IN THE MATTER OF

VENUS FUR CORPORATION ET AL.

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

Docket C-93. Complaint, Mar. 13, 1962—Decision, Mar. 13, 1962

Consent order requiring New York City furriers to cease violating the Fur Products Labeling Act by labeling and invoicing bleached fur products falsely to show that the fur contained therein was natural, failing to show on labels and invoices when fur was artificially colored, and furnishing false guaranties that fur products were not misbranded, falsely invoiced, or falsely advertised.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act and by virtue of the authority vested in it by said Acts, the Federal Trade Commission having reason to believe that Venus Fur Corporation, a corporation, and Leon Lutzker, Nathan Kimmel, Morris Rosenshine, and George Perlman, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Fur Products Labeling Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Venus Fur Corporation 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 307 Seventh Avenue, New York, N.Y.

Respondents Leon Lutzker, Nathan Kimmel, Morris Rosenshine, and George Perlman are president, treasurer, vice president, and secretary, respectively, of the said corporate respondent and formulate, direct and control the acts, practices and policies of the said corporate respondent. Their office and principal place of business is the same as that of the said corporate respondent.

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

have been made in whole or in part of fur which has been shipped and received in commerce as the terms "commerce", "fur" and "fur product" are defined in the Fur Products Labeling Act.

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

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

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

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

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

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

PAR. 8. The aforesaid acts and practices of respondents, as herein alleged, are in violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder and constitute unfair and deceptive acts and practices and unfair methods of competition in commerce under the Federal Trade Commission Act.

DECISION AND ORDER

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

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondents of all the jurisdictional facts set forth in the complaint 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 Venus Fur Corporation 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 307 Seventh Avenue, New York, N.Y.

Respondents Leon Lutzker, Nathan Kimmel, Morris Rosenshine, and George Perlman 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 Venus Fur Corporation, a corporation, and its officers, and Leon Lutzker, Nathan Kimmel, Morris Rosenshine, and George Perlman, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, or manufacture for introduction, into commerce, or the sale, advertising or offering for sale, in commerce, or the transportation or distribution in commerce of any fur product; or in connection with the sale, manufacture for sale, advertising, offering for sale, transportation or distribution, of any fur product which has been made in whole or in part of fur which has been shipped and received in commerce as

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

1. Misbranding fur products by:

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

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

2. Falsely or deceptively invoicing fur products by:

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

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

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

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

IN THE MATTER OF

MIDWEST FROZEN FOODS, INC., ET AL.

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

Docket C-94. Complaint, Mar. 13, 1962—Decision, Mar. 13, 1962

Consent order requiring Gary, Ind., sellers of freezers and food by means of a "freezer-food plan" to cease representing falsely, by their salesmen and otherwise, savings realized by purchasers of their plan; failing to disclose that installment contracts would be sold to others, and failing to complete contracts at the time of a sale and later filling in different terms and conditions from those agreed to.

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 Midwest Frozen

Foods, Inc., a corporation, Midwest Wholesale Freezer Foods, Inc., a corporation, and Harriet B. Pearlstein, individually and as an officer 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. Respondent Midwest Frozen Foods, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Indiana with its principal office and place of business located at 4001 West Ridge Road, Gary, Ind.

Respondent Midwest Wholesale Freezer Foods, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Indiana with its principal office and place of business located at 4001 West Ridge Road, Gary, Ind.

Respondent Harriet B. Pearlstein is an officer of said corporations. She participates in the formulation, direction and control of the policies, acts and practices of the said corporate respondents. Her address is the same as that of corporate respondents.

PAR. 2. Respondents are, and for more than one year last past have been, engaged in the offering for sale, sale and distribution of freezers and food by means of a so-called "freezer-food plan".

PAR. 3. Respondents cause the said freezer and food, when sold, to be transported from their places of business in the State of Indiana to purchasers thereof located in other states of the United States. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said freezers and food in commerce, as "commerce" is defined in the Federal Trade Commission Act. Their volume of business in such commerce is and has been substantial.

PAR. 4. In the course and conduct of their business, at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of freezers, food and freezer-food plans.

PAR. 5. In the course and conduct of their business, and for the purpose of inducing the purchase of their "freezer-food plan" in commerce, respondents have represented directly or by implication by means of statements or representations made by their salesmen and otherwise:

1. That their salesmen are qualified, by virtue of training or experience, in the field of dietary control, and to determine the food requirements of customers;

2. That the food ordered with the help of their salesmen will be sufficient to last the purchaser for four months;

3. That because purchasers of their freezer-food plan can buy their food from respondents at wholesale prices, such purchasers can purchase their food requirements and a freezer for the same or less money than they have been paying for food alone;

4. That purchasers of respondents' freezer-food plan will save enough money on the purchase of food to pay for a freezer;

5. That installment contracts for the purchase of their freezer-food plan are financed or carried by respondents and will not be sold or discounted to others;

6. That the terms and conditions of the sale are as agreed upon and as disclosed at the time of sale.

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

1. Respondents' salesmen are not qualified in the field of dietary control or to determine the food requirements of customers;

2. The food ordered with the help of respondents' salesmen, at the time of the purchase of respondents' freezer-food plan is seldom sufficient to last the purchaser for four months;

3. The prices charged for food by respondents are not always wholesale prices, nor are respondents' prices so low that purchasers of their freezer-food plan can purchase their food requirements and a freezer for the same or less money than such purchasers have been paying for food alone;

4. Purchasers of respondents' freezer-food plan do not save enough money on the purchase of food to pay for a freezer;

5. Respondents have sold or discounted purchasers' installment contracts to others despite their representations to the contrary, both specifically, and inferentially by reason of their failure to disclose that such contracts will be sold or discounted to others;

6. All of the terms and conditions of sale are not always disclosed at the time of a sale, and in many instances contracts are not completely filled in at the time of a sale and when later filled in and sent to purchasers the terms or conditions thereof are not the same as previously agreed to by the purchasers.

PAR. 7. The use by respondents of the aforesaid false, misleading and deceptive representations has had and now has the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said representations were and are true and into the purchase of substantial quantities of respondents' freezer-food plan by reason of said erroneous and mistaken belief.

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 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 the same, issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondents Midwest Frozen Foods, Inc., and Midwest Wholesale Freezer Foods, Inc., are corporations organized, existing and doing business under and by virtue of the laws of the State of Indiana, with their offices and principal places of business located at 4001 West Ridge Road, Gary, Ind.

Respondent Harriet B. Pearlstein is an officer of said corporations and her 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 Midwest Frozen Foods, Inc., a corporation, Midwest Wholesale Freezer Foods, Inc., a corporation, and their officers, and Harriet B. Pearlstein, individually and as an officer of said corporations, and respondents' agents, representatives and

employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of freezers, food or freezer-food plans, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing in any manner that salesmen or saleswomen are experts in the field of dietary control or are qualified in planning or determining the food requirements of customers or purchasers;

2. Representing that food ordered by a purchaser will be sufficient to last such purchaser any stated or specified period of time;

3. Representing that they are wholesalers of food or sell food at wholesale prices;

4. Representing that by purchasing their freezer-food plan purchasers can purchase their food requirements and a freezer for the same or less money than they have been paying for food alone;

5. Representing that purchasers of their freezer-food plan can save enough money on the purchase of food to pay for a freezer;

6. Misrepresenting in any manner the savings realized by respondents' customers;

7. Representing, by failure to disclose or otherwise, that purchasers' installment contracts are financed or carried by respondents or that they will not be sold or discounted to others, when respondents themselves do not finance or carry such contracts, or when respondents sell or discount such contracts to others;

8. Obtaining purchasers' signatures on sales contracts which contracts do not at that time contain all of the terms or conditions of sale.

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

PARIS NECKWEAR COMPANY, INC., ET AL.

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

Docket 8335. Complaint, Mar. 16, 1961—Decision, Mar. 14, 1962

Order requiring associated manufacturers in New York City to cease violating the Textile Fiber Products Identification Act by such practices as failing to label as to fiber content some 17,000 dozen handkerchiefs which they shipped from their place of business in Walnut Port, Pa., to a New York

City concern under a barter or exchange arrangement, and representing falsely on invoices that the handkerchiefs were labeled as required by the Act.

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 Paris Neckwear Company, Inc., a corporation, Paris Handkerchief Company, Inc., a corporation, and Harry Markson, Herbert Siegel and Ted Markson, individually and as officers of the said corporations, hereinafter referred to as respondents, have violated the provisions of said 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. Respondents Paris Neckwear Company, Inc., and Paris Handkerchief Company, Inc., are corporations organized, existing and doing business under and by virtue of the laws of the State of New York. Individual respondents Harry Markson, Herbert Siegel and Ted Markson are president, treasurer and secretary, respectively, of the corporate respondents. Said individual respondents cooperate in formulating, directing and controlling the acts, policies and practices of the corporate respondents including the acts and practices hereinafter referred to. All respondents have their office and principal place of business at 1220 Broadway, New York, N.Y.

PAR. 2. Subsequent to the effective date of the Textile Fiber Products Identification Act on March 3, 1960, respondents, except Paris Handkerchief Company, Inc., have been and are now engaged in the introduction, manufacture for introduction, and all respondents have been engaged in the 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 have 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 were made of other textile 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 as prescribed by the rules and regulations promulgated under such Act.

PAR. 4. The respondent Paris Handkerchief Co., Inc., has furnished false guaranties that their textile fiber products were not misbranded in violation of Section 10 of the Textile Fiber Products Identification Act.

PAR. 5. 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. 6. The acts and practices of respondents, as set forth here, were 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.

Otterbourg, Steindler, Houston & Rosen, of New York, N.Y., by *Mr. Donald L. Kreindler*, for the respondents.

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. At a hearing held on November 15, 1961, respondents' counsel moved for leave to withdraw the answer theretofore filed on behalf of respondents by their former counsel, and such leave was granted by the hearing examiner. Thereafter, respondents' counsel admitted, with certain limitations, all of the material allegations of fact in the complaint. Proposed findings and conclusions have been submitted on behalf of all parties, and the case is now before the hearing examiner for final consideration. Any proposed findings or conclusions not included herein have been rejected.

2. Respondents Paris Neckwear Company, Inc., and Paris Handkerchief Company, Inc., are New York corporations with their office and principal place of business at 1220 Broadway, New York, N.Y. Respondents Harry Markson, Herbert Siegel, and Ted Markson are

president, treasurer, and secretary, respectively, of the corporate respondents and cooperate in formulating, directing, and controlling their policies, acts, and practices.

3. Subsequent to the effective date of the Textile Fiber Products Identification Act, March 3, 1960, respondents, except Paris Handkerchief Company, Inc., have been engaged in the introduction, manufacture for introduction, and all respondents have been engaged in the 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 have 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 were made of other textile products so shipped in commerce; as the terms "commerce" and "textile fiber products" are defined in the Textile Fiber Products Identification Act.

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

5. In September and October 1960, respondents delivered to Reliable Handkerchief Co., in New York City, certain quantities of handkerchiefs, the handkerchiefs being shipped to Reliable from respondents' place of business in Walnut Port, Pa. The dates and quantities of the several shipments were as follows: September 27, 1960, 4,720 dozen; October 4, 1960, 4,960 dozen; October 11, 1960, 1,495 dozen; and a second shipment on October 11, 1960, of 5,882 dozen.

These shipments were the result of a barter or exchange arrangement between respondents and Reliable Handkerchief Co. under which each supplied quantities of handkerchiefs to the other. It appears to have been understood by the respective parties that neither would label the handkerchiefs delivered to the other, but that in each case the party receiving the handkerchiefs would affix proper labels thereto before reselling the handkerchiefs to retailers. In any event, the handkerchiefs delivered by respondents to Reliable bore no labels as to fiber content, although each shipment was accompanied by an invoice to Reliable which referred to the handkerchiefs as "Cotton Handkerchiefs".

Respondents' position is that this transaction represents an isolated, unusual instance, not in the regular course of respondents' business, which is the sale of handkerchiefs to retailers; that while the trans-

action may constitute a technical violation, it is not within the real purpose and intent of the Textile Fiber Products Identification Act.

This argument must be rejected. It must be remembered that we are dealing here with a highly technical, mandatory statute which appears to impose the strict requirement that all textile fiber products moving in interstate commerce must be properly labeled as to fiber content. The unusual circumstances here present do not, in the hearing examiner's opinion, serve to remove the case from the operation of the Act.

6. In invoices covering the shipments of handkerchiefs described in paragraph 5, respondent Paris Handkerchief Company, Inc., stated: "Continuing guarantee under the Textile Fiber Products Identification Act filed with the Federal Trade Commission." This statement constituted a representation that the handkerchiefs were labeled in accordance with the requirements of the Act. As the handkerchiefs were not in fact so labeled, the statement was untrue and in violation of Section 10 of the Act.

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 within the intent and meaning of the Federal Trade Commission Act. The proceeding is in the public interest.

ORDER

It is ordered, That the respondents, Paris Neckwear Company, Inc., a corporation, and Paris Handkerchief Company, Inc., a corporation, and their respective officers, and Harry Markson, Herbert Siegel, and Ted Markson, individually and as officers of said corporations, and respondents' representatives, agents, and employees, directly or through any corporate or other device, in connection with the introduction, manufacture for 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 in connection with selling, offering for sale, advertising, delivering, transporting, or causing to be transported, textile fiber products which have been advertised or offered for sale in commerce; and in connection with selling, offering for sale, advertising, delivering, transporting, and causing to be transported, after shipment in commerce, textile fiber products, either in their original state or which have been made of other textile fiber products shipped

in commerce; as the term "commerce", is defined in the Textile Fiber Products Identification Act, of handkerchiefs or other "textile fiber products" as such products are defined in and subject to 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.

It is further ordered, That respondent Paris Hankerchief Company, Inc., a corporation, and its officers, and its representatives, agents and employees as set forth in the preceding paragraph, do forthwith cease and desist from:

Furnishing false guaranties that textile fiber products are not misbranded under the provisions of the Textile Fiber Products Identification only 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 14th day of March 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

HANS BROS., INC., ET AL.

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

Docket 8444. Complaint, Oct. 3, 1961—Decision, Mar. 14, 1962

Order requiring New York City furriers to cease violating the Fur Products Labeling Act by failing to disclose on labels and invoices the names of animals producing the fur in certain fur products; failing to disclose on invoices the country of origin of imported furs; setting forth on invoices the name of an animal other than that which produced a fur, such as "lynx-dyed fox"; and furnishing false guaranties that certain of their fur products were not misbranded, falsely invoiced, or falsely advertised.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act, and by virtue of the authority

vested in it by said Acts, the Federal Trade Commission, having reason to believe that Hans Bros., Inc., a corporation, and Max Hans and Harry Hans, individually and as officers of said corporation, and Jack Hans, individually, 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. Hans Bros., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its office and principal place of business located at 333 Seventh Avenue, New York, N.Y.

