into the erroneous and mistaken belief that their watch bands are wholly of domestic manufacture and into the purchase of substantial quantities of respondents' product by reason of said erroneous and mistaken belief. As a consequence thereof, substantial trade in commerce has been, and is being, unfairly diverted to respondents from their competitors and substantial injury has thereby been, and is being, done to competition in commerce."

Respondents' appeal embraces two main arguments. First, that the issues here are *res judicata*, having already been decided by the Commission in respondents' favor in a prior proceeding, thus necessitating dismissal of this case. Second, that factual support for the order is lacking.

I

Respondents' *res judicata* argument is based on the disposition made in *Manco Watch Strap Co., Inc.*, 50 F.T.C. 553. There the Commission on December 21, 1953, dismissed a prior complaint containing substantially similar allegations against respondents, on the ground that the evidence in the record indicated that no domestic watch bands were sold at prices comparable to those of the imported bands, and that there was no evidence in the record of a substantial consumer preference for higher-priced domestic bands over respondents' lower-priced imported bands.

The principle of *res judicata*, properly applied, does not require dismissal of the present complaint. We are dealing here with new and different issues of fact and law. The complaint in the first *Manco* case involved acts and practices occurring prior to February 23, 1951; the present complaint covers the period from approximately January 1, 1957, to February 24, 1960. A failure of proof in the first proceeding does not establish a similar failure of proof in every subsequent proceeding based on like allegations.

The point is settled by the Supreme Court's decision in *Federal Trade Commission* v. *Raladam Co.*, 316 U.S. 149, which followed a prior decision between the same parties, 283 U.S. 643, denying enforcement of a Commission order because of "the inadequacy of the findings and proof, as revealed in the particular record. . . ." 316 U.S., at 150–151. The Court stated that "these reasons are not controlling in this case, arising, as it does, out of different proceedings and presenting different facts and a different record for our consideration." *Id.*, at 151. Raladam's plea of *res judicata* was rejected as "without merit." *Id.*, at 152.

Like the second *Raladam* case, this is a new proceeding presenting a new record and new facts. The Commission's authority to take such action as may be proper on the record here is not impaired by the failure of proof found in the earlier record. Were it otherwise, factual deficiencies in a prior proceeding, for whatever reason, would forever bar any later complaint based on new or different facts. Congress deliberately rejected any such limitation on the Commission's power. Section 5(b) of the Federal Trade Commission Act contains a comprehensive grant of authority to the Commission to accommodate its orders and proceedings to changed conditions of law, fact, or policy. It provides that the Commission may—except when a proceeding is subject to the exclusive jurisdiction of a reviewing court—"at any time, after notice and opportunity for hearing, reopen and alter, modify, or set aside, in whole or in part, any report or order made or issued by it under this section, whenever in the opinion of the Commission conditions of fact or of law have so changed as to require such action or if the public interest shall so require. . . ."

The substance and effect of Section 5(b) is, therefore, that the doctrine of finality ordinarily applicable to judicial proceedings is not applicable to Commission proceedings. No order, whether it dismisses or sustains allegations made in the complaint, can prejudice the statutory right and duty of the Commission to initiate any future action, whether by issuing a new complaint or by reopening and altering, modifying, or vacating an order based on an old complaint, where it finds such action to be required by changes of fact or law or by the public interest.[1]

Beyond reliance on the doctrine of *res judicata* in its technical aspects, respondents may be suggesting that it constitutes oppressive harassment for the Commission to attack their sales practices again, having dismissed a similar charge against them seven years earlier. The contention rests on a supposition we must reject, viz., that in the exercise of its jurisdiction to prevent unfair trade practices, the Commission would itself act unfairly. The Commission is not, nor would it seek to be, free from effective restraints, both internal and external, which guard against irresponsible or arbitrary abuse of its powers.

II

We turn now to respondents' arguments as to the factual inadequacy of the initial decision.

We proceed initially to an examination of the record, to determine whether it substantiates the examiner's finding that a significant segment of the buying public has a preference for American-made bands, and also assumes or believes that watch bands sold in packages unmarked as to country of origin are made in the United States. Such a finding would amply support the conclusion that sale of imported watch bands in unmarked packages violates Section 5 of the Federal Trade Commission Act. 38 Stat. 719, as amended, 15 U.S.C. 45. See *Segal* v. *Federal Trade Commission*, 142 F. 2d 255 (C.A. 2).

The first contention is that disclosure of foreign origin on the watch bands themselves constitutes adequate notice to all potential purchasers who may be interested in this information, since they would take the

[1] See *American Chain and Cable Co.* v. *Federal Trade Commission*, 142 F. 2d 909, 911–912 (C.A. 4); *Rural Gas Service, Inc.*, Docket No. 7065, October 24, 1961, slip opinion, p. 6.

trouble to inspect the bands for origin markings before buying. The short answer is that the record shows that, while some would exercise the circumspection respondents claim, others would not. Further, there is a wealth of testimony here that, in the absence of any disclosure of the country of origin on the packages containing the watch bands, many purchasers will—if, indeed, they think about it at all—assume that the bands were manufactured in the United States. This being so, even a purchaser concerned over the national origin of the product is unlikely to open the package in search of origin markings if the package itself bears none.