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

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

PAR. 3. Certain of said fur products were misbranded 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 the name or names (as set forth in the Fur Products Name Guide) of the animal or animals that produced the fur.

PAR. 4. Certain of said fur products were falsely and deceptively invoiced by respondents in that they were not invoiced as required by Section 5(b)(1) of the Fur Products Labeling Act, and in the manner and form prescribed by the Rules and Regulations promulgated thereunder. Among such falsely and deceptively invoiced fur products, but not limited thereto, were invoices pertaining to such fur products which failed:

1. To disclose the name or names (as set forth in the Fur Products Name Guide) of the animal or animals that produced the fur;

2. To disclose the name of the country of origin of imported furs used in the fur products.

PAR. 5. Certain of said fur products were falsely and deceptively invoiced in that respondents set forth on invoices pertaining to fur products the name of an animal other than the name of the animal that produced the fur in violation of Section 5(b)(2) of the Fur Products Labeling Act. Among such invoices, but not limited thereto, were fur products invoiced as "lynx-dyed fox".

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

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

Mr. Robert W. Lowthian supporting the complaint.

Mr. Max Hans, *Mr. Harry Hans*, and *Mr. Jack Hans*, of New York, N.Y., *pro se*.

INITIAL DECISION BY WILLIAM K. JACKSON, HEARING EXAMINER

This proceeding was brought pursuant to the provisions of the Federal Trade Commission Act, the Fur Products Labeling Act and Rules and Regulations promulgated thereunder by the issuance of a complaint on October 3, 1961, charging the above-named corporate respondent and the individual respondents with violations of both acts by misbranding, falsely and deceptively invoicing and furnishing false guarantees of their fur products.

By amended answer filed November 28, 1961, the corporate and individual respondents admitted the truth of all the material allegations of the complaint and waived any hearings in the matter. By order dated November 30, 1961, the examiner afforded the parties an opportunity to file proposed findings of fact and conclusions of law by January 2, 1962. Counsel in support of the complaint filed proposed findings of fact and conclusions on December 12, 1961. Respondents did not avail themselves of the opportunity.

Based upon the allegations of the complaint, the amended answer admitting the material allegations of the complaint, and after giving consideration to the proposed findings and conclusions submitted by counsel in support of the complaint; the hearing examiner makes the following findings as to the facts, conclusions drawn therefrom and order.

FINDINGS OF FACT

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

2. The individual respondents Max Hans and Harry Hans are officers, and Jack Hans is office manager of the said corporate respondent and they control, formulate and direct the acts, practices and policies of the said corporate respondent. Their office and principal place of business is the same as that of the said corporate respondent.

3. 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.

4. Certain of said fur products were misbranded, in that they were not labeled as required under the provisions of Section 4(2) of the Fur Products Labeling Act and in the manner and form prescribed by the Rules and Regulations promulgated thereunder. Among such misbranded fur products were fur products with labels which failed to disclose the name or names (as set forth in the Fur Products Name Guide) of the animal or animals that produced the fur.

5. Certain of said fur products were falsely and deceptively invoiced by respondents, in that they were not invoiced as required by Section 5(b)(1) of the Fur Products Labeling Act, and in the manner and form prescribed by the Rules and Regulations promulgated thereunder. Among such falsely and deceptively invoiced fur products were invoices pertaining to such fur products which failed:

(a) To disclose the name or names (as set forth in the Fur Products Name Guide) of the animal or animals that produced the fur;

(b) To disclose the name of the country of origin of imported furs used in the fur products.

6. Certain of said fur products were falsely and deceptively invoiced in that respondents set forth on invoices pertaining to fur products the name of an animal other than the name of the animal that produced the fur in violation of Section 5(b)(2) of the Fur Products Labeling Act. Among such invoices were fur products invoiced as "lynx-dyed fox".

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

CONCLUSIONS

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

2. The complaint herein states a cause of action, and this proceeding is in the public interest.

3. The aforesaid acts and practices of the respondents in misbranding, falsely and deceptively invoicing and furnishing false guarantees of their fur products, as hereinabove found, were in violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder and constituted unfair and deceptive acts and practices in commerce, within the intent and meaning of the Federal Trade Commission Act.

ORDER

It is ordered, That Hans Bros., Inc., a corporation, and Max Hans and Harry Hans, individually and as officers of said corporation, and Jack Hans, individually and as office manager of the said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, manufacture for introduction, or the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce of fur products or in connection with the sale, manufacture for sale, advertising, offering for sale, transportation or distribution of fur products which have been made in whole or in part of fur which has been shipped and received in commerce as "commerce", "fur" and "fur products" are defined in the Fur Products Labeling Act do forthwith cease and desist from:

1. Misbranding fur products by:

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

B. Setting forth on invoices pertaining to fur products the name or names of any animal or animals other than the name of the animal producing the fur contained in the fur product as specified in the Fur Products Name Guide and as prescribed under the Rules and Regulations.

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

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 14th 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

BERGER, SAUL & GARFUNKEL FURS, INC., ET AL.

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

Docket C-95. Complaint, Mar. 14, 1962—Decision, Mar. 14, 1962

Consent order requiring manufacturing furriers in New York City to cease violating the Fur Products Labeling Act by labeling and invoicing artificially colored furs as natural; failing to show on labels and invoices when furs were bleached or dyed; and representing falsely 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 Berger, Saul & Garfunkel Furs, Inc., a corporation, and Alfred Saul, Osias Garfunkel, and Henry Berger, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Fur Products Labeling Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Berger, Saul & Garfunkel Furs, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its office and principal place of business located at 214 West 29th Street, New York, N.Y.

Respondents Alfred Saul, Osias Garfunkel and Henry Berger are president, vice president, and secretary and treasurer, respectively, 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 said corporate respondent.

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

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

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

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

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

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

PAR. 7. Respondents furnished false guaranties under Section 10(b) of the Fur Products Labeling Act with respect to certain of their fur products by falsely representing in writing that they had a continuing guaranty on file with the Federal Trade Commission when said respondents in furnishing such guaranties had reason to believe that the fur products so falsely guaranteed would be sold, transported and distributed in commerce, in violation of Rule 48(c) of the Rules and Regulations promulgated under the Fur Products Labeling Act and Section 10(b) of said Act.

PAR. 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 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 Berger, Saul & Garfunkel Furs, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 214 West 29th Street, New York, N.Y.

Respondents Alfred Saul, Osias Garfunkel and Henry Berger 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 Berger, Saul & Garfunkel Furs, Inc., a corporation, and its officers, and Alfred Saul, Osias Garfunkel, and Henry Berger, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, or manufacture for introduction, into commerce, or the sale, advertising or offering for sale, in commerce, or the transportation or distribution in commerce of any fur product; or in connection with the sale, manufacture for sale, advertising, offering for sale, transportation or distribution, of any fur product which has been made in whole or in part of fur which has been shipped and received in commerce, as "commerce", "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

1. Misbranding fur products by:

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

B. Failing to affix labels to fur products showing in words and figures plainly legible all the information required to be disclosed by

each of the subsections of Section 4(2) of the Fur Products Labeling Act.

2. Falsely or deceptively invoicing fur products by:

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

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

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

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

IN THE MATTER OF

KIMBER FARMS, INC., ET AL.

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

Docket C-96. Complaint, Mar. 14, 1962—Decision, Mar. 14, 1962

Consent order requiring the Fremont, Calif., developer of hybrid chickens known as "Kimberchiks" produced by crossing different white leghorn strains, to cease restricting its dealers or distributors as to where or to whom they might sell its poultry, fixing their prices, inducing them not to handle other such chickens, and impeding expansion of their business.

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 Kimber Farms, Inc., and Kimberchiks, Inc., sometimes hereinafter referred to as respondents, have violated the provisions of Section 5 of the Federal Trade Commission Act (15 U.S.C., Sec. 45), and it appearing to the Commission that a proceeding by it in respect thereto would be in the public interest, hereby issues its complaint, stating its charges in this respect as follows:

PARAGRAPH 1. Respondent Kimber Farms, Inc., is a corporation organized, existing and doing business under and by virtue of the

laws of the State of California with its office and principal place of business at Fremont, Calif. (P.O. Box 2008). Respondent Kimberchiks, Inc., is also a corporation organized, existing and doing business under and by virtue of the laws of the State of California with its office and principal place of business at Niles, Calif. Respondent Kimberchiks, Inc., is a wholly-owned subsidiary of respondent Kimber Farms, Inc.

PAR. 2. Respondent Kimber Farms, Inc., for a number of years has been engaged in the business of producing and selling poultry and poultry products including different cross strains or cross breeds of live chicks which are sold, advertised and distributed under the registered trademark or trade name of "Kimberchiks". Most Kimberchiks are cross strains of the white leghorn type and are bred by respondent to be raised as egg layers although a broiler or meat type bird is available. The eggs laid by such chickens are white as distinguished from brown or tinted eggs.

Kimberchiks are produced by crossing different strains or breeds of chickens and are thus hybrid birds which, though capable of reproducing, cannot reproduce themselves. Respondent Kimber Farms, Inc. has expended substantial sums of money and gone to considerable pains, and continues so to do, to develop and maintain the parent stock from which the various types of Kimberchiks are derived in an attempt to produce birds which, when mature, will approach optimum performance as white egg layers.

Prior to about 1955 all or most sales of respondent Kimber Farms' poultry products, including Kimberchiks, were made by that respondent to purchasers in the State of California. In or about 1955, however, respondent formed or caused to be formed respondent Kimberchiks, Inc. Sales, advertising and distribution of Kimberchiks are currently, and for some years past have been, effected by respondent Kimber Farms, Inc., through respondent Kimberchiks, Inc. All acts and practices hereinafter attributed to respondent Kimber Farms, Inc. include those performed or followed through or by its wholly-owned subsidiary respondent Kimberchiks, Inc., even though not specifically so alleged.

Direct sales and shipments of Kimberchiks by respondent Kimber Farms, Inc., through Kimberchiks, Inc., are and have been made mostly to purchasers in the State of California. However, respondents achieve a nationwide distribution of Kimberchiks through franchise arrangements with independent hatchery operators in more than 30 states.

Such franchise arrangements are entered into by respondents through Kimberchiks, Inc., with selected hatcheries through "Association Hatchery Agreement[s]". Pursuant to such agreements respondents sell to the hatcheries in the form of live chicks the parent stock from which Kimberchiks are produced. The hatcheries raise these parent stock chicks to maturity, breed them, and sell the Kimberchiks resulting from such breeding to poultrymen throughout the country. However, under the terms of the agreements, for each female Kimberchik so sold or held for further growth, each associate hatchery is required to remit a royalty of four cents to respondent Kimberchiks, Inc.

Respondents occupy a prominent place in their selected field and growth over the last few years has been substantial. Respondents have more than 50 associate hatcheries in more than 30 states and in addition have hatcheries in Greece, Spain, France, Canada, Chile, Peru, Venezuela and Mexico. Respondents' American franchised hatcheries, exclusive of those in California, sold more than 15,500,000 Kimberchiks during 1960 for which respondents received in excess of $650,000 in royalty payments, while the total figure for such payments from all associates both foreign and domestic exceeded $1,390,000. In 1955 respondents' income from poultry and poultry products approximated $2,507,000 while the same figure for 1960 was $4,414,000. Sales of Kimberchiks parent stock to associate hatcheries in the United States increased from about 20,000 in 1955, when the associate hatchery system was inaugurated, to more than 824,000 in 1960. During the period from January through September 1960, straight run sales of Kimberchiks reached or exceeded 10% of the total straight run of light breed chicks hatched in 13 states, exclusive of California, and in five of these states the figure exceeded 20%. The corresponding percentage for the State of California approached or exceeded 25%, while in advertising they have circulated respondents claim a sales figure of as high as 38% of the annual hatch of all light breeds in a state. During 1960 aggregate straight run sales of Kimberchiks were about 52,000,000 which approached or exceeded such sales of any other strain of chicken.

PAR. 3. Respondent Kimber Farms, Inc., in the course and conduct of its business of selling and distributing Kimberchiks through respondent Kimberchiks, Inc., (a) ships or causes to be shipped the parent stock thereof and, on occasion Kimberchiks themselves, from the state or states where such stock and Kimberchiks are produced to various states other than the state of production; (b) maintains a force of field representatives who call upon the various associate hatcheries from time to time; (c) requires periodic reports from such hatcheries as to

eggs hatched and sales of Kimberchiks made together with an accounting for payments due upon female Kimberchiks sold or held for further growth; (d) maintains a constant stream of communication between itself and many associate hatcheries in various states; (e) enters its Kimberchiks in numerous egg laying tests conducted in California and other states and ships or causes such Kimberchiks to be shipped from California to such other states where such tests are conducted; (f) advertises Kimberchiks in trade and industry journals circulated throughout the United States; and (g) sells and distributes from California to associate hatcheries in many other states various aids to be employed in the advertising, promotion and sale of Kimberchiks including brochures, booklets and catalogues for circulation among customers or potential customers therefor. Respondents are now and for a number of years have been engaged in "commerce" as that term is defined in the Federal Trade Commission Act.

PAR. 4. Respondent Kimber Farms, Inc., through respondent Kimberchiks, Inc., in the course and conduct of selling and distributing Kimberchiks is in competition in commerce with other producers and distributors of the same or similar chickens not parties hereto, including associate hatcheries, some of which are also engaged in such competition with one another and others not parties hereto, except to the extent that actual and potential competition has been hindered, lessened, restricted, restrained and eliminated by the acts and practices hereinafter alleged.

PAR. 5. The standard, typical or representative "Associate Hatchery Agreement" by which respondent Kimber Farms, Inc., through respondent Kimberchiks, Inc., franchises associated hatcheries to breed and sell Kimberchiks is a bilateral contract wherein the parties thereto agree *inter alia*, that:

(a) The hatchery will not sell Kimberchiks in the State of California and respondent Kimberchiks, Inc., will not sell Kimberchiks in the hatchery's territory.

(b) The hatchery will sell Kimberchiks only at prices, including discounts, which have been approved in writing by respondent Kimberchiks, Inc.

(c) The hatchery will not establish any branch hatchery more than 20 miles from its present location without written consent of respondent Kimberchiks, Inc.

(d) The hatchery will not actively solicit orders for Kimberchiks by such devices as salesmen and dealers in territories assigned to other associate hatcheries.

There are also incorporated in the standard or representative associate hatchery agreement provisions relating to the limitation of egg strain chicks which a hatchery may sell and the territory wherein it may actively solicit orders for Kimberchiks. The terms and conditions of these provisions of the agreement vary from hatchery to hatchery.

All or almost all of the hatcheries with which respondents have associated themselves were going concerns at the time such association commenced, and respondents have therefore allowed them a reasonable period within which to dispose of the strain or breed of chicken or chickens formerly handled, and have raised no serious objection to an associate handling and selling chickens other than light breed white egg strain types. However, most of the hatcheries now associated with respondents have agreed to sell only Kimberchiks.

The sales territory which is allocated to an associate hatchery for active solicitation varies with the section of the country involved. In some instances no specific restriction is imposed, aside from the covenant not to sell in California, or the territory assigned may encompass very substantial areas such as an entire state or states, generally with the understanding that as more hatcheries are franchised in the particular section of the country involved some division of territory may be necessary. Under other circumstances a hatchery's exclusive area for active sales solicitation may be narrowly spelled out in terms of portions of a state, states or counties, the boundaries of which may be delineated by highways and state and county lines.

PAR. 6. Respondent Kimber Farms, Inc., through respondent Kimberchiks, Inc., has for a number of years last past engaged in fixing the prices, including discount terms, at which Kimberchiks may be sold by its associate hatcheries. This is accomplished by respondents by periodically transmitting to such hatcheries lists specifying prices to be charged for Kimberchiks, and discounts available for submitting orders and payment in advance and cumulative quantity purchases within a given time.

On occasion respondent Kimberchiks, Inc., has functioned as a focal point for price fixing by associate hatcheries in particular sections of the country by urging them to submit proposed prices for Kimberchiks to it, and thereafter issuing a list of prices based in large part upon a composite of, or compromise between, the prices suggested to it by the hatcheries located in the area or areas involved. Respondent Kimberchiks, Inc., has from time-to-time urged its associate hatcheries to exchange price lists and pricing information with one another and to compromise their differences over sales territories. Respondent

Kimberchiks, Inc., has consistently preached, advised and advocated against competition, particularly price competition, among and between its associate hatcheries.

Respondent Kimber Farms, Inc., through Kimberchiks, Inc., has taken measures to enforce the provisions of associate hatchery agreements. Among the measures so taken were (a) requiring a hatchery to show cause why its franchise should not be terminated for soliciting business outside of its allocated sales territory and at less than the approved price; (b) serving written notice upon a hatchery that it and another hatchery were to make no sales whatsoever across a specified territorial line as of a certain date, and that in the event such conditions were unsatisfactory to the hatchery the letter whereby such notice was given should also serve to alert the hatchery that its contract would be cancelled not later than a date certain; (c) terminating an agreement with an associate hatchery when it became known to respondent that the former was handling and promoting or planning to handle and promote white leghorn type chickens other than Kimberchiks; and (d) refusing to allow one associate hatchery to make sales of Kimberchiks or maintain a dealer therefor in the territory assigned to another for active solicitation of orders thereof.

PAR. 7. The capacity, tendency and effect of respondents' acts and practices as hereinbefore alleged, the franchise agreements with associate hatcheries, and the steps taken by respondents to maintain and enforce the terms and conditions of such agreements, either individually or collectively, has been, is now, or may be, to substantially lessen, restrain, restrict and prevent competition, including price competition, between and among respondents and their associate hatcheries, between and among such associate hatcheries or some of them, and between and among respondents, their associate hatcheries and others not parties hereto, in the sale and distribution of Kimberchiks, other chickens or both, particularly in the following respects:

1. Respondents have eliminated competition in the sale of Kimberchiks between themselves and their associate hatcheries by agreeing with such hatcheries not to sell Kimberchiks in their allocated sales territories and exacting agreements from them that they will not so sell in California.

2. Respondents have eliminated or severely restricted competition between and among their associate hatcheries or some of them and between and among such hatcheries and other vendors of chickens, by establishing, fixing and maintaining the prices at which sales of Kimberchiks by such hatcheries may be made in various sections of the country, and such prices have been so established, fixed and main-

tained beyond the exception provided by the McGuire Amendment to Section 5(a) of the Federal Trade Commission Act.

3. Respondents have eliminated or severely restricted competition between and among their associate hatcheries, or some of them, by allocating and assigning exclusive sales territories to such hatcheries, and refusing to permit other associate hatcheries to solicit sales of Kimberchiks in such territories or maintain dealers therein.

4. Respondents as a condition to franchising their associate hatcheries, or some of them, have required that they agree to ultimately refrain from handling any light breed white egg producing chickens except Kimberchiks, which has the tendency and capacity to foreclose producers, distributors and vendors of other chickens of such breed and egg producing characteristics who are or may be in competition with respondents in the production, distribution and sale thereof, from the facilities afforded by and through such associate hatcheries which have in the aggregate a substantial capacity for the production, distribution and sale of such chickens.

5. Respondents have restricted, restrained, eliminated or impeded competition in that they have required an associate hatchery to show cause why its franchise should not be cancelled for selling Kimberchiks outside of its allocated sales territory and at less than prices approved by respondents; have delivered an ultimatum in writing to a hatchery that it was to make no sales whatsoever across pertinent territorial lines and that in the event such conditions were unsatisfactory and unacceptable said ultimatum should serve as notice of franchise cancellation no later than a date specified; and have terminated an agreement with a hatchery upon learning that the latter was promoting and handling or preparing to promote and handle white leghorn type chickens other than Kimberchiks.

PAR. 8. Each and all of respondents' acts and practices, the terms and conditions of their franchise agreements with associate hatcheries, and the steps they have taken to effect compliance with such terms and conditions, as hereinbefore alleged in paragraphs five, six and seven, constitutes an unfair act and practice or unfair method of competition in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the captain 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, Kimber Farms, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of California with its office and principal place of business at Fremont, Calif. (P.O. Box 2008).

Respondent, Kimberchiks, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of California with its office and principal place of business at Niles, 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 respondent, Kimber Farms, Inc., a corporation, and respondent Kimberchiks, Inc., a corporation, their officers, directors, representatives or employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of poultry and poultry products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Putting into effect, maintaining or enforcing any merchandising or distribution plan or policy under which contracts, agreements or understandings are entered into with dealers in or distributors of such poultry and poultry products or with dealers in or distributors of poultry and poultry products which are or may be obtained by breeding parent stock poultry sold, leased or otherwise made available by or through respondents which have the purpose or effect of:

(a) Limiting, allocating or restricting the geographical area in which, or the persons to whom, any dealer or distributor may sell or solicit sales of such poultry and poultry products; or

(b) Fixing, establishing or maintaining the prices at which such poultry and poultry products may be sold by any dealers therein or distributors thereof; or

(c) Requiring or inducing, or attempting so to do, any dealer or distributor of such poultry and poultry products to refrain from selling or soliciting sales of such poultry and poultry products in any specified geographical area or to or from any specified persons.

(a) Requiring any dealer or distributor of such poultry and poultry products to refrain from handling, dealing in or distributing any other poultry and poultry products; or

(e) Impeding, restricting or limiting in any way, or attempting so to do, the expansion of the business of any dealer in or distributor of such poultry and poultry products.

2. Entering into, continuing or enforcing, or attempting to enforce, any contract, agreement or understanding with any dealer in or distributor of their poultry products, or the poultry and poultry products which are or may be obtained by breeding poultry sold, leased or otherwise made available by or through respondents, for the purpose or with the effect of establishing or maintaining any merchandising or distribution plan or policy prohibited by paragraph 1 of this order.

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

SELLS ENTERPRISES, INC., ET AL.

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

Docket C-97. Complaint, Mar. 14, 1962—Decision, Mar. 14, 1962

Consent order requiring Atlanta, Ga., distributors of toys, nursery products including potted plants, coffee bars and supplies, knives, and other merchandise, to cease making a variety of misrepresentations in newspaper advertisements soliciting distributors to service merchandise routes, including deceptive employment offers, exaggerated earnings claims, purported assistance in securing routes, and special selection of customers, as in the order below indicated.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Sells Enterprises, Inc., a corporation, and Edward S. Munro, 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 Sells Enterprises, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Georgia, with its office and principal place of business located at 188 Walton Street, N.W., in the city of Atlanta, State of Georgia.

Edward S. Munro is an individual and an officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent, and his address is the same as that of said corporation.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of toys, nursery products including potted plants, coffee bars and supplies, knives, and other articles of merchandise to distributors for resale to the public.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said products, when sold, to be shipped from their place of business in the State of Georgia 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, respondents have been, and are now, in direct and substantial competition, in commerce, with corporations, firms and individuals in the sale of the same or similar merchandise.

PAR. 5. Respondents insert advertisements in various newspapers soliciting distributors to service merchandise routes. Persons responding to said advertisements are contacted by respondents or their agents or representatives. Said respondents or their agents or representatives then display to the prospective distributor a variety of

promotional literature and make various oral representations concerning said merchandise in an effort to induce the prospective distributor to buy the merchandise. Among and typical, but not all inclusive, of the statements and representations made in newspapers and in printed material distributed to prospective distributors are the following:

SPARE TIME
FULL TIME
OPPORTUNITY
REAL INCOME
Self Service
Toy Route Business

Deliver and collect ONLY. 10¢ to 98¢ toys. No selling. Choice territory. Acquire profitable self-service cash. Toy Route in grocery, drug stores, super markets, etc., which we will establish for you. Our beautiful self-service DISPLAYS are America's greatest toy variety, and rapidly replacing cheap, unsightly racks.

NOT A GET RICH SCHEME, SOUND REPEAT BUSINESS.

Note: herewith gross profits of just a few of our successful distributorships: Panama City, Fla., 114 days work—$5,960.00; Port Arthur, Tex., 43 days work—$1,530.00; Beaumont, Tex., 137 days work—$4,717.00; Gastonia, N.C., 100 days work—$3,871.00; Nashville, Tenn., 356 days work—$10,399.00; Birmingham, Ala., 444 days work—$12,303.00; Decatur, Ala., 85 days work—$2,998.00; Beloit, Wis., 319 days work—$8,812.00; Roanoke, Ala., 120 days work—$2,263.00; St. Petersburg, Fla., 32 days work—$1,248.00; Miami, Fla., 65 days work—$2,042.45; Jackson, Miss., 14 days work—$475.54.

Many more in twenty states. We are a National Concern and will finance expansion to full time for conscientious, qualified person. Must have car. Be between 25 and 35, and have $2,500 to $5,000 working capital to start. This is a proven business and only sincere persons need apply. Write give age, phone employment record.

SELLS ENTERPRISES, INC., 188 Walton St., N.W., Atlanta 3, Ga.

NEW BUSINESS

Permanent year around business. Man or woman. Deliver light weight packaged products to small and medium size employers. Name brand products used. Business established for you by written contract with each employer. Repeat each two weeks indefinitely. Your profit $3.00 to $4.00 each package delivered. Easy to deliver 100 or more packages weekly. Expansion possibilities unlimited. Spare or full time. Openings in other Florida cities now. $3,000 minimum working capital required. Phone 56-5592 or write P.O. Box 12303, St. Petersburg 33.

MANAGER
MAN OR WOMAN
NEW BUSINESS

Supply green potted plants to Super Markets, Drug Stores, and other established retail outlets, weekly direct from Florida Nurseries. No selling as Company

establishes all retail outlets for you. No overhead, operate from home. No experience necessary. A new Business with little or no Competition offering a fabulous unlimited future. Full or spare time to start. Must have car, be between 30 and 50, have references, and $2,000 working capital. Sizable income your first week. Write giving full background information and phone. SELLS ENTERPRISES, INC., 188 Walton Street, N.W., Atlanta, Georgia.

SERVICE MANAGER
YOUR OWN BUSINESS

Responsible person to own and manage very profitable local business that is fully established for you and producing a profit. No overhead. Operate from home, full or spare time. No experience necessary. Woman can handle. Age 30 to 45. Must have car and $2,000 to $4,000 working capital. Substantial income starts when you take over. National concern with its own operations in many states invites your banker and lawyers investigations and will guarantee under written contract 100% profit in first 12 months. For qualified person with sales experience. Company will finance expansion to full time. Write for appointment, give full background. Inspect our bank, Chamber of Commerce and other references. See what others do in this business. Lifetime opportunity. A three billion dollar industry. Sells Enterprises, Inc., 188 Walton Street, N.W., Atlanta, Georgia.

MANAGER NEW BUSINESS

Permanent year around business. Man or woman. Deliver small light weight packaged products to small and medium sized employers. Name brand products are supported by TV, radio, magazine, and newspaper advertising throughout America. Business established for you by written contract with each employer. Repeats each two or three weeks indefinitely. Your profit $4.00 to $6.00 each package delivered. Easy to deliver 100 or more packages weekly. Expansion possibilities unlimited, spare time or full time. Openings in your state area now. $3,000.00 minimum cash working capital required. Call Mr. Moore today or Monday, ALpine 6–0611, Extension 205.

PAR. 6. By and through the use of the statements in the aforesaid advertisements and others of similar import, not specifically set out herein, respondents represent and have represented, directly or by implication that:

1. The offer made by respondents' advertising is an offer of employment.

2. Respondents' offer is limited to selected persons or those with certain qualifications.

3. Respondents offer for sale established profitable merchandise routes.

4. Respondents will secure profitable locations for the merchandise displays sold by them or will locate such displays in drugstores, supermarkets and other high traffic areas.

5. Persons purchasing respondents' merchandise displays will earn substantial income from the first week, or are guaranteed to earn 100% profit on their investment the first year, and unlimited and fabulous earnings.

6. Purchasers will make a profit of $3.00 to $6.00 each week on each display.

7. Respondents establish or set up the business or routes for distributors and all that is required of the distributor is the delivery of small packages to these established locations.

8. Respondents' offer is to manage an established business and that the only effort required of the distributor is to deliver packages to said business.

9. It is easy to deliver 100 packages a week at a profit of $4.00 to $6.00 per package.

10. No selling is required to successfully operate respondents' distributorships or merchandise routes.

PAR. 7. Respondents and the salesmen and representatives employed by them, in the course of their solicitation for the sale of their products, have repeated the statements set out in Paragraph Five hereof and have made additional oral statements to prospective purchasers of their said products, of which the following are typical:

1. Purchasers of respondents' products are granted exclusive territories within which to operate their businesses.

2. Purchasers of respondents' products will realize a 25% profit or commission on all products sold by them.

3. Respondents will send experts to make traffic surveys and place the displays of merchandise in supermarkets, chainstores, drugstores and other large stores that will yield the biggest profits.

4. Profits of $5.00 to $10.00 a week or $50.00 a month per location will be assured, or that profits of $75.00 to $100.00 a week will be made immediately after placing of the merchandise and displays.

5. Respondents' employees will relocate displays that are not profitable.

6. Respondents have large numbers of distributors of plants and toys throughout the country who are making big profits, including those who are making $30.00 to $40.00 per display per month.

7. Transportation costs will be paid by respondents or an allowance sufficient to pay such costs will be made.

8. Respondents will train and assist the purchasers of their products in conducting their businesses.

PAR. 8. The aforesaid statements and representations made in advertising matter or orally by respondents or their agents or representatives are false, misleading and deceptive. In truth and in fact:

1. The offer in respondents' advertisements is not an offer of employment, but is made for the purpose of obtaining purchasers for their products.