Next, it is suggested that among the potential purchasers of respondents' watch bands, no preference exists for such bands originating in the United States rather than in Japan or Hong Kong. Once again, the answer must be that the evidence is to the contrary. Several witnesses testified that they would choose an American-made band over a Japanese band if they were offered at the same price. Others went much further. One witness testified that he would prefer a $4.00 American band to a $2.00 Japanese band, and at one point he said that he would not buy a Japanese band at any price. Another stated that he would be willing to pay 50% more for an American band than for an import. Still another testified that he would pay $2.00 to $3.00 more for a domestically produced band than for one made in the Orient.

In sum, respondents' argument as to origin preference suffers from the same fatal defect as their argument concerning adequacy of disclosure. So long as it appears that a substantial segment of the purchasing public prefers watch bands made in the United States, it is of no avail to show that another substantial segment does, or may, not. That would suffice only if proof of a uniform preference among all buyers were necessary. Protection of the public interest obviously need not wait upon a demonstration that every segment of the public is injured by the challenged practice.

Respondents next contend that their imported watch bands are not in competition with bands of domestic manufacture. The record requires rejection of this contention. Further, even if it were true, it would not alter the result.

Respondents draw principally upon testimony of suppliers of domestically made watch bands that they do not consider respondents' bands to be in competition with their own, because respondents' bands customarily retail for $0.50 to $1.00 while theirs are considerably more expensive. In the first place, this estimate misconceives the breadth of respondents' price range. The record shows that some of their bands sold for $1.50, and one store normally sold a line of respondents' bands at $1.98. Second, American-made watch bands are by no means universally priced far above respondents'. One witness testified that some American-made bands could retail for $1.00 or less. Others stated that they themselves distributed bands that sold at $1.95 retail. Finally, there was testimony—directly opposed to that on which respondents rely—that competition against inexpensive American-made watch bands by their imported Japanese counterparts has been real and damaging.

The situation, then, is that there are American-made watch bands priced at or near the price level of respondents' imports. Moreover, the record more than justifies the inference that consumer preference for the American product widens considerably the price range within which domestic and imported bands compete. We conclude that respondents' imported watch bands do in fact compete with American-made bands selling at a higher price.

In any event, proof of competition is not essential to proof of violation of the Act. Unfair or deceptive acts and practices in commerce are forbidden in the interest of protecting the public whether they injure competitors or not. Where there exists a substantial danger that "purchasers are deceived into purchasing an article which they do not wish or intend to buy, and which they might or might not buy if correctly informed as to its origin," *Federal Trade Commission* v. *Royal Milling Co.*, 288 U.S. 212, 217, "the purchasing public is entitled to be protected against that species of deception. . . ." *Ibid.*

These conclusions are supported by the Commission's recent decision in *Oxwall Tool Company, Ltd.*, Docket No. 7491, December 26, 1961. In that proceeding, respondents argued that there was no showing of competition between their imported tools and tools produced in this country, and that, under the first Manco case, this was an essential element of proof. Rejecting this contention, the Commission stated:

> [I]t should be pointed out that the fact that an imported article has no domestic competitors in its price class does not force the conclusion that consumers who purchase such an imported article unmarked as to foreign origin have no preference for domestic goods. To the extent that the holding in the *Manco* matter may be inconsistent with this statement, the *Manco* opinion does not reflect the present views of the Commission. *Oxwall Tool*, slip opinion, at p. 6.

For the reasons set forth above, respondents' appeal must be denied. The hearing examiner's findings adverse to respondents are amply justified by the detailed factual showing made in the record. Accordingly, the order contained in the initial decision, which we have carefully examined and find to be appropriate to prohibit the illegal practices found, will be adopted.[2]

III

In the exercise of our responsibility to furnish guidance to hearing examiners and counsel, we think it desirable and appropriate to make the following additional observations concerning the requirements of proof in cases of this type arising in the future.[3]

The requirement of clear and conspicuous disclosure of a product's national origin is only one example of the basic remedy, frequently used by the Commission in its orders, of compelling affirmative disclosures to protect the public from deception. Representations can be contrived to mislead not only by what they contain but by what they omit. In order to prevent this type of deception, the Commission is often obliged in its orders to go beyond conventional negative prohibitions and to require disclosure of material facts previously not disclosed to prospective purchasers. If affirmative disclosure is the effective antidote to deception, it is a remedy the Commission may—even must—prescribe.[4]

---

[2] Counsel for respondents contended, on oral argument, that a requirement of disclosure of the country of origin on the container of each watch band would be burdensome, since it would necessitate sorting and separating bands made in Hong Kong and Japan. But, as counsel admitted, this argument of hardship has no factual foundation in the record. In addition, the evidence shows that consumer preferences in this area are specific rather than undifferentiated. It is apparently important to many buyers to know exactly where their watch bands were made.

[3] It is, of course, common practice for an appellate court having supervisory responsibility over the conduct of trials in lower courts to formulate principles relating to the nature of proof. *E.g., United States* v. *Pink*, 315 U.S. 203 (judicial notice); *Commercial Molasses Corp.* v. *New York Tank Barge Corp.*, 314 U.S. 104 (burden of proof); *McNabb* v. *United States*, 318 U.S. 332 (illegally obtained admissions); *Elkins* v. *United States*, 364 U.S. 206 (admissibility of evidence unlawfully seized). Indeed, an appellate court, in writing opinions, almost inevitably lays down such rules when it states criteria of relevance. An administrative agency certainly owes it to its hearing examiners and counsel to furnish similar guidance. See *Securities & Exchange Commission* v. *Chenery Corp.*, 332 U.S. 194. 203, and other cases cited *infra*, footnote 20.