2. Respondents' offer is not limited to any selected group of persons or those with certain qualifications other than their financial ability to purchase and pay for respondents' merchandise.

3. Respondents, in their advertisements, do not offer for sale established and profitable merchandise routes. No effort is made by respondents to locate any of the merchandise displays until after the sale thereof has been consummated.

4. Respondents do not in most instances secure profitable locations for the merchandise displays. Certain locations are no more than a token compliance with the respondents' obligation under the contracts with their distributors and such locations are almost without exception undesirable, unsuitable and unprofitable. Respondents do not generally locate such displays in chainstores, supermarkets, drugstores, or other high traffic areas.

5. Persons purchasing respondents' merchandise displays in most instances do not earn substantial incomes from the first week, or at all, and respondents do not guarantee 100% profits of distributors' investments, or any other level of profits, and such profit is not realized either the first year or at any other time in the great majority of cases.

6. Purchasers do not make a profit of $3.00 to $6.00 each week on each display.

7. Respondents' sole efforts in establishing or setting up routes or the businesses of distributors consist of placing the displays in any or all locations where permission can be obtained from the occupants of the premises, and in many cases in order to resell any of respondents' merchandise the distributors have to relocate the displays which have been placed by respondents' employees. The delivery of the "small packages" is not to established businesses, but is to the locations which respondents' employees have secured as above.

8. Respondents' offer is not to manage and establish businesses with the only effort required of the purchaser being to deliver packages but is an offer to sell merchandise to distributors who must finance and manage their own businesses.

9. Operation of a distributorship for respondents or the purchase of respondents' merchandise does not consist of delivering packages

only and the great majority of respondents' distributors do not "make a profit of $4.00 to $6.00 a package".

10. Selling is required on the part of purchasers or distributors of respondents' merchandise displays in that they must relocate displays in most instances, in which case it is necessary to sell the merchants and others to the extent that they will permit the displays to be placed in their establishments.

11. Purchasers of respondents' products are not granted exclusive territories in which to operate their businesses.

12. Purchasers of respondents' products seldom, if ever, realize a 25% profit or commission on all products sold by them, the percentage of profit in most instances being much less than that represented by respondents.

13. Respondents do not send experts or others to make surveys or to find the most favorable and profitable locations for the displays of merchandise but merely send their representatives into purchasers' areas to sign up an easily available space regardless of its desirability as a profitable location for such business.

14. Profits of $5.00 to $10.00 a week or $50.00 a month per location are not assured, and profits of $75.00 to $100.00 a week are not made immediately after respondents' displays of merchandise are placed.

15. Respondents' employees do not relocate displays that are unprofitable and any such relocations are required to be made by the purchasers of respondents' merchandise.

16. Respondents do not have large numbers of distributors of their merchandise throughout the country who are making big profits.

17. Respondents do not pay transportation costs of their merchandise or make allowances sufficient to pay such costs.

18. Respondents do not train or assist the purchasers of their merchandise in operating their businesses.

PAR. 9. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that 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 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 Sells Enterprises, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Georgia, with its office and principal place of business located at 188 Walton Street N.W., in the city of Atlanta, State of Georgia.

Respondent Edward S. Munro is an officer of said corporation and his address is the same as that of said corporation.

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

ORDER

It is ordered, That respondents, Sells Enterprises, Inc., a corporation, and its officers, and Edward S. Munro, 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 toys, nursery products including potted plants, coffee bars and supplies, knives 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 that:

1. Employment is offered by respondents, when in fact the real purpose of respondents' advertisement is to obtain purchasers and distributors of their products.

2. Respondents' products are sold only to a selected group of persons, or that any qualifications are necessary to become a distributor other than ability to pay for the merchandise ordered.

3. Established or profitable merchandise routes are offered for sale.

4. Only profitable locations will be secured by respondents for merchandise displays or that respondents usually or customarily obtain locations in chainstores, supermarkets, drugstores or other high traffic areas for merchandise displays sold by respondents.

5. Purchasers of respondents' merchandise displays will earn substantial profits from the first week or $75 or $100 per week immediately, or will make a profit of $3.00 to $6.00 per display per week.

6. Purchasers of respondents' products will derive earnings or profits from the operation of a display route or from a single display or location in any amounts which are in excess of the earnings or profits typically received by others contemporaneously engaged in the operation of similar distributorships or merchandise display routes situated in similar locations in like trade areas.

7. Distributors or purchasers of respondents' products are guaranteed 100% profit on their investment the first year or representing in any manner that profits are guaranteed by respondents to distributors.

8. The only effort required for profitable or successful operation of respondents' display routes is the delivery of packages.

9. Respondents' offer is to manage an established business.

10. No selling is required in the operation of respondents' merchandise display routes.

11. Purchasers of respondents' merchandise will be granted exclusive territory for the operation of their display routes.

12. Purchasers of respondents' products will make 25% profit on their investment for each display or misrepresenting in any other manner the percentage of profit or mark up afforded to operators of display routes.

13. Respondents employ or furnish experts to make surveys or to locate favorable or profitable placement of the merchandise displays or that such displays will be placed only in desirable and profitable locations.

14. Profits of $5.00 to $10.00 a week or $50 a month per location are assured.

15. Respondents' employees or representatives will relocate the displays at the request of the purchaser or operators of the display routes.

16. Respondents have large numbers of successful distributors over the country who are making large or substantial profits per week.

17. Respondents will pay all transportation costs or make allowances to fully meet such costs.

18. Respondents will train or assist the purchasers of their merchandise in operating their display routes or in the resale of the merchandise sold by respondents.

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

SWANEE PAPER CORPORATION

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

Docket 6927. Modified order, Mar. 16, 1962

Order modifying—in accordance with the decree of the Court of Appeals for the Second Circuit (291 F. 2d 833) which held that "the order should be limited to the particular practice found to violate the statute"—desist order of Mar. 22, 1960 (56 F.T.C. 1077), requiring cessation of violation of Sec. 2(d) of the Clayton Act.

MODIFIED ORDER TO CEASE AND DESIST

Respondent having filed in the United States Court of Appeals for the Second Circuit a petition to review and set aside the order to cease and desist issued herein on March 22, 1960; and the court on June 22, 1961, having rendered its decision, and, on August 3, 1961, having entered its final decree modifying and, as modified, affirming and enforcing said order to cease and desist; and the United States Supreme Court having denied a petition filed by respondent for writ of certiorari to the court of appeals for review of said decision and final decree;

Now therefore, it is hereby ordered, That the aforesaid order to cease and desist be modified, in accordance with the said final decree of the court of appeals, to read as follows:

It is ordered, That respondent Swanee Paper Corporation, a corporation, its officers, employees, agents or representatives, directly or through any corporate or other device, in connection with the sale or offering for sale in commerce (as "commerce" is defined in the Clayton Act) of paper products, do forthwith cease and desist from:

Paying or contracting to pay anything of value to any third person as compensation or in consideration for any advertising or promotional display services or facilities if such services or facilities are furnished by or through any customer of Swanee in connection with the sale or offering for sale of Swanee's products, and such compensation or consideration paid or contracted to be paid to said third person is used in whole or in part to provide benefits for said customer, unless the benefits thus derived by said customer are made available on proportionally equal terms to all other customers of Swanee competing in the distribution of its products.

IN THE MATTER OF

WEST-WARD, INC., ET AL.

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

Docket 8141. Modified order, Mar. 16, 1962

Order modifying, as justified by changed conditions of fact, order of Mar. 1, 1961 (58 F.T.C. 249), against New York City drug distributors by eliminating the general requirement that they cease to claim they had an adequate quality control system.

ORDER MODIFYING THE FINAL ORDER OF THE COMMISSION

Respondents West-Ward, Inc., and Samuel G. Goldstein having moved for the modification of the order of the Commission dated March 1, 1961, which motion has been treated by the Commission as a motion for reopening pursuant to Section 3.27 of the Commission's Rules of Practice (1955); and the Commission having determined that the reopening of this matter and the modification of its order are justified by changed conditions of fact and are in the public interest,

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

ORDER

It is ordered, That respondents, West-Ward, Inc., a corporation, and its officers, and Samuel G. Goldstein, individually and as an officer

of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of drugs or food do forthwith cease and desist, 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:

(a) Misrepresents the nature or extent of the procedures used by them in the manufacture, preparation or distribution of drugs or food;

(b) Represents, directly or indirectly:

(1) That a quantitative analysis is made of each of respondents' preparations to determine the amount of each of the active ingredients contained therein, unless such is the fact.

(2) That respondents have established the stability as to potency or disintegration characteristics of their enteric coated tablets, unless such is the fact.

(3) That respondents perform assays in their own laboratories on all of the preparations offered for sale and sold by them.

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 in commerce, as "commerce" is defined in the Federal Trade Commission Act, of said preparations, which advertisement contains any of the terms or representations prohibited in paragraph 1 hereof.

IN THE MATTER OF

DAVID FELDMAN ET AL. TRADING AS NORFOLK HANDKERCHIEF CO.

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

Docket 8334. Complaint, Mar. 16, 1961—Decision, Mar. 20, 1962

Order requiring New York City distributors to cease selling handkerchiefs without labeling as required by the Textile Fiber Products Identification Act, and furnishing their customers a false guaranty that the handkerchiefs were properly labeled.

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 David Feldman, Charles Wicentowski and Sidney Wicentowski, individually and as copartners trading as Norfolk Handkerchief Company, 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. Respondents David Feldman, Charles Wicentowski and Sidney Wicentowski, copartners, trading as Norfolk Handkerchief Company, have their principal place of business at 481 Broadway, New York, N.Y.

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 transportation 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 have 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 were made of other textile 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 as prescribed by the Rules and Regulations promulgated under such Act.

PAR. 4. The respondents have furnished false guarantees that their textile fiber products were not misbranded in violation of Section 10 of the Textile Fiber Products Identification Act.

PAR. 5. 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. 6. The acts and practices of respondents, as set forth herein, were 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 and *Mr. Bernard Turiel* 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 to the complaint, a hearing was held at which evidence both in support of and in opposition to the complaint was received. Proposed findings and conclusions have been submitted by Commission counsel (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. Respondents David Feldman and Sidney Wicentowski are copartners trading as Norfolk Handkerchief Company with their principal place of business at 481 Broadway, New York, N.Y. Respondent Charles Wicentowski is deceased and the complaint is being dismissed as to him. The term respondents as used hereinafter will include only respondents David Feldman and Sidney Wicentowski.

3. Subsequent to the effective date of the Textile Fiber Products Identification Act, 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 transportation 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 were made of other textile products so shipped in commerce, as the terms "commerce" and "textile fiber products" are defined in the Textile Fiber Products Identification Act.

4. In the course and conduct of their business, respondents are in competition with other individuals and firms and with corporations

engaged in the sale of handkerchiefs and other textile fiber products in interstate commerce. Respondents' annual volume of business is substantial.

5. Certain of respondents' handkerchiefs were misbranded by respondents in that such handkerchiefs 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 that Act.

6. In certain invoices covering interstate sales of their handkerchiefs respondents have included the statement "Continuing guaranty under the Textile Fiber Products Identification Act filed with the Federal Trade Commission." Respondents thus furnished to their customers a guaranty that their handkerchiefs were labeled as required by the Act. As the handkerchiefs were not in fact so labeled, the guaranty was in violation of Section 10 of the Textile Fiber Products Identification Act.

CONCLUSION

The acts and practices of respondents as described above were in violation of the Textile Fiber Products Identification Act and the Rules and Regulations promulgated thereunder and constituted unfair and deceptive acts and practices and unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act. The proceeding is in the public interest.

ORDER

It is ordered, That respondents David Feldman and Sidney Wicentowski, individually and as copartners trading as Norfolk Handkerchief Company, or under any other name, and their representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, manufacture for 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 in connection with selling, offering for sale, advertising, delivering, transporting, or causing to be transported, textile fiber products, which have been advertised or offered for sale in commerce; and in connection with selling, offering for sale, advertising, delivering, transporting, and causing to be transported, after shipment in commerce, textile fiber products, either in their original state or which have been made of other textile fiber products shipped in commerce; as the term "commerce" is defined in the Textile Fiber Products Identification Act, of

handkerchiefs or other "textile fiber products", as such products are defined in and subject to the Textile Fiber Products Identification Act, do forthwith cease and desist from:

1. 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.

2. Furnishing false guarantees that textile fiber products are not misbranded under the provisions of the Textile Fiber Products Identification Act.

It is further ordered, That the complaint be dismissed as to respondent Charles Wicentowski, deceased.

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 20th day of March 1962, become the decision of the Commission; and, accordingly:

It is ordered, That David Feldman and Sidney Wicentowski, individually and as copartners trading as Norfolk Handkerchief Company, 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

VANITY FAIR PAPER MILLS, INC.

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

Docket 7720. Complaint, Jan. 5, 1960—Decision, Mar. 21, 1962

Order requiring a manufacturer of household paper products—distributing its products to retail and wholesale grocers, drug wholesalers, and retailers in Texas, Oklahoma, Arkansas, Mississippi, and Louisiana, and with sales in 1958 exceeding $13,000,000—to cease discriminating in price in violation of Sec. 2(d) of the Clayton Act by such practices as making special payments of $430 in excess of the usual allowances, for advertising or other services in connection with the sale of its products to J. Weingarten, Inc., without making comparable compensation available to all competitors of the latter.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondent named in the caption hereof, and hereinafter more

particularly described, has violated and is now violating the provisions of subsection (d) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act (U.S.C. Title 15, Sec. 13), hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent, Vanity Fair Paper Mills, 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 principle place of business located at 420 Lexington Avenue, New York, N.Y.

PAR. 2. Respondent is now and has been engaged in the business of manufacturing, selling and distributing household paper products to retail and wholesale grocers, drug wholesalers and retailers in the States of Texas, Oklahoma, Arkansas, Mississippi and Louisiana. Respondent's sales are substantial and exceeded $13,000,000 during the year 1958.

PAR. 3. In the course and conduct of its business respondent has engaged and is now engaging in commerce, as "commerce" is defined in the Clayton Act, as amended, in that respondent sells and causes its products to be transported from the respondent's principal place of business, located in New York, to customers located in other states of the United States.

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

PAR. 5. For example, during the year 1958 respondent contracted to pay and did pay to J. Weingarten, Inc., special payments amounting to $430, in excess of the usual and regular allowances, as compensation or as an allowance for advertising or other services or facilities furnished by or through J. Weingarten, Inc., in connection with its offering for sale or sale of products sold to it by respondent. Such compensation or allowance was not offered or otherwise made available on proportionally equal terms to all other customers competing with J. Weingarten, Inc., in the sale and distribution of products of like grade and quality purchased from respondent.