[4] See, *e.g.*, *New American Library of World Literature, Inc.* v. *Federal Trade Commission*, 213 F. 2d 143 (C.A. 2); *Bantam Books, Inc.* v. *Federal Trade Commission*, 275 F. 2d 680 (C.A. 2), *cert. denied*, 364 U.S. 819 (apparently new books must bear disclosure they are abridged or retitled); *Aronberg* v. *Federal Trade Commission*, 132 F. 2d 165 (C.A. 7); *American Medicinal Products, Inc.* v. *Federal Trade Commission*, 136 F. 2d 426 (C.A. 9) (medicinal preparations must state they are harmful if administered improperly); *Keele Hair & Scalp Specialists, Inc.* v. *Federal Trade Commission*, 275 F. 2d 18 (C.A. 5); *Ward Laboratories, Inc.* v. *Federal Trade Commission*, 276 F. 2d 952 (C.A. 2), *cert. denied*, 364 U.S. 827 ("baldness cures" must reveal most baldness is at present incurable); *Hasklite Manufacturing Corp.* v. *Federal Trade Commission*, 127 F. 2d 765 (C.A. 7), (apparently all-wood trays must be labeled to disclose that their surfaces are paper); *Mohawk Refining Corp.* v. *Federal Trade Commission*, 263 F. 2d 818 (C.A. 3), *cert. denied*, 361 U.S. 814 (re-refined motor oil must be so specified).

The reversal in *Alberty* v. *Federal Trade Commission*, 182 F. 2d 36 (C.A.D.C.), *cert. denied*, 340 U.S. 818, rested solely on the lack of findings deemed necessary, on the particular record, to justify the disclosure order.

These considerations underlie the foreign-origin line of decisions. As the court explained in *Segal* v. *Federal Trade Commission*, 142 F. 2d 255 (C.A. 2), "If it is true that a substantial number of buyers suppose that unmarked goods are home made goods, and have a preference for such goods, the sale of unmarked foreign goods is a misrepresentation, which the Commission was authorized to stop."[5] Thus, if a foreign-made product is shown not to be clearly so marked, only two additional findings—(1) a belief or assumption by a substantial segment of the buying public that the product, not being clearly marked otherwise, was made in America; and (2) a preference by such buyers for the American-made product—are necessary to justify an order for affirmative disclosure of the product's foreign origin.

Both these findings must be based on general factual inquiry into consumer buying habits and attitudes in relation to the product. The outcome of such general inquiry should be the same, regardless of the particular respondents or brands involved. Thus, to determine whether it is indeed true that a substantial number of American buyers suppose that unmarked watch bands are made in this country, and have a preference for such domestically-made bands, we look to consumer habits and attitudes towards watch bands in general. The facts in that regard obviously do not vary, depending on whether Seller X rather than Y happens to be the respondent.

If this were the first foreign-origin product case to come before the Commission, the conclusion that a substantial segment of the public assumes that unmarked watch bands are American-made and prefers such domestically-made bands would have to be based on specific evidence. But this is not a case of first impression; rather, it follows scores, if not hundreds, of others involving fundamentally the same general factual issues. This is an area of administration that has evolved to a point at which the accumulated experience and knowledge of the Commission may properly be invoked in exercising its fact-finding function. Over the course of years the Commission has been called upon to determine the adequacy of foreign origin markings on such widely varying products as gloves,[6] flashlight bulbs,[7] sunglass lenses,[8] imitation pearls,[9] mechanical pencils,[10] sewing ma-

---

[5] Accord, *L. Heller & Son, Inc.* v. *Federal Trade Commission*, 191 F. 2d 954 (C.A. 7); *American Tack Co.* v. *Federal Trade Commission*, 211 F. 2d 239 (C.A. 2).

[6] *American Merchandise Co.*, 28 F.T.C. 1465.

[7] *Vulcan Lamp Works, Inc.*, 32 F.T.C. 7.

[8] *The Bolta Company*, 44 F.T.C. 17.

[9] *L. Heller & Son, Inc.*, 47 F.T.C. 34, and related cases following.

[10] *Atomic Products, Inc.*, 48 F.T.C. 289.

chine parts,[11] thumbtacks,[12] cutlery handles,[13] stainless steel tableware,[14] hand tools,[15] and watch bands.[16] This list is suggestive, not exhaustive.

Cases of this nature have produced many volumes of factual evidence, of the sort described in Part II of this opinion, showing that, generally speaking, many consumers prefer American goods and believe they are getting American goods unless informed to the contrary. For people who have such a general preference for American goods, what matters is whether the product was made in America, not whether it happens to be a pencil or a tool or a watch band. Of course, we neither approve nor disapprove the state of mind reflected by a consumer preference for American goods; we merely recognize that it exists. The grounds for such preference may vary. But whether it springs from patriotism or prejudice, reason or unreason, is not our concern. What is our concern is the existence of the preference as a material fact for a substantial number of buyers, who are entitled under the law to protection against deception. In view of the frequency and consistency with which proof of the existence of such preference has been shown in countless prior proceedings, the Commission may take official notice of that fact, and dispense with the need to re-prove it in each new proceeding that is brought.