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

Mr. Fredric T. Suss and *Mr. Philip F. Zeidman* for the Commission.

Olwine, Connelly, Chase, O'Donnell & Weyher, by *Mr. John Logan O'Donnell*, of New York, N.Y., for respondent.

INITIAL DECISION BY WALTER R. JOHNSON, HEARING EXAMINER

The respondent is charged with having made discriminatory payments to some of its customers in violation of subsection (d) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act. The matter has been submitted to the Hearing Examiner for initial decision upon the pleadings and a stipulation of facts entered into by and between counsel supporting the complaint and counsel for the respondent.

The findings of fact and conclusions of law, proposed by the parties, not hereinafter specifically found or concluded, are herewith rejected. The Hearing Examiner, having considered the record herein, makes the following findings of fact and conclusions:

1. Respondent 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 Margaret Street, Plattsburgh, N.Y.

2. Respondent is now and has been engaged in the business of manufacturing, selling, and distributing household paper products to retail and wholesale grocers, drug wholesalers and retailers, located in the States of Texas, Oklahoma, Arkansas, Mississippi, and Louisiana. Its sales in the year 1958 totaled approximately $15.4 million. Among its larger competitors, Scott Paper Company and Kimberly-Clark Corporation had sales of approximately $285,000,000 and $368,000,000, respectively. Respondent accounts for approximately 2.5% of sales of household paper products in the United States, ranking approximately 10th in this industry.

3. Respondent has engaged and is now engaged in commerce, as "commerce" is defined in the Clayton Act, as amended, in that respondent sells and causes its household paper products to be transported from its principal place of business, located in New York, to customers located in other States of the United States.

4. During the year 1958, respondent sold certain of its household paper products to J. Weingarten, Inc., a retail grocery chain (hereinafter called Weingarten). During the same period, it also sold certain of the same household paper products, including the product promoted by Weingarten in its Anniversary and Texas-Louisiana Products Sales of 1958, to other customers who competed with Weingarten in the resale of such products.

5. Respondent, during the period in question, entered into a standard contract with its said customers, to reimburse said customers for advertising services performed during the period, i.e., for maintaining good shelf displays of such products and for advertising such products in newspapers at least once during each quarter of 1958. This "cooperative advertising agreement" provides for reimbursement on a per-case basis.

6. During 1958, the foregoing standard contract constituted the only offer made by respondent to Weingarten and its competitors to compensate such customers for the furnishing of any services or facilities in connection with their offering for sale or selling respondent's products. During said period, respondent did not solicit or request from its customers the furnishing of any services or facilities in addition to those regularly furnished under the standard contract. Respondent did not have sufficient funds available for extensive advertising in various media and relied on the support of customers' promotions. It was its policy, therefore, to take under consideration any request made by any customer for respondent's participation in one-time special promotions conducted by that customer, such as anniversary sales, wherein respondent's products would be featured along with those of other suppliers. It was respondent's policy to participate in such promotions if payment requested for services rendered therein was in an amount reasonably related to the cost of the services to the customer. All sales representatives of respondent were advised of these policies and were instructed to inform respondent's customers thereof.

7. In or about January 1958, Weingarten sent a form letter to respondent requesting respondent to participate in Weingarten's 57th Anniversary Sale to be held in February 1958, and offering for such participation newspaper advertising and in-store displays featuring respondent's products. Attached thereto was a schedule of payments to be made for such services. The amount of said payments was in each instance for participation in the entire promotional program with the difference in prices being due to the different size advertisements in the various cities which were to be included in a newspaper section.

8. After considering Weingarten's aforementioned request, respondent elected to pay, and subsequently paid, Weingarten $215.00 for a promotion of one of its products in February 1958. Respondent selected one of the least expensive promotions offered and received for this payment the entire promotional service with the display and resale of its product during the Anniversary Sale in all of the Wein-

garten stores located in Texas and Louisiana and with advertising consisting of 1/16 of a page in newspapers with distribution in Houston, Freeport, Baytown, and Texas City.

9. In or about October 1958, Weingarten requested respondent to participate in Weingarten's 20th Texas and Louisiana Products Sale to be held in November and offered precisely the same services at the same rates as offered in connection with its anniversary sale referred to above. After considering Weingarten's request, respondent elected to pay, and subsequently paid, Weingarten $215.00 for a promotion of one of its products. Respondent, as it did in connection with the earlier anniversary sale, selected one of the least expensive promotions offered and received for this payment the entire promotional service with the display and resale of its product during the Texas and Louisiana Products Sale in all of the Weingarten stores located in Texas and Louisiana and with advertising consisting of $\frac{1}{16}$ of a page in newspapers with distribution in Houston, Freeport, Baytown, and Texas City.

10. During 1958 respondent sold its said products to approximately 28 customers in the Houston, Beaumont, and Galveston, Texas, areas, and in the Lake Charles and Shreveport, Louisiana, areas. In each of these areas Weingarten does business and a substantial number of the said customers compete with Weingarten in the sale of respondent's said household paper products, including the product promoted by Weingarten in return for the said $215.00 payments. Of these 28 customers, 9 received reimbursement for advertising services under the standard contract described in paragraph 5 hereof. Only two received, or were offered, special promotional allowances. These two included Weingarten and one other retail grocery chain. A tabulation of the sales and promotional allowances to these 28 customers during 1958 and the relationship between these sales and promotional allowances, reveals further that the said allowances received by Weingarten are proportionally in excess of those received by any other customer of respondent during the period in question.

CONCLUSIONS

11. The evidence of record supports the following conclusions:

(a) The respondent in 1958 paid to one of its customers something of value as compensation or in consideration for services furnished by such customer in connection with its offering for sale or sale of products sold to it by respondent, and such payments were not made available on proportionally equal terms to all other customers competing in the sale and distribution of products purchased from respondent.

(b) Respondent's policy of participation in certain of its customers' special promotions, without making payments available on proportionally equal terms to all other competing customers, constitutes a plan of "separate and individual arrangement. * * * Such individualized and preferential treatment was the very thing Section 2(d) was designed to prevent." In the Matter of *Chestnut Farms Chevy Chase Dairy*, Docket No. 6465.

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

ORDER

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

Making or contracting to make, to or for the benefit of J. Weingarten, Inc., or any other customer, any payment of anything of value as compensation or in consideration for advertising or other services or facilities furnished by or through such customer, in connection with the handling, offering for resale, or resale of the respondent's products, unless such payment is offered or otherwise affirmatively made available on proportionally equal terms to all other customers competing in the distribution or resale of such products.

OPINION OF THE COMMISSION

By ANDERSON, *Commissioner:*

Respondent, Vanity Fair Paper Mills, Inc., has appealed from the hearing examiner's initial decision filed March 15, 1961, in which decision respondent was found to have violated subsection (d) of Section 2 of the amended Clayton Act, as charged, and was ordered to cease and desist such unlawful practices.

Respondent appeals from this initial decision on two grounds: (1) that it did not violate the law because the payments made to a certain customer in 1958 for special promotions were available on proportionally equal terms to all other customers of respondent competing with such customer, and (2) that the cease and desist order issued by the hearing examiner is unwarranted, vague and unduly broad.

This matter has come to us for decision upon a stipulated record. Most of the facts are not in dispute. Respondent is engaged in the

manufacture, sale and distribution of household paper products to grocery and drug retailers and wholesalers in Texas, Oklahoma, Arkansas, Mississippi and Louisiana. Its sales in 1958 totaled approximately $15.4 million, and it ranks approximately tenth in the household products industry in the United States.

In 1958, respondent sold certain of its household paper products to J. Weingarten, Inc. (hereinafter referred to as Weingarten), a retail grocery chain, and to other customers who competed with Weingarten in the resale of such products in the areas of Houston, Beaumont, and Galveston, Texas, and Lake Charles and Shreveport, Louisiana. During this period respondent entered into a standard contract or "cooperative advertising agreement" with such customers to reimburse them for various advertising services. This agreement provided for payment on a per case basis.

Respondent also had a policy to take under consideration any request made by any customer for respondent's participation in one-time special promotions conducted by that customer, such as anniversary sales. Respondent's policy was to take part in such promotions if payment requested for the services rendered was in an amount reasonably related to the cost of the services to the customer. It was stipulated that a representative of respondent would testify that all sales representatives of respondent were advised of these policies and were instructed to inform respondent's customers of them.

Weingarten requested and received from respondent for newspaper advertising and in-store displays of respondent's products the amount of $215.00 in connection with an aniversary sale in February 1958, and another payment of $215.00 in connection with Weingarten's 20th Texas and Louisiana Products Sale in November 1958.

Of the approximately 28 customers to which respondent sold its products in the above-mentioned trade areas, a substantial number competed with Weingarten in the sale of respondent's household paper products, including the product or products promoted by Weingarten for the two $215.00 payments. Of these customers, 9 received reimbursement under the standard contract; only 2 received or were offered special promotional allowances. The customers receiving special allowances were Weingarten and Childs Big Chain, an organization located in Shreveport, Louisiana. The first received the payments above indicated, the latter a payment in 1958 of $152.00.

Availability of Payments on Proportionally Equal Terms

Respondent argues that where the record shows it took steps to appraise its customers of its policy, it then became incumbent upon

counsel in support of the complaint to show that not all customers were so informed. We reject this argument. The question of the availability on proportionally equal terms of payments to other customers competing in the sale of the product with the favored customer is a matter of defense to be established by the respondent upon the *prima facie* showing of a discriminatory payment. *Liggett & Myers Tobacco Company, Inc.*, Docket No. 6642 (September 9, 1959); Cf. *State Wholesale Grocers* v. *The Great Atlantic & Pacific Tea Co.*, 258 F. 2d 831, 837–838 (1958).

The evidence on the question of the proportional availability of the challenged payments, for which respondent must carry the burden of proof, is contained in a stipulation of facts which is not entirely clear on all points. Respondent has failed to carry its burden if the showing made discloses that the payments were not proportionally available or if the showing is inadequate to support any determination.

We believe the evidence shows that respondent failed to make the payments available on proportionally equal terms as required by Section 2(d). Respondent gave the payments to two customers and it did not offer these specific allowances, as stipulated, to any other customers. The reason is clear. Respondent's policy was to consider the customer's request for participation and take part therein in some instances. These allowances were arrived at by individual negotiation, a feature of the case to be discussed below in more detail, and by their nature would not have been presented to the competing customers. While respondent readily concedes they were not offered to the other customers, it is also clear in the context that other customers were not advised or informed as to the availability of these promotional allowances.

We have held that an allowance is not "available" within the meaning of Section 2(d) if it has not been offered or made known to the other customers competing with the favored customer in the distribution of the products involved. *Chestnut Farms Chevy Chase Dairy*, 53 F.T.C. 1050 (1957); *Kay Windsor Frocks, Inc., et al.*, 51 F.T.C. 89 (1954); *Rosenfeld, Inc., et al.*, 52 F.T.C. 1535 (1956); *Liggett & Myers Tobacco Company, Inc., supra.*

Notwithstanding the clear showing that competing customers were not informed of the special promotional allowances, respondent urges that the allowances were "available" within the meaning of Section 2(d) because respondent's general policy to participate in such promotions had been made known to all its customers. This argument depends upon an inference of fact because the record discloses only that the promotion policy was made known to respondent's represent-

atives who were instructed to pass the information on to respondent's customers. But it does not necessarily follow that the customers were so informed. In *Chestnut Farms Chevy Chase Dairy*, *supra*, although there was testimony that driver salesmen had always been instructed to advise every customer of the availability of the promotional allowances, the record otherwise showed that a number of customers had not received the information. In this case, aside from the stipulated fact of the failure to make the offer to competitors, the negative nature of the policy, i.e., the consideration of a request by the customer, and its vagueness would, in our view, tend to discourage its mention and negate any inference that all competitors had been informed.

It is our holding that in the circumstances the offer was not made known to competitors of the favored customer and that the allowances were not "available" to such customers on proportionally equal terms or on any terms.

The further contention made by respondent, that it should not be found to be violating Section 2(d) for failing to offer or give what customers did not want, is rejected. The case cited in support of this argument is *Liggett & Myers Tobacco Co., Inc.*, *supra*. There is no evidence here, as in the case cited, that an offer would have been futile. Such an argument, furthermore, is most unconvincing in the same brief in which the primary contention is that the offer was made to all competing customers.

The Commission is additionally of the view that even if the evidence were adequate to support a finding that all competitors knew of respondent's promotion policy, respondent's payments for promotional allowances would nevertheless violate Section 2(d) because they were not granted on proportionally equal terms. There was no provision for graduating these allowances to the amount of goods purchased during a given period, nor were the allowances based on any other guiding factor. Respondent, in its brief, concedes that the special payments to Weingarten were given as a result of individual negotiation. Respondent's plan, if indeed it was a plan at all, was to make payments, in an amount reasonably related to the cost of the services, for one-time special promotions where the customer requested the allowance. Such an arrangement requires individual negotiation in each case, and necessarily results in a failure to proportionalize in accordance with the requirements of Section 2(d). *Chestnut Farms Chevy Chase Dairy*, *supra*. See also *Liggett & Myers Tobacco Company, Inc.*, *supra*. Any policy which is no more than a general offer to grant allowances, and which requires the customer to seek

the allowance and to bargain as to the terms thereof, is not an adequate basis for compliance with the requirements of Section 2(d).

SCOPE OF THE ORDER

Respondent challenges the order principally as to its breadth or scope. It is asserted that because of the 1959 amendments to Section 11 of the Clayton Act (Public Law 86–107, 86th Cong., 73 Stat. 243), which legislation contains new provisions governing the finality status of Commission cease and desist orders under that Act, the terms of the order should be more specific. Respondent requests that we limit the order to the line of products involved in the special promotions, i.e., household paper products; and to the services purchased, i.e., in-store displays and newspaper advertising.

It must be remembered that a cease and desist order of the Federal Trade Commission does not punish or impose compensatory damages for past acts. Its purpose is to prevent illegal practices in the future. Thus, where a violation has been uncovered, it is reasonable and necessary that the order, if it is to have the desired preventative effect, be broad enough so that its terms may not be easily evaded. This proposition is supported by a long line of cases, including *Federal Trade Commission* v. *Ruberoid Co.*, 343 U.S. 470 (1952); *E. Edelmann & Company* v. *Federal Trade Commission* 239 F. 2d 152, 156 (7th Cir. 1956), *cert. denied* 355 U.S. 941 (1958); *Federal Trade Commission* v. *National Lead Co.*, 352 U.S. 419, 428–429 (1957); *Federal Trade Commission* v. *Mandel Brothers, Inc.*, 359 U.S. 385, 392 (1959); *P. Lorillard Company* v. *Federal Trade Commission*, 267 F. 2d 439, 445 (3rd Cir. 1959), *cert. denied* 361 U.S. 923 (1959), and many others.