Proof of general consumer attitudes and preferences in regard to the general class of products of foreign origin or manufacture would only prove again that which the Commission has already established to be the fact from its accumulated knowledge and experience. Further, the requirement that such proof be adduced anew in each case entails, as it did here, the introduction of an abundance of consumer testimony, needlessly delaying the progress of the proceedings and taxing the resources of respondents as well as the Commission. The Supreme Court stated in *Jacob Siegel Co.* v. *Federal Trade Commission*, 327 U.S. 608, 614, that "The Commission is entitled not only to appraise the facts of the particular case and the dangers of the marketing methods employed . . . but to draw from its generalized experience." Accordingly, we may now properly generalize the facts established by the Commission in the long line of foreign-origin cases and relieve the parties in this type of case of the unnecessary

---

11 Cases involving these products are almost countless. See, *e.g.*, *State Sewing Machine Corp.*, 48 F.T.C. 941; *Royal Sewing Machine Corp.*, 49 F.T.C. 1351.

12 *American Tack Co.*, 50 F.T.C. 202; *American Merchandise Co.*, note 6, *supra*.

13 *William Adams, Inc.*, 53 F.T.C. 1164.

14 *Utica Cutlery Co.*, Docket No. 7427, April 2, 1960.

15 *Oxwall Tool Co.*, Docket No. 7491, December 26, 1961.

16 *Rene D. Lyon Co.*, 48 F.T.C. 313, 787.

burden of continuing to litigate, over and over again, the same general factual issues as to consumer attitudes and preferences.[17]

In the interest of clarity, it is worth restating that these conclusions rest not upon *a priori* theory but upon experience reflected in countless records and proceedings.[18] Following established practice, reflected in the provisions of Section 7(d) of the Administrative Procedure Act and Section 4.12(c) of the Commission's Rules of Practice, we merely "take judicial notice of our own records." *Bienville Water Supply Co.* v. *Mobile*, 186 U.S. 212, 217.[19] To do so is in no way to deprive respondents of the benefits and protections of an adversary proceeding.[20] General presumptions of fact, officially noticed, may of course be rebutted by facts in a particular case.[21] Just as the generalization

---

[17] The Commission's authority to draw appropriate inferences in making its findings is well established. For example, in *Federal Trade Commission* v. *Raladam*, 316 U.S. 149, 152, the Court stated that, upon a determination that a commercial deception has been practiced in a field of active competition, the Commission is authorized to infer that there has been a diversion of trade.

[18] For authoritative recognition of the desirability of allowing agencies to exercise their powers in varying ways, depending on the needs of the situation, see *Securities & Exchange Commission* v. *Chenery Corp.*, 332 U.S. 194, 201–203, which concludes that "the choice made between proceeding by general rule or by individual, *ad hoc* litigation is one that lies primarily in the informed discretion of the administrative agency." At p. 203. In *Chenery*, the Court sustained the agency's authority to formulate new general standards of conduct in an adjudicative proceeding, rather than through exercise of its rule-making powers. *A fortiori*, there can be no question—as Section 7(d) of the Administrative Procedure Act explicitly recognizes—of an agency's right to take official notice of material facts, though not appearing in evidence of record, within its expert knowledge derived from experience.

To insist that rules of proof in agency litigation should not be enunciated prospectively in agency opinions or decisions would be to stultify the administrative process, circumscribing it far more narrowly than the judicial. Judge-made rules, particularly relating to evidence, are as old as the common law. The suggestion that an agency must act "like a court," placing sole and undeviating reliance on a case-by-case process of "inclusion and exclusion," never deciding more than the circumstances require or undertaking to generalize from the particular, reflects more than an erroneously narrow view of the judicial process. If accepted, it would imply abdication rather than fulfillment of an agency's paramount responsibility to devise and administer a viable scheme for giving practical and concrete effect to the broad provisions of law entrusted to its administration. See Friendly, "A Look at the Federal Administrative Agencies," 60 Columbia L. Rev. 429, 436–37 (1960).

[19] To the same effect, see, *e.g.*, *National Fire Insurance Co. of Hartford* v. *Thompson*, 281 U.S. 331, 336; *United States* v. *Pink*, 315 U.S. 203, 216.

[20] The notion that an administrative agency may not rely on expert knowledge derived from experience has long been rejected where, as is true here, the issue involved is the correct appraisal of the "results which may flow from" facts already in evidence. *Republic Aviation Corp.* v. *National Labor Relations Board*, 324 U.S. 793, 800. A major purpose in creating administrative agencies was "to have decisions based upon evidential facts under the particular statute made by experienced officials with an adequate appreciation of the complexities of the subject which is entrusted to their administration." *Ibid. Republic Aviation* explicitly sustained reliance on rebuttable presumptions of fact based on agency experience. See pp. 804–805.

See also *Market Street Railway Co.* v. *Railroad Commission of California*, 324 U.S. 548, 559–561, which upholds the right of an administrative agency to rely on its own experience and expert judgment in drawing predictive inferences.

[21] See Administrative Procedure Act, § 7(d), 5 U.S.C. 1006(d), 60 Stat. 241: 'Where any agency decision rests on official notice of a material fact not appearing in the evidence in the record, any party shall on timely request be afforded an opportunity to show the

of fact we have stated is drawn from experience, so too must it be qualified by experience. It is not an absolute or dogma, expressing revealed truth. The Commission is well aware, for example, that a man who prefers an American-made watch band or hand tool may not prefer American cigars, perfume, caviar, or scotch. Indeed, we have frequently acted on the premise, again drawn from experience and observation, that some imported products are far more highly prized by the vast majority of Americans than their counterparts made in the United States. Where that is the case, a false implication of foreign origin is an actionable deception.[22]

But we are not barred from taking official notice of a general fact merely because it is not a universal fact. By recognizing, as we do, that there will be exceptions to the general fact, we do not impair the essential validity or propriety of utilizing the doctrine of official notice. In cases where the foreign product involved and the circumstances of its sale are such that the Commission may not properly take official notice of a substantial consumer preference for its American counterpart, the Commission will not do so. Where failure to disclose the product's foreign origin is plainly not deceptive, the Commission will have no cause to issue a complaint.[23] However, in a case involving neither an exceptional product nor exceptional circumstances, where the Commission's complaint is predicated on the existence of a general consumer preference for American-made goods of which official notice is taken, the burden of showing that the particular case is exceptional and not within the general rule will rest on the respondent.[24] Specifically, once it is shown in such a case that the

---

contrary." Federal Trade Commission Rules of Practice, § 4.12(c): "When any decision of a hearing examiner or of the Commission rests, in whole or in part, upon the taking of official notice of a material fact not appearing in evidence of record, opportunity to disprove such noticed fact shall be granted any party making timely motion therefor."

[22] See, *e.g., H. N. Heusner & Son* v. *Federal Trade Commission,* 106 F. 2d 596 (C.A. 3), and *El Moro Cigar Co.* v. *Federal Trade Commission,* 107 F. 2d 429 (C.A. 4) ("Havana" cigars); *Fioret Sales Co.* v. *Federal Trade Commission,* 100 F. 2d 358 (C.A. 2), and *Harsam Distributors, Inc.* v. *Federal Trade Commission,* 263 F. 2d 396 (C.A. 2) ("French" perfume); *Federal Trade Commission* v. *Bradley,* 31 F. 2d 569 (C.A. 2) ("English" soap); *E. Griffith Hughes, Inc.* v. *Federal Trade Commission,* 77 F. 2d 886 (C.A. 2), cert. denied, 296 U.S. 617 ("English" bath salts); *Edward P. Paul & Co.* v. *Federal Trade Commission,* 169 F. 2d 294 (C.A.D.C.) ("English" and "French" porcelain products).

[23] An obvious example would be a well-known brand of French perfume, where a statement on the package "Made in Paris" would help rather than hinder its sales appeal, and the omission of such statement could not be materially deceptive since no substantial segment of the buying public would be misled or prejudiced thereby.

[24] In such a case, in order that the respondent may have fair opportunity to disprove the noticed fact, in accordance with Section 7(d) of the Administrative Procedure Act and Section 4.12(c) of the Commission's Rules of Practice (quoted *supra,* footnote 21), the Commission will state in the complaint that it has taken official notice of the general consumer preference for American-made products. In addition, it would be a desirable practice, as has already been done in some instances, for the examiner to incorporate the taking of such official notice in his pre-hearing order. See *Lifetime Cutlery Corp.,* Docket.

product's foreign origin has not been clearly disclosed to prospective purchasers, the burden will shift to the respondent to come forward with evidence that in the particular circumstances no substantial segment of the buying public believes or assumes that his unmarked foreign-made product is of domestic origin or is prejudiced by the failure to disclose its foreign origin.[25]

Commissioners Anderson and Kern dissent in part.

OPINION, DISSENTING IN PART

By KERN, *Commissioner:*

The majority opinion correctly states respondents' two main arguments on appeal, namely, (1) that the issues here are *res judicata* having already been decided by the Commission in respondents' favor in a prior proceeding, and (2) that factual support for the order is lacking. Part I of the Commission's opinion rejects respondents' contention of *res judicata.* With this conclusion I concur. Part II of the Commission's opinion rejects respondents' contention as to the factual inadequacy of the initial decision. It deals with and disposes of the contention of respondents that there is no domestic preference for American-made watch bands—and indeed the record is clear on this issue. With this conclusion I likewise concur.

However, the majority was not content to dispose of the only issues raised by the appeal and to affirm the hearing examiner's decision as fully supported by the record. In Part III of its opinion, perhaps the longest sustained example of dicta to come to my attention, it seeks to demonstrate that preference of the buying public for articles of domestic manufacture is properly the subject of official notice, which should be utilized in future cases. While dicta laying down techniques for use in future cases to shorten trial records may perform a useful function, yet a generalization founded upon dicta is at best of dubious value.[1]

No. 7292, October 30, 1959; hearing examiner's notice of intention to take official notice, *Hilton Watch Co.,* Docket No. 8402, January 19, 1962; hearing examiner's denial of motion for clarification, *Savoy Watch Co., Inc.,* Docket No. 8080, CCH Trade Cases, Par. 15,677, January 22, 1962.

[25] One further caveat should be added. We deal here only with the question of origin markings on the products themselves and on their packaging. Advertising matter presents another question. Both the burden of requiring disclosures of foreign origin in all advertisements, and the extent of protection of the public to be derived from such a requirement, assuming adequate disclosure is made on the package and product, are significantly different.