Notwithstanding this authority, the 1959 amendments to the Act, which will govern the enforcement of this order, introduce a new factor to be considered in the formulation of orders. The Supreme Court in its recent opinion in *Federal Trade Commission* v. *Henry Broch & Company*, 30 LW 4105 (January 15, 1962), stated that the severity of possible penalties prescribed by the amendments for violations of orders which have become final underlines the necessity for fashioning orders which are, at the outset, sufficiently clear and precise to avoid raising serious questions as to their meaning and application. See also, *Swanee Paper Corporation* v. *Federal Trade Commission*, 291 F. 2d 833 (2nd Cir. 1961) [7 S. & D. 175].[1]

[1] Recent decisions ruling on the scope of the Commission's order to cease and desist in matters related to Section 2(d) are: *The Grand Union Company* v. *Federal Trade Commission*, 300 F. 2d 92 (2nd Cir. 1962), and *American News Company* and *The Union News Company* v. *Federal Trade Commission*, 300 F. 2d 104 (2nd Cir. 1962).

On the scope of the order in this case, we turn first to respondent's request that the order be limited as to the products covered. The order contained in the initial decision relates broadly to "paper products or other merchandise". The facts, as stipulated, disclose that respondent is engaged in the business of manufacturing, selling and distributing household paper products. The record does not reveal whether respondent makes or sells any other product, and no reason is apparent for applying the order generally to "other merchandise". We believe, therefore, that the order should be limited in this respect but that it should apply to "paper products". While the term "paper products" is more comprehensive than "household paper products", the former is justified in view of the difficulties which might develop in the future in attempting to determine the type of product defined by the latter term.

The other limitation sought is as to the kind of service purchased. Here, the violations shown involved in-store displays and newspaper advertising because it so happened that these were the services or facilities offered by the customer in the particular instances. Respondent's policy was to consider the customer's request for participation in a promotion. Such requests obviously can take many different forms. Respondent's policy also was to take part in the promotion if the service rendered was reasonably related to the cost of the service. Under such a policy, the service or facility which might be involved in possible future arrangements could take many forms. Customers might hereafter request participation in radio or television shows, billboard advertising, or in other forms of promotion, or payments for other types of services or facilities. In these circumstances, it is clear that the order should not be limited to the exact forms involved in the violations uncovered by the evidence.

Orders under the Clayton Act should be made as definitive as possible, but the fact remains that Section 2(d) of that Act is in itself a very narrow definition of an illegal trade practice. The court in *P. Lorillard Company* v. *Federal Trade Commission*, *supra*, observed that Section 2(d) is much narrower in scope than Section 2(a). Because Section 2(d) covers a limited area in which forms of violations are like or related, it appears that in most circumstances a Section 2(d) order should not be confined to the exact forms of the violations found. In *Shulton, Inc.*, Docket No. 7721 (July 25, 1961), a Section 2(d) case, we rejected an argument for limiting the order, stating that the narrow order requested would be virtually worthless since it would do little more than prohibit respondent from engaging in the illegal practice by the same means previously employed. The

narrow order requested in this proceeding as to the forms of violations to be prohibited would be objectionable for the same reason.

In the *Swanee Paper Corporation* case, *supra*, the court, in holding that the breadth of the Commission's order was not justified by the facts of the case, relied on the circumstances, among others, that the single violation found occurred in an uncertain area of law and was discontinued before the complaint was filed. This case is far different in such respects.

Here the several violations were not in an uncertain area of law. These were direct payments, clearly prohibited unless made available to competing customers on proportionally equal terms. Moreover, there has been no discontinuance in this case or any admission as to the illegality involved. In the circumstances, there could be recurrence not only in the exact form here found but in other ways as well.

We deem unmeritorious the suggestion that the Commission would be shifting to the courts the burden of administering the section in possible subsequent contempt proceedings. In *Federal Trade Commission* v. *Morton Salt Co.*, 334 U.S. 37, 54 (1948), the Court decided that responsibility in an enforcement proceeding in trying issues of possible injury to competition as to certain differentials of less than 5% could not be shifted to the courts since these were issues which Congress primarily entrusted to the Commission. We have no such question in this proceeding.

Respondent's other contentions as to the unwarranted nature of the order do not merit particular discussion and are rejected.

Respondent's appeal is granted to the extent indicated in this opinion and it is otherwise denied. It is directed that the initial decision be modified in accordance with the views herein expressed and that, thereafter, the initial decision, as so modified, be adopted as the decision of the Commission. It is directed that an appropriate order be entered.

Commissioner Elman dissented in part to the decision herein.

OPINION, DISSENTING IN PART

By ELMAN, *Commissioner:*

I agree that the record supports a finding of violation of Section 2(d).[1] I do not agree, however, that the order entered by the Com-

[1] To the extent that the Commission's decision rests on an affirmative finding of a clear showing that competing customers were not advised or informed as to the availability of the special promotional allowances (opinion, pp. 574, 575), it lacks support in the sketchy four-page stipulation that comprises the entire record in this case. However, this does not alter the result. As the Commission states, a *prima facie* violation of Section 2(d) is made out on a showing of discriminatory payments; the respondent then must bear the burden of proving that those payments were available on proportionally equal terms to all

mission constitutes the most effective and appropriate remedy for dealing with the violation found.

I

The general principles governing the scope and content of Commission orders have been stated many times by the Supreme Court in a long series of decisions, culminating in *Federal Trade Commission* v. *Broch*, decided January 15, 1962. The Commission has "wide discretion in its choice of a remedy deemed adequate to cope with the unlawful practices". *Jacob Siegel Co.* v. *Federal Trade Commission*, 327 U.S. 608, 611; *Federal Trade Commission* v. *Ruberoid Co.*, 343 U.S. 470; *Federal Trade Commission* v. *National Lead Co.*, 352 U.S. 419, 428–429. "Congress expected the Commission to exercise a special competence in formulating remedies to deal with problems in the general sphere of competitive practices." *Ruberoid Co.*, *supra*, 343 U.S. at 473. In exercising its "specialized, experienced judgment * * * in the shaping of its remedies" (*Moog Industries, Inc.* v. *Federal Trade Commission*, 355 U.S. 411, 413), the Commission not only may "appraise the facts of the particular case" but also may "draw from its generalized experience" (*Siegel Co.*, *supra*, 327 U.S. at 614).

The Commission is "not required to limit its prohibition to the specific" violation found but "must be allowed effectively to close all roads to the prohibited goal, so that its order may not be by-passed with impunity." *Ruberoid Co.*, *supra*, 343 U.S. at 474; *National Lead Co.*, *supra*, 352 U.S. at 429. For "those caught violating the Act must expect some fencing in." *National Lead Co.*, *supra*, 352 U.S. at 431. A Commission order, like a decree in equity, should be effective to "cure the ill effects of the illegal conduct, and assure the public freedom from its continuance" (*United States* v. *United States Gypsum Co.*, 340 U.S. 76, 88). Thus, "as a prophylactic and preventive measure," the Commission may enjoin not only practices found to be violations but also other "like and related" practices. *Federal Trade Commission* v. *Mandel Bros., Inc.*, 359 U.S. 385, 393; and see *Colgate-*

competing buyers. See *Liggett & Myers Tobacco Co.*, Docket No. 6642, Sept. 9, 1959, p. 6; *Austin, Price Discrimination and Related Problems under the Robinson-Patman Act*, 2d Rev. Ed. (1959), pp. 122–123. *Cf. Corn Products Refining Co.* v. *Federal Trade Commission*, 144 F. 2d 211, 219 (C.A. 7), aff'd 324 U.S. 726. Respondent's only showing on this point is the recital that it had a "policy" to "take under consideration" and "participate in" special "one-time promotions" if the requested payment was "reasonably related to the cost of the services to the customer," and that "all sales representatives of respondent were advised of these policies and were instructed to inform respondent's customers thereof." (Stipulation, p. 2.) This falls short of meeting its burden of proof that its special payments to two customers were made known and available to their numerous competitors.

Palmolive Co., et al., Docket No. 7736, decided by the Commission, December 29, 1961, opinion pp. 22–24.

In the *Broch* case, the Court emphasized "the necessity for fashioning orders which are, at the outset, sufficiently clear and precise to avoid raising serious questions as to their meaning and application." (Slip op., p. 8.) The principle thus declared was not novel. "A party is entitled to a definition as exact as the circumstances permit of the acts which he can perform only on pain of contempt of court." *J. I. Case Co.* v. *National Labor Relations Board*, 321 U.S. 322, 341. The mere fact that a violation of law has been found by an agency "does not justify an injunction broadly to obey the statute," *National Labor Relations Board* v. *Express Publishing Co.*, 312 U.S. 426, 435; it is also necessary "that the decree be as specific as possible, not only in the core of its relief, but in its outward limits, so that parties may know their duties and unintended contempts may not occur", *International Salt Co.* v. *United States*, 332 U.S. 392, 400.

Thus, there are essentially three problems in fashioning administrative orders. To some extent these problems overlap and merge, but each may involve separate and distinct considerations:

1. The *breadth* of the order. Should the order be limited to the particular acts or practices found illegal? Or, do the circumstances justify a broader order covering other "like and related" practices? If so, which practices should be included?

2. The *justification* for a broad order. If the agency determines that the public interest would not be served by a limited order directed only to the particular acts or practices in the record found to be unlawful, it should say so and give the reasons for its conclusion. Since "the courts will not interfere except where the remedy selected has no reasonable relation to the unlawful practices found to exist" (*Siegel Co., supra*, 327 U.S. at 613), the "reasonable relation" of the order to the facts should be shown. If the Commission is relying on its special or generalized experience and expertise, such reliance should be explicit and reasoned. The practice of entering broad orders in the terms of the statute, routinely and automatically without citing need or justification therefor, is indefensible as a matter of law and sound administration; and I would assume it to be a thing of the past.[2] Respondents, Commission counsel, reviewing courts, the bar, and the business community have as much right to, and as great a need for, an explanation of the reasons for the remedy selected as for the finding of violation.

[2] Compare *Swanee Paper Corp.* v. *Federal Trade Commission*, 291 F. 2d 833 (C.A. 2); *Bankers Securities Corporation* v. *Federal Trade Commission* (C.A. 2), decided December 18, 1961.

3. The *formulation* of the order. This is essentially a matter of drafting the order so that it meets the requirements of clarity and precision set forth in *Broch* and other cases. Respondents, who will be subject to severe penalties for disobedience or contempt, should be able to read the order and know, as clearly and specifically as language can convey, what conduct is, and is not, proscribed. The agency should avoid the easy "solution" of simply incorporating *haec verba* general statutory prohibitions couched by Congress, and justifiably so, in broad, indefinite, and ambiguous terms, raising questions of interpretation and application that have not yet been resolved.[3]

This is, I repeat, a separate question from determining how broad or narrow the order should be. Having concluded, for example, that the order should be broader than the practices found unlawful, and having stated the reasons for that conclusion, the agency must draft the order in language which is as specific, clear, and understandable as possible. I do not minimize the difficulties of draftsmanship that this task may entail. But that is no reason for not undertaking it. Elementary fairness forbids imposition of penalties without clear prior notice of the circumstances in which they may be incurred.[4]

II

In the instant case, the hearing examiner's order prohibited respondent, in connection with the sale of any "paper products or other merchandise," from

> Making or contracting to make, to or for the benefit of J. Weingarten, Inc., or any other customer, any payment of anything of value as compensation or in consideration for advertising or other services or facilities furnished by or through such customer, in connection with the handling, offering for resale or resale of the respondent's products, unless such payment is offered or otherwise affirmatively made available on proportionally equal terms to all other customers competing in the distribution or resale of such products.[5]

Respondent argues that this order is too broad, and proposes that it be limited to "the line of product involved in the special promotions, *i.e.*, household paper products and to the services purchased, *i.e.*, in-store displays and newspaper advertising."[6] The Commission's re-

[3] See *Federal Trade Commission* v. *Morton Salt Co.*, 334 U.S. 37, 53–55.

[4] Compare *Musser* v. *Utah*, 333 U.S. 95, 97: "Legislation may run afoul of the Due Process Clause because it fails to give adequate guidance to those who would be law-abiding, to advise defendants of the nature of the offense with which they are charged, or to guide courts in trying those who are accused." This principle applies equally to a decree or order which, like legislation, undertakes to control future conduct on pain of punishment for violating its prohibitions.

[5] Initial Decision, at p. 5, filed March 15, 1961, see p. 573 herein.

[6] Respondent's Appeal Brief, at p. 10.

sponse is a compromise; it pares the order to "paper products" but restricts it no further, as to services or otherwise.

If, as respondent plausibly contends, the difficulty is that the order "has shifted to respondent the task of correctly interpreting and applying subsection 2(d) in myriad situations," [7] this difficulty is not obviated by merely restricting the order's prohibitions to paper products. Here, it seems to me, the problem is not so much that of determining the breadth of the order as it is of achieving clarity and precision in formulating its prohibitions, whether they be broad or narrow. Concentration on the line of product or type of service alone overlooks the truly perplexing questions posed by application of Section 2(d), *e.g.*, when is a payment "compensation" or "in consideration" for "services or facilities" furnished "by or through" a customer, when is a payment "available," and what are "proportionally equal terms"? The modifications urged by respondent, and partially adopted by the Commission, do little or nothing by way of adding specificity and certainty to the broad statutory language. And it is the use of that language, to define respondent's obligations under the order, which remains its basic vice.

I suggest, however, that at least some progress towards certainty and specificity in orders might be made by abandoning the "statutory language" route, which has not gotten us very far. Instead, orders should be framed in terms of defining those actions which the respondent must take in order to assure compliance with the law. The objective of cease-and-desist orders is the prevention of future misconduct of the kind found to have occurred in the past. Thus, inquiry should commence with an analysis of the nature of the respondent's violation of the statute.

The statute here—Section 2(d) of the Robinson-Patman Act—is concerned not with preventing promotional allowances, but, rather, with preventing their being made on a discriminatory basis to favored customers. The order would succeed in its purpose if it compelled action resulting in all customers having an opportunity to participate equally in whatever promotional scheme respondent may devise. This could be accomplished by requiring respondent affirmatively to establish and maintain prescribed procedures whereby all customers of its products are informed of the terms of any promotional payment made to one or some of them, and all are given an opportunity to receive the same benefits, or a fair equivalent, on the same terms. In short, the order should spell out the actions, or kind of actions,

[7] *Id.*, at p. 8.

which respondent is obliged to take so as to conform its business practices to the requirements of the law.

This case provides a fruitful oppportunity for such an approach. Respondent claims to have a "policy" of participating in special promotions if the cost is reasonable. It should have no objection, therefore, to a Commission order requiring that it inform its customers of this policy in a way that will insure common knoweldge of it, *e.g.*, by registered mail or by special visits from respondent's salesmen. Nor should it object to regular use of these and other suitable devices for spreading the word to all customers that its policy has been revised, for announcing the grant of a special payment when it is made, and so on. If, as the stipulation states, promotional allowances are respondent's substitute for "extensive advertising in various media" (at p. 2), this type of order would sharpen and formalize respondent's main advertising activity, rather than hamper or curtail it as the Commission's order seems likely to do. Further, it would minimize future controversy over compliance, since it would enable respondent to accumulate detailed records of its actions in complying with the order's commands.[8] Even more important perhaps, such an order could be drafted without repetition of the broad and ambiguous statutory language that only shifts to the courts the determination of major questions of interpretation and application entrusted by Congress to the Commission's expert judgment based on unfolding experience in dealing with the changing problems of a dynamic competitive economy.

FINAL ORDER

This matter having been heard by the Commission upon respondent's appeal from the hearing examiner's initial decision, and upon briefs and oral argument in support thereof and in opposition thereto; and

The Commission, for the reasons stated in the accompanying opinion, having granted in part and denied in part the respondent's appeal and having directed that the initial decision be modified in accordance with its views expressed in the opinion and that, thereafter, such decision, as modified, be adopted as the decision of the Commission:

It is ordered, That the order contained in the initial decision be, and it hereby is, modified by striking out the words "or other merchandise" in the sixth line thereof.

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[8] The Commission's authority to issue orders embodying affirmative requirements, rather than merely negative prohibitions, has been upheld in a number of cases involving advertising disclosures. See *e.g.*, *Keele Hair & Scalp Specialists* v. *Federal Trade Commission*, 275 F. 2d 18 (C.A. 5); *Mohawk Refining Corp.* v. *Federal Trade Commission*, 263 F. 2d 818 (C.A. 3), cert. denied, 361 U.S. 814; *New American Library of World Literature, Inc.* v. *Federal Trade Commission*, 213 F. 2d 143 (C.A. 2); *Aronberg* v. *Federal Trade Commission*, 132 F. 2d 165 (C.A. 7).

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

It is further ordered, That respondent, Vanity Fair Paper Mills, Inc., 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 contained in the initial decision as modified.

By the Commission, Commissioner Elman dissenting in part.

IN THE MATTER OF

UNITED FARMERS OF NEW ENGLAND, INC., ET AL.

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

Docket 8406. Complaint, May 26, 1961—Decision, Mar. 22, 1962

Consent order requiring a marketing cooperative composed of dairy farmers in the New England States to cease discriminating in price among its customers in violation of Sec. 2(a) of the Clayton Act by charging some retailer-purchasers substantially higher prices than their competitors, the differentials ranging as high as 40% for cream and 15% for fluid milk; and to cease violating Sec. 2(d) of the Act by such practices as granting large grocery chains preferential cash payments for promotional advertising, display cabinets, and new store openings, while making no such allowances available on proportionally equal terms to all other competing customers.

COMPLAINT

The Federal Trade Commission, having reason to believe that the parties respondent named in the caption hereof, and hereinafter more particularly designated and described, have violated and are now violating the provisions of subsections (a) and (d) 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:

COUNT I

PARAGRAPH 1. Respondent, United Farmers of New England, Inc., sometimes hereinafter referred to as United Farmers, is a cooperative marketing association organized and existing under the laws of the State of Vermont, with its principal office and place of business located at Morrisville, Vt. Respondent United Farmers is composed of ap-

proximately 2,200 members who are dairy farmers in the States of Maine, New Hampshire and Vermont.

The control, direction and management of respondent United Farmers' affairs, policies, practices, and actions are vested in respondent United Farmers' officers, directors and members.

Respondents Earl N. Gray, Eldon J. Corbett, William F. Sinclair and J. C. Thomas, are officers, directors and members of respondent United Farmers and are sometimes hereinafter referred to as respondent officials.

The membership of respondent United Farmers constitutes a class so numerous and changing as to make it impracticable to specifically name each member as a party respondent herein. Therefore, there are named and included as respondents herein the respondent officials in their individual and official capacities and since they are likewise members of respondent United Farmers and are representative of the entire membership, they are also named as representative of all the members of respondent United Farmers as a class, so that those members not specifically named are also made parties respondent herein.

The principal office and place of business of each of respondent officials and all other members is in care of United Farmers of New England, Inc., Morrisville, Vt.

PAR. 2. Respondent United Farmers is extensively engaged in the business of processing, manufacturing, purchasing and selling on its own account and as agent for its members fluid milk and other dairy products throughout the States of Maine, New Hampshire, New York, Vermont, Connecticut, Rhode Island, and Massachusetts. United Farmers' annual net sales are in excess of $24 million.

PAR. 3. Respondent sells fluid milk and other dairy products of like grade and quality to a large number of purchasers located throughout the States of Maine, New Hampshire, Rhode Island, Connecticut, Vermont, New York and Massachusetts for sale, consumption or resale therein.

Respondent owns, maintains and operates a large number of receiving stations, processing and manufacturing plants, and distribution depots located in the above-named states, from which it sells and distributes its said products to purchasers.

PAR. 4. In the course and conduct of its business, respondent is now, and for many years past has been, transporting fluid milk and other dairy products, or causing the same to be transported, from dairy farms and other points of origin to respondent's receiving sta-

tions, processing and manufacturing plants, and distribution depots located in states other than the state of origin.

Respondent is now, and for many years past has been, transporting fluid milk and other dairy products, or causing the same to be transported, from the state or states where such products are processed, manufactured or stored in anticipation of sale or shipment, to purchasers located in other States of the United States.

Respondent also sells and distributes its said fluid milk and other dairy products to purchasers located in the same states and places where such products are processed, manufactured or stored in anticipation of sale.

All of the matters and things, including the acts, practices, sales, and distribution by respondent of its said fluid milk and other dairy products, as hereinbefore alleged, were and are performed and done in a constant current of commerce, as "commerce" is defined in the Clayton Act.

PAR. 5. Respondent sells its fluid milk and other dairy products to retailers and consumers. Respondent's retailer-purchasers resell to consumers. Many of respondent's retailer-purchasers are in competition with other retailer-purchasers of respondent.

Respondent, in the sale of its fluid milk and other dairy products to retailers and consumers, is in substantial competition with other manufacturers, distributors and sellers of said products.

PAR. 6. In the course and conduct of its business in commerce, respondent has discriminated and is now discriminating in price in the sale of fluid milk and other dairy products by selling such products of like grade and quality at different prices to different purchasers at the same level of trade.

Included in, but not limited to, the discriminations in price, as above alleged, respondent has discriminated in price in the sale of said products by charging many retailer-purchasers in the State of Massachusetts substantially higher prices than respondent charged to other retailer-purchasers, many of whom are competing purchasers. Such differences in price have ranged as high as 40 percent for cream and 15 percent for fluid milk.

PAR. 7. The effect of such discriminations in price by respondent in the sale of fluid milk and other dairy products has been or may be substantially to lessen, injure, destroy or prevent competition:

1. Between respondent and its competitors in the processing, manufacture, sale and distribution of such products.

2. Between retailers paying higher prices and competing retailers paying lower prices for respondent's said products.

PAR. 8. The discriminations in price, as herein alleged, are in violation of subsection (a) of Section 2 of the Clayton Act, as amended.

COUNT II

Charging violation of subsection (d) of Section 2 of the Clayton Act, the Commission alleges:

PAR. 9. Paragraphs 1 through 5 of Count I hereof are hereby set forth by reference and made a part of this count as fully and with the same effect as if quoted herein verbatim.

PAR. 10. In the course and conduct of its business in commerce, as aforesaid, respondent has paid, or contracted for the payment of, money, goods, or other things of value to or for the benefit of some of its customers as compensation or in consideration for services or facilities furnished or agreed to be furnished by or through such customers, in connection with the handling, sale, or offering for sale of respondent's dairy products and respondent has not made or contracted to make such payments, allowances, or consideration available on proportionally equal terms to all of its other customers competing in the sale and distribution of such products.

Included among such discriminatory and disproportionate allowances, respondent has paid and allowed advertising, promotional and other allowances in connection with the resale of its said products to some of its customers while not offering or otherwise making available on proportionately equal terms such payments and allowances to other competing customers. As illustrative of such practices, respondent has paid certain amounts of money to selected customers, principally to large grocery store chains, for promotional advertising, display cabinets, and new store openings. Respondent has not offered or otherwise made available on proportionately equal terms such allowances and payments to many of its customers who compete with those who receive such benefits. Such discriminatory payments and allowances, as herein alleged, have been made by respondent to its customers located and doing business in the State of Massachusetts.

PAR. 11. The acts and practices as alleged in paragraph 9 above are in violation of subsection (d) of Section 2 of the aforesaid Clayton Act.

DECISION AND ORDER

This matter having come on to be heard by the Commission upon a record consisting of the Commission's complaint charging the respondents named in the caption hereof with violation of subsections (a) and (d) of the Clayton Act, as amended by the Robinson-Patman Act, and an agreement by and between respondent United

Farmers of New England, Inc., and counsel supporting the complaint, which agreement contains an order to cease and desist, an admission by said respondent of all the jurisdictional facts alleged in the complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by said respondent that it has violated the law as alleged in the complaint, and waivers and provisions as required by the Commission's Rules, and which agreement further provides for dismissal of this proceeding as to respondents Earl N. Gray, Eldon J. Corbett, William F. Sinclair and J. C. Thomas; and

The Commission having considered said agreement and the affidavits made a part thereof which state, among other things, that one of the above named respondent individuals is deceased, that two others have severed all connection with the corporate respondent and that none of the respondent individuals participated as officers or otherwise in the acts and practices challenged in the complaint; and

The Commission having determined that the agreement provides an adequate basis for appropriate disposition of the proceeding, the agreement is hereby accepted, the following jurisdictional findings are made, and the following order is entered.

1. Respondent United Farmers of New England, Inc., is an incorporated cooperative marketing association organized and existing under the laws of the State of Vermont with its principal office and place of business located at Morrisville, Vt.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, United Farmers of New England, Inc.

ORDER

It is ordered, That respondent, United Farmers of New England, Inc., a corporation, its officers, members, employees, agents, representatives, successors and assigns, directly or through any corporate or other device, in connection with the sale of fluid milk and other dairy products in commerce, as "commerce" is defined in the Clayton Act, do forthwith cease and desist from discriminating in price by selling fluid milk and other dairy products of like grade and quality to any purchaser at a price lower than the price granted to other purchasers:

(1) Where respondent, in the sale of said products, is in competition with any other seller; or

(2) Where any purchaser who does not receive the benefit of the lower price does, in fact, compete in the resale of said products with the purchaser who does receive the benefit of the lower price.

It is further ordered, That respondent, United Farmers of New England, Inc., a corporation, its officers, members, employees, agents, representatives, successors and assigns, directly or through any corporate or other device, in connection with the sale of fluid milk and other dairy products in commerce, as "commerce" is defined in the Clayton Act, do forthwith cease and desist from:

Making or contracting to make, to or for the benefit of any customer, any payment or allowance of anything of value as compensation or in consideration for any advertising or other services or facilities furnished by or through such customer, in connection with the handling, offering for resale, or resale of products sold to him by respondent, unless such payment or allowance is made available on proportionally equal terms to all other customers competing in the distribution or resale of such products.

It is further ordered, That the complaint be, and it hereby is, dismissed as to the individuals Earl N. Gray, Eldon J. Corbett, William F. Sinclair, and J. C. Thomas, named as respondents individually and as officers, directors, and members, and in their representative capacities as representative of all the members of respondent cooperative.

It is further ordered, That respondent, United Farmers of New England, Inc., 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

ACME BRIEF CASE COMPANY, INC., ET AL.

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

Docket C-98. Complaint, Mar. 23, 1962—Decision, Mar. 23, 1962

Consent order requiring New York City manufacturers of brief cases, looseleaf notebooks, ring binders, school bags, etc., to cease such false and misleading practices as tagging zipper binders "Made of solid one piece split cowhide leather" and "A top value in laminated split cowhide leather" when the interior surfaces and sections were made of a material simulating leather; and labeling binders as "Virgin vinyl" and school bags as "Vinyl Plastic", when both had outside sections made of very thin sheets of a plastic-like material backed with thicker layers of cardboard or paper.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Acme Brief Case Company, Inc., a corporation, and Abraham Klotz, Abraham Lishinsky, and Gerald S. Klotz, 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 Acme Brief Case 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 440 Nepperhan Avenue, city of Yonkers, State of New York.

Respondents Abraham Klotz, Abraham Lishinsky and Gerald S. Klotz are individuals and 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 the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the manufacturing, advertising, offering for sale, sale and distribution of brief cases, looseleaf notebooks, ring binders, school bags and other articles of merchandise.

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

PAR. 4. In the course and conduct of their business as aforesaid and for the purpose of inducing the sale of said products, respondents have engaged in certain acts and practices as follows:

1. The tag attached to certain of respondents' two-ring zipper binders reads in part, "Made of solid one piece split cowhide leather". The interior surfaces and sections of said binders are made of a material engrained, finished and colored so as to have the appearance of leather.

2. Certain of respondents' two-ring zipper binders have attached thereto a tag which reads, "A top value in laminated split cowhide

leather." The interior surfaces and sections of said binders are made of a material engrained, finished and colored so as to have the appearance of leather.

3. Certain of respondents' three-ring zipper binders have attached thereto a tag which reads, "Virgin vinyl luxurious jewel tone." The exterior and interior surfaces and various interior sections are engrained, finished and colored so as to have the appearance of leather.

Certain of respondents' school bags have attached thereto a tag which reads, in part, "Vinyl Plastic Texon". The interior surfaces of said school bags are finished so as to have the appearance of cloth or plastic.

PAR. 5. Through the use of the aforesaid statements and representations and materials in the manner aforesaid, respondents represent, directly or indirectly:

1. That said binders described as being made of "Solid one piece split cowhide leather" are, in fact, made of one solid piece of split cowhide leather and that said interior portions having the appearance of leather are made of leather.

2. That the said binders described as being made of "Laminated Split Cowhide Leather" are, in fact, made of successive layers of split cowhide leather bonded together into a whole and that the various interior portions thereof having the appearance of leather are made of leather.

3. That said binders described as being made of "Virgin Vinyl" are, in fact, made of solid vinyl plastic of the apparent thickness of the respective portions of said binders. That the said school bags described as being made of "Vinyl Plastic" are in fact made of solid vinyl plastic of the apparent thickness of the respective portions of said school bags.

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

1. Said binders described as being made of "solid one piece split cowhide leather" are not in fact made of one piece of solid split cowhide leather and said interior surfaces and sections having the appearance of leather are made of substances and materials other than leather. Actually the outside covering of said binders is made of very thin sheets of leather laminated to or backed with thicker layers of cardboard or paper finished on its underside to resemble leather. The various other interior portions of said binders having the appearance of leather are in fact made of nonleather materials.