[1] Cardozo, "The Nature of the Judicial Process", pp. 29–30: "Cases do not unfold their principles for the asking. They yield up their kernel slowly and painfully. The instance cannot lead to a generalization till we know it as it is. That in itself is no easy task. For the thing adjudged comes to us oftentimes swathed in obscuring dicta, which must be stripped off and cast aside. Judges differ greatly in their reverence for the illustrations

719-603—64——34

In defense of the majority's action in going beyond the issues before the Commission for decision, it is contended that "it is, of course, common practice for an appellate court having supervisory responsibility over the conduct of trials in lower courts to formulate principles relating to the nature of proof." However, the cases cited by the majority to support this proposition lack conviction; [2] all of these cases deal with details of proof that were directly involved in the proceeding and were before the court for consideration and disposition. Indeed, an examination of the authorities cited reveals that the issue relating to the nature of proof constituted the crux of the cases.

I would not for one moment argue that there might not arise occasions when the enunciation of rules of proof in agency cases would be appropriate. Indeed, in the cases relied upon by the majority to sustain its position, it was necessary for the court to do so as the issue was squarely before the court for determination.[2] These cases sustain my position that it would be far more appropriate to lay down a rule of proof in a case where the issue is squarely presented. Indeed, there is raised a grave question of propriety in taking a firm position on a matter as important as the methodology of proof of key issues in this and future foreign origin cases where such action is uncalled for by the facts under review. The problem was neither briefed nor argued and properly so because it was not raised by the issues on appeal. In my view any decision involving something as important as removing from Commission counsel a vital element of proof, as the majority would do, and thrusting upon future respondents the burden of overcoming presumptions based on the Commission's experience in other cases, is a serious matter which should be arrived at only after countervailing arguments have been thoroughly considered in an adversary proceeding where such issues are squarely presented. Being promulgated for future guidance, it clearly takes on the stature of a substantive rule, yet it is accomplished by the majority in utter disregard

---

and comments and side-remarks of their predecessors, to make no mention of their own. All agree that there may be dissent when the opinion is filed. Some would seem to hold that there must be none a moment thereafter. Plenary inspiration has then descended upon the work of the majority. No one, of course, avows such a belief, and yet sometimes there is an approach to it in conduct. I own that it is a good deal of a mystery to me how judges, of all persons in the world, should put their faith in dicta. A brief experience on the bench was enough to reveal to me all sorts of cracks and crevices and loopholes in my own opinions when picked up a few months after delivery and reread with due contrition. The persuasion that one's own infallibility is a myth leads by easy stages and with somewhat greater satisfaction to a refusal to ascribe infallibility to others. But dicta are not always ticketed as such, and one does not recognize them always at a glance. There is the constant need, as every law student knows, to separate the accidental and the nonessential from the essential and inherent. . . ."

[2] Footnote 3, p. 510, Comm. Opin.

of the statutory safeguards applicable to administrative rule making.[3]

The majority attempts to justify the propriety of its action by pointing out the fact that there have been many previous cases involving various foreign products in which the Commission has decided the existence of a public preference for the domestic counterpart. It argues that Commission experience has evolved to a point where the Commission may officially notice the fact of a domestic preference for a domestic product generally, However, just because public preference has been demonstrated for domestic products A, B and C, it does not follow that this demonstrates a similar preference for domestic products D, E and F and finally for domestic products generally. Indeed, in this proceeding the hearing examiner, I believe, would have excluded evidence as to a domestic preference for gloves, flashlight bulbs, sunglass lenses, imitation pearls, mechanical pencils, sewing machine parts, thumbtacks, cutlery handles, stainless steel tableware and hand tools, as irrelevant. Yet the Commission now proposes to utilize its experience with respect to these widely varied products as a valid basis for laying down a principle that domestic preference for articles of domestic manufacture generally is so notorious that official notice of the fact should be adopted as a general rule of proof.

Based upon the experience the Commission has had in connection with foreign origin cases involving such unrelated products, can the Commission now claim that its taste has become so educated, so accurate, so refined that it can now (when we are in a period where public taste is constantly changing) undertake to lay down a rule generalizing the public taste and preference for articles of domestic manufacture and to require it to be the subject of official notice? I doubt it very much.[4]

A serious question of administrative policy is involved here. Indeed, we have recently been admonished that "the Federal Trade Commission is an administrative agency, not a court. * * * Congress did not contemplate that the Commission would function, like a court, as a passive arbiter of controversies. It was not created merely to apply specific legal standards to isolated commercial acts."[5] Is it a sound technique of administrative enforcement to rigidify by administrative fiat the issue of public preference for articles of domestic manufacture,

---

[3] Administrative Procedure Act, Sec. 4, 5 U.S.C. 1003, 60 Stat. 238.

[4] "Happy is the man possessing
The superior holy blessing
Of a judgment and a taste
Accurate, refined and chaste"
Aristophanes, "The Frogs"

[5] Commissioner Elman's Dissenting Opinion in the matter of *Gimbel Bros.*, Docket 7888.

or should it not more properly be left to determination on a case by case basis? Even the majority concedes that the dogma is not absolute and points to exceptions such as cigars, perfume, caviar and Scotch. Conveniently omitted are many other articles of foreign manufacture so famed for excellence that it might be difficult to justify the presumption of a preference for any domestic counterpart. In this connection I call to mind Japanese and Chinese lacquer ware, English saddlery, Waterford glass, Persian and Turkish Oriental rugs, French, Swiss and Italian cheeses, cashmere sweaters, English and Scotch tweeds, French wines, liqueurs and champagnes, camel's hair coats, Irish and Swiss linens, Belgian lace, Shetland sweaters, Sheffield and Damascus steel cutlery, German cameras and binoculars, French porcelains, tapestries, etc. Moreover the number of small foreign compact and sports cars on the American highways today serve as another example demonstrating the dubious wisdom of the generalization now made by the majority opinion. In this jet age when public preferences are constantly changing due to the broadening experience of travel, in this age when the trade markets of the world are coming closer and closer, in this age when trade barriers are falling, in this age when perhaps a free world common market is emerging, it seems a strange anachronism that the Commission now adopts a static viewpoint on this issue—and does so in a proceeding where the issue is not even raised. Sound administrative policy suggests instead that the Commission follow the grain of history. At the very least sound administrative policy suggests that the generalization reached by the majority be tested in a case bringing the issue into clear focus.

While the majority lays down a doctrine of taking official notice with respect to the public's preference for articles of domestic manufacture generally, nevertheless it hedges on this question and concedes that the dogma is not absolute. Therefore it states, "in cases where the foreign product involved and the circumstances of its sales are such that the Commission may not properly take official notice of a substantial consumer preference for its American counterpart, the Commission will not do so." The majority evidently is laying down some kind of a hybrid or hit-or-miss form of official notice which not only demonstrates the weakness of its position, but runs counter to the whole philosophy behind the doctrine of official notice.[6]

[6] IX Wigmore on Evidence (3rd Ed.) Par. 2567: "That a matter is judicially noticed means merely that it is taken as true without the offering of evidence by the party who should ordinarily have done so. This is because the Court *assumes* that the matter is so notorious that it will not be disputed."

Par. 2571: "Scope of Principle. The scope of facts that may be noticed includes: (1) Matters which are actually so notorious to all that the production of evidence would be unnecessary;"

One other major objection to the majority view remains for final consideration. Commissioner Elman, speaking for the majority, proposes a rule of proof not bottomed on the record before us, not placed in issue on appeal, not tested at the trial level where issues of this character should certainly be best resolved—a rule of proof by which domestic preference generally for articles of domestic manufacture is officially noted for all future cases. In addition to the objections to such Commission action heretofore pointed out, I wish to note a further objection, namely, that the majority opinion in connection with what is in effect the formulation of a substantive rule, provides that the Commission will state in its complaint that it has officially noted this vital element of proof when it issues its complaint. The administrative process has had a hard career. It has been misunderstood, abused and sometimes properly criticized. But up until the moment the majority opinion issues, it could not fairly be accused of prejudging cases in advance nor could it be accused of adopting a substantive rule in disregard of statutory requirements. Yet this is what the majority opinion accomplishes. No longer can the vital factual issue of domestic preference be tried out *ab initio* with all the procedural safeguards that the use of official notice envisages.[7]

Heretofore, when a case reached the Commission for final decision, it was in a position to decide all the issues in an atmosphere of perfect impartiality. No longer can this be said. The Commission not only has indicated its own position in advance, but in doing so in the complaint deprives the hearing examiner of complete independence and impartiality. I am perfectly willing to submit on the basis of this record the question as to whose views, the majority's or my own, "would be to stultify the administrative process," and would be engaging in "abdication rather than fulfillment of an agency's paramount responsibility".[8]

Finding myself out of touch with the majority in connection with its views as expressed in Part III of its opinion, I regretfully dissent therefrom for the reasons heretofore stated.

---

[7] It would clearly be unobjectionable in the light of the Commission's experience with watch band foreign origin cases for the trial staff to request the hearing examiner in future watch band cases to take official notice of public preference for watch bands of domestic origin. Being a factual issue it should be considered by the hearing examiner and the respondent should have the opportunity to rebut it at the hearing examiner level—and certainly should have the opportunity to rebut it without having the hearing examiner influenced by statements placed in the complaint. Only in this way could respondents' rights be fully protected at the trial stage of the proceeding.

[8] Footnote 18, p. 513, Comm. Opin.

OPINION JOINING COMMISSIONER KERN IN DISSENTING IN PART

By ANDERSON, *Commissioner:*

I subscribe to the majority opinion with reference to Part One and Part Two. In connection with Part Three of the opinion, I experience some difficulty. In attempting to steer a course between Scylla and the Charybdis of the majority and the dissenting opinions with respect to the preference of the buying public for articles of domestic manufacture or the reverse, for the preference of the buying public for certain articles of foreign manufacture, I find the buoys not altogether to my liking. A balancing of course prompts me, however, to join with Commissioner Kern in his dissenting opinion.

FINDINGS OF FACT

1. The Commission adopts the hearing examiner's Findings of Fact "1" through "6," and makes the following additional findings.

2. In the absence of adequate disclosure that a metal expansion watch band is of foreign origin, a substantial segment of the purchasing public believes and understands that it is of domestic origin.

3. A substantial segment of the purchasing public prefers domestically produced metal expansion watch bands to those originating in foreign countries.

4. A substantial segment of the purchasing public is willing to pay significantly more for metal expansion watch bands of domestic origin than for such bands made abroad.

5. In the course of their business, respondents are, and at all times relevant have been, in substantial competition, in commerce, with businesses selling metal expansion watch bands of both foreign and domestic origin. Because of substantial consumer preference for American-made bands, the range of competition for respondents' imported watch bands includes domestically produced bands priced not only at or very near the price levels of respondents' bands but also significantly higher.