2. Said binders described as being made of "laminated split cowhide leather" are not in fact made of successive layers of split cowhide

leather bonded together into a whole and said interior sections having the appearance of leather are in fact made of nonleather materials. Actually said outside coverings of said bindings are made of very thin sheets of leather laminated to or backed with thicker layers of cardboard or paper which has been finished on its underneath surface to have the appearance of leather. The various interior sections of said binders having the appearance of leather are, in fact, made of various nonleather materials.

3. Said binders described as being made of "Virgin Vinyl" are not made of a solid piece of vinyl plastic and the interior sections thereof having the appearance of leather are not made of leather. Actually the outside covering of said binders is made of very thin sheets of a plastic-like substance laminated to or backed with thicker layers of cardboard or paper. Neither the interior nor the exterior surfaces or sections of said binders having the appearance of leather are in fact leather.

Said "Vinyl Plastic" school bags are not made of a solid piece of vinyl plastic. The outside sections of said school bags are made of very thin sheets of a plastic-like material laminated to or backed with thicker layers of cardboard or paper.

PAR. 7. By the aforesaid practices, respondents place in the hands of retailers and dealers the means and instrumentalities by and through which they may mislead and deceive the public as to the quality, leather or plastic content of said binders and school bags.

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 brief cases, looseleaf notebooks, ring binders, school bags and other articles of merchandise of the same general kind and nature as those sold by respondents.

PAR. 9. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that 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 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, Acme Brief Case 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 440 Nepperhan Avenue, in the city of Yonkers, State of New York.

Respondents Abraham Klotz, Abraham Lishinsky, and Gerald S. Klotz 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 Acme Brief Case Company, Inc., a corporation, and its officers, and Abraham Klotz, Abraham Lishinsky and Gerald S. Klotz, 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 looseleaf notebooks, ring binders, school bags, brief cases or any other articles of merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the terms "one piece split cowhide leather", "laminated split cowhide leather" or any other words or terms denominating

leather to describe any of said products or their parts which are not made wholly of the kind of leather so stated and which are made of said leather laminated to or backed with a different kind of leather from that so stated or with nonleather material without clearly, conspicuously and in immediate connection therewith stating that said product is laminated or backed and revealing the kind of leather or nonleather material comprising such lamination or backing.

2. Using the words "Virgin Vinyl", "Vinyl Plastic", or any other words or terms which reveal or purport to reveal the substance from which said products or their parts are made, to describe any of said products or their parts which are not made wholly of said substance and which are made of said substance laminated to or backed with a material different from said substance without clearly, conspicuously and in immediate connection therewith stating that said product is laminated or backed and revealing the kind of material comprising such lamination or backing.

3. Offering for sale or selling said products made of nonleather material which simulates leather without attaching thereto or affixing thereon in such manner that it cannot readily be removed, and of such nature as to remain on the product until it reaches the ultimate consumer, a mark, tag or label, which clearly and conspicuously discloses that the product is not made of leather.

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

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

JOHN C. MINUDRI TRADING AS FURS BY MINUDRI

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

Docket C-99. Complaint, Mar. 23, 1962—Decision, Mar. 23, 1962

Consent order requiring a San Francisco furrier to cease violating the Fur Products Labeling Act by substituting non-conforming labels for those originally affixed to fur products, and failing to keep required records; failing, on labels and invoices, to show the true animal name of furs, the

country of origin of imported furs, and the name of the manufacturer, etc., to disclose when fur was artificially colored, and to set forth the term "Dyed Broadtail-processed Lamb" as required; failing, on invoices, to disclose when fur products were composed of cheap or waste fur and when they were natural; and failing in other respects to comply with labeling and invoicing requirements.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that John C. Minudri, an individual trading as Furs by Minudri, hereinafter referred to as respondent, has violated the provisions of said Acts and the Rules and Regulations promulgated under the Fur Products Labeling Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent John C. Minudri is an individual trading as Furs by Minudri, with his principal office and place of business located at 93 West Portal Street, San Francisco, Calif.

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

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

PAR. 4. Respondent, in substituting labels as provided for, in Section 3(e) of the Fur Products Labeling Act, has failed to keep and

preserve the records required, in violation of such Section and Rule 41 of the Rules and Regulations promulgated under the said Act.

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

PAR. 6. Certain of said fur products were misbranded in that they were falsely and deceptively labeled or otherwise identified with respect to the country of origin of the furs contained in the fur products in violation of Section 4(1) of the Fur Products Labeling Act.

PAR. 7. Certain of said fur products were misbranded in that they were not labeled as required under the provisions of Section 4(2) of the Fur Products Labeling Act and in the manner and form prescribed by the Rules and Regulations promulgated thereunder.

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

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

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

3. To show the name, or other identification issued and registered by the Commission of one or more of the persons who manufactured such fur products for introduction into commerce, introduced them into commerce, sold them in commerce, advertised or offered them for sale, in commerce, or transported or distributed them in commerce.

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

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

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

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

(c) Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder

was mingled with non-required information, in violation of Rule 29(a) of said Rules and Regulations.

(d) Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations was not set forth in the required sequence, in violation of Rule 30 of said Rules and Regulations.

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

PAR. 9. Certain of said fur products were falsely and deceptively invoiced by the respondent 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 products.

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

3. To show the name and address of the person or persons issuing such invoices.

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

PAR. 10. Certain of said fur products were falsely and deceptively invoiced in violation of the Fur Products Labeling Act in that they were not invoiced in accordance with the Rules and Regulations promulgated thereunder in the following respects:

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

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

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

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

(e) Fur products which were not pointed, bleached, dyed, tip-dyed, or otherwise artificially colored were not described as natural.

PAR. 11. The aforesaid acts and practices of respondent, as herein alleged, are in violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder and constitute unfair and deceptive acts and practices and unfair methods of competition in commerce under the Federal Trade Commission Act.

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 Fur Products Labeling 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, John C. Minudri, is an individual trading as Furs by Minudri with his principal office and place of business located at 93 West Portal Street, in the city of San Francisco, State of California.

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 John C. Minudri, individually and trading as Furs by Minudri or under any other trade name, and respondent's representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce, of 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 com-

merce; or in connection with the sale, advertising, offering for sale or processing of any fur product which has been shipped and received in commerce and upon which fur product a substitute label has been placed by the respondent, as "commerce", "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

1. Misbranding fur products by:

A. Placing thereon substitute labels for labels affixed to such fur products pursuant to Section 4 of the Fur Products Labeling Act and which substitute labels do not conform to the requirements of Section 4 of the said act.

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

C. Falsely and deceptively labeling or otherwise identifying such products as to the country of origin of the furs contained in such products.

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

E. Setting forth on labels affixed to fur products:

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

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

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

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

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

2. Falsely or deceptively invoicing fur products by:

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

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

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

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

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

F. Failing to describe fur products which are not pointed, bleached, dyed, tip-dyed, or otherwise artificially colored, as natural.

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

It is further ordered, That the 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

LINCOLN LUGGAGE COMPANY, INC., ET AL.

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

Docket C-100. Complaint, Mar. 23, 1962—Decision, Mar. 23, 1962

Consent order requiring New York City luggage manufacturers to cease such misrepresentations as stating falsely on attached tags that their luggage was "Flight tested by TWA", that their Zephyrlite line was "Nationally advertised", and that "We chose Alcoa Aluminum" when their products contained no aluminum except for affixed strips of aluminum foil simulating aluminum.

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 Lincoln Luggage Company, Inc., a corporation, and Harry B. Silverman and Herbert Silverman, 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, Lincoln Luggage 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 18 West 18th Street, New York, N.Y.

Respondents Harry B. Silverman and Herbert Silverman 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 the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the manufacture, advertising, offering for sale, sale and distribution of luggage of various kinds 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 and transported from their place of business in the State of New York to purchasers thereof located in the 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 luggage, respondents attach, or cause to be attached, tags to their luggage upon which certain representations are made about the construction of, and materials used in, said luggage. Among and typical of the statements and representations appearing thereon, and others of similar import and meaning but not specifically set forth herein, are the following:

(a) Flight tested by TWA.

(b) Another famous Lincoln product flight tested and approved by TWA Airlines.

(c) Nationally advertised Zephyrlite.

(d) We chose Alcoa Aluminum. Aluminum Company of America.

PAR. 5. Through the use of the foregoing statements and representations and others of similar import and meaning but not specifically set out herein, respondents have represented, and do now represent, directly or by implication:

(a) That the luggage manufactured by the respondents to which was attached the tags bearing the words set forth in paragraphs 4(a)

and 4(b), above, had been tested and approved by Trans World Airlines for use in airplane travel.

(b) That the luggage known as "Zephyrlite" was currently being advertised throughout the United States.

(c) That the luggage manufactured by the respondents, to which was attached a tag bearing the words set forth in paragraph 4(d) above is composed of solid aluminum or contains aluminum in significant quantities.

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

(a) No luggage manufactured by the respondents has ever been tested or approved by Trans World Airlines, and the use of statements set forth in paragraphs 4(a) and 4(b) has never been authorized by said Trans World Airlines.

(b) The luggage known as "Zephyrlite" is not currently advertised nationally.

(c) The luggage manufactured by the respondents, to which was attached a tag bearing the words set forth in paragraph 4(d), above, contains no aluminum except that there is affixed to the said luggage longitudinal strips of aluminum foil encased in plastic and made to simulate solid aluminum.

PAR. 7. In the conduct of their business, at all times mentioned herein, respondents have been in substantial competition, in commerce, with other corporations, firms and individuals in the sale of 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 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. 9. The aforesaid acts and practices of respondents, as herein alleged, were, and are, all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce, in violation of Section 5(a)(1) of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act, and the respondents having

been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondents of all the jurisdictional facts set forth in the complaint 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, Lincoln Luggage 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 18 West 18th Street, New York, N.Y.

Respondents Harry B. Silverman and Herbert Silverman 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 the respondent, Lincoln Luggage Company, Inc., a corporation, and its officers, and respondents Harry B. Silverman and Herbert Silverman, individually and as officers of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the manufacturing, advertising, offering for sale, sale and distribution of luggage, or related products, in commerce, as "commerce" is defined by the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication:

1. That any such product sold by respondents has been tested and approved by Trans World Airlines or by any other concern.

2. That any such product sold by the respondents is currently being nationally advertised.

3. That any such product sold by respondents is composed of solid aluminum or contains aluminum in significant quantities or otherwise misrepresenting the nature and type of material used in their products.

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

BARNETT & WEITZNER, INC., ET AL.

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

Docket C-101. Complaint, Mar. 23, 1962—Decision, Mar. 23, 1962

Consent order requiring New York City manufacturing furriers to cease violating the Fur Products Labeling Act by falsely labeling and invoicing artificially colored fur as natural, failing to disclose on labels and invoices when fur products were bleached or dyed, and to label and invoice as natural, products which were not artificially colored; setting forth on labels the name of an animal other than that producing the fur; and failing in other respects to comply with labeling and invoicing requirements.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Barnett & Weitzner, Inc., a corporation, and Joseph Barnett, and Adolph Weitzner, individually and as officers of the 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. Barnett & Weitzner, 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 345 Seventh Avenue, New York 1, N.Y.

Individual respondents Joseph Barnett and Adolph Weitzner are president and treasurer, respectively, of the corporate respondent. Said individuals cooperate in formulating, directing and controlling the acts, policies and practices of the corporate respondent including

the acts and practices hereinafter referred to. Their office and principal place of business is the same as that of the said corporate respondent.

PAR. 2. Subsequent to the effective date of the Fur Products Labeling Act on August 9, 1952, and more especially since 1954, respondents have been and are now engaged in the introduction into commerce, and in the manufacture for introduction into commerce, and in the sale, advertising, and offering for sale, in commerce, and in the transportation and distribution, in commerce, of fur products; and have manufactured for sale, sold, advertised, offered for sale, transported and distributed fur products which have been made in whole or in part of fur which has been shipped and received in commerce, as the terms "commerce" "fur" and "fur product" are defined in the Fur Products Labeling Act.

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

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

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

PAR. 5. Certain of said fur products were misbranded in the labels affixed thereto set forth the name of an animal other than the name of the animal that produced the fur, in violation of Section 4(3) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder.

PAR. 6. Certain of said fur products were misbranded in violation of the Fur Products Labeling Act in that they were not labeled in accordance with the Rules and Regulations promulgated thereunder in that fur products which were not pointed, bleached, dyed, tip-dyed, or otherwise artificially colored were not described as natural, in violation of Rule 19(g) of the said Rules and Regulations.

PAR. 7. 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 in the

manner and form prescribed by the Rules and Regulations promulgated thereunder.

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

PAR. 8. Certain of said fur products were falsely and deceptively invoiced by the respondent 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. 9. Certain of said fur products were falsely and deceptively invoiced in violation of the Fur Products Labeling Act in that they were not invoiced in accordance with the Rules and Regulations promulgated thereunder in that fur products which were not pointed, bleached, dyed, tip-dyed, or otherwise artificially colored, were not described as natural, in violation of Rule 19(g) of the said Rules and Regulations.

PAR. 10. The aforesaid acts and practices of respondents, as herein alleged, are in violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder and constitute unfair and deceptive acts and practices in commerce under the Federal Trade Commission Act.

DECISION AND ORDER

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

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the complaint 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 Barnett & Weitzner, 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 345 Seventh Avenue, in the city of New York, State of New York.

Respondents Joseph Barnett and Adolph Weitzner 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 respondent Barnett & Weitzner, Inc., a corporation, and its officers, and respondents Joseph Barnett and Adolph Weitzner, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, or manufacture for introduction, into commerce, or the sale, advertising, or offering for sale, in commerce, or the transportation or distribution in commerce, of fur products; or in connection with the manufacture for sale, sale, advertising, offering for sale, transportation or distribution, of fur products which are made in whole or in part of fur which has been shipped and received in commerce, as "commerce", "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

1. Misbranding fur products by:

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

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

C. Setting forth on labels attached to fur products the name or names of any animal or animals other than the name of the animal producing the fur contained in the fur product as specified in the Fur Products Name Guide, and as prescribed under the Rules and Regulations.

D. Failing to describe fur products which are not pointed, bleached, dyed, tip-dyed, or otherwise artificially colored, as natural.

2. Falsely or deceptively invoicing fur products by:

A. Failing to furnish invoices to purchasers of fur products showin 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. Failing to describe fur products which are not pointed, bleached, dyed, tip-dyed, or otherwise artificially colored, as natural.

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

JOSEF MEISELS TRADING AS J. MEISELS

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

Docket C-102. Complaint, Mar. 23, 1962—Decision, Mar. 23, 1962

Consent order requiring a New York City furrier to cease violating the Fur Products