6. Although some purchasers of low-priced metal expansion watch bands might examine the bands themselves for a disclosure of foreign origin, a substantial number would not, in part because of the widespread belief that metal expansion watch bands are American-made unless their packages contain information to the contrary. Thus, the failure of respondents to disclose on the various types of packages containing their watch bands that the bands are of foreign origin has a tendency and capacity to mislead a substantial segment of the purchasing public into the erroneous belief that their watch bands are wholly of domestic manufacture, and into the purchase of substantial

quantities of respondents' watch bands as a result of this mistaken belief. As a consequence, substantial trade in commerce has been, and may be, unfairly diverted to respondents from their competitors, with attendant injury to competition in commerce.

7. The facts of record in this proceeding relate to the period from approximately January 1, 1957, through February 24, 1960. The practices at issue in *Manco Watch Strap Co., Inc.*, 50 F.T.C. 553, took place prior to February 23, 1951.

CONCLUSIONS

1. The Commission has jurisdiction of the respondents and of the subject matter of this proceeding.

2. The acts and practices of respondents enumerated in the Findings of Fact and discussed in the Opinion of the commission were, and are, all to the prejudice and injury of the public and of respondents' competitors, and constitute unfair and deceptive acts and practices and unfair methods of competition, in commerce, within the intent and meaning of the Federal Trade Commission Act.

3. For the reasons set forth in the opinion, respondents' defense of *res judicata* is rejected as without merit.

4. It is necessary, in the public interest, to require that respondents make clear, conspicuous, and specific affirmative disclosure of foreign origin on the packages or containers of their watch bands.

FINAL ORDER

It is ordered, That the order promulgated by the hearing examiner in this proceeding be, and it hereby is, adopted as the Final Order of the Commission.

It is further ordered, That respondents, Manco Watch Strap Co., Inc., Topps Products Corp., Samuel Mandel, Marvin Mandel, Morris Mandel, and Eugene Mandel 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.

By the Commission, Commissioners Kern and Anderson dissenting in part.

ORDER MODIFYING ORDER TO CEASE AND DESIST*

The Commission having, on May 14, 1962, issued an order reopening this proceeding and granting leave to show cause why its order to cease and desist should not be modified; and

Respondents having replied with an Affidavit in Opposition to Modification of Cease and Desist Order and in Support of Motion to

*July 26, 1962.

Postpone Effective Date of Order, asserting that modification of the order as proposed would unfairly prejudice respondents in competing with others not subject to similar prohibitions; and

The Commission having adopted Trade Practice Rules for the Metallic Watch Band Industry, effective on this date, establishing, *inter alia*, a uniform industry-wide trade practice rule concerning disclosure of foreign origin of imported watch bands on the bands themselves and on their containers; and

It appearing, therefore, that respondents will not be prejudiced by an order which is in conformity with the provisions of said trade practice rule; and

The Commission having found that modification of the order herein is required in the public interest:

It is ordered, That the order to cease and desist previously entered in this proceeding be, and it hereby is, modified in the manner set forth below:

It is ordered, That respondents, Manco Watch Strap Co., Inc., and Topps Products Corp., corporations, and their officers, and respondents Samuel Mandel, Marvin Mandel, Morris Mandel, and Eugene Mandel, individually and as officers of said corporations, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of imported merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Offering for sale, selling, or distributing any such product packaged, or mounted in a container, or on a display card, without disclosing the country or place of foreign origin of the product, or substantial part thereof, on the front or face of such packaging, container, or display card, so positioned as to clearly have application to the product so packaged or mounted, and of such degree of permanency as to remain thereon until consummation of consumer sale of the product, and of such conspicuousness as to be likely observed and read by purchasers and prospective purchasers making casual inspection of the product as so packaged or mounted.

It is further ordered, That the allegations of the complaint, insofar as they charge as a deceptive practice that the respondents' unpackaged watch bands fail to have adequately identified thereon the country or place of origin, are herein and hereby dismissed for lack of evidence;

It is further ordered, That respondents Manco Watch Strap Co., Inc., Topps Products Corp., Samuel Mandel, Marvin Mandel, Morris

Mandel, and Eugene Mandel 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.

ORDER MODIFYING ORDER TO CEASE AND DESIST*

Respondents having filed a motion pursuant to Section 5.7 of the Commission's Rules of Practice to reopen this proceeding and to modify the final order entered by the Commission on July 26, 1962, and the Commission having determined that the reopening of this matter is justified to clarify the meaning of its order and is in the public interest,

It is ordered, That this matter be, and it hereby is, reopened and the final order of the Commission is modified to read as follows:

It is ordered, That respondents, Manco Watch Strap Co., Inc., and Topps Products Corp., corporations, and their officers, and respondents Samuel Mandel, Marvin Mandel, Morris Mandel, and Eugene Mandel, individually and as officers of said corporations, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of metal expansion watch bands in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Offering for sale, selling, or distributing any such product packaged, or mounted in a container, or on a display card, without disclosing the country or place of foreign origin of the product, or substantial part thereof, on the front or face of such packaging, container, or display card, so positioned as to clearly have application to the product so packaged or mounted, and of such degree of permanency as to remain thereon until consummation of consumer sale of the product, and of such conspicuousness as to be likely observed and read by purchasers and prospective purchasers making casual inspection of the product as so packaged or mounted.

It is further ordered, That the allegations of the complaint insofar as they charge as a deceptive practice that the respondents' unpackaged watch bands fail to have adequately identified thereon the country or place of origin, are herein and hereby dismissed for lack of evidence.

*April 8, 1963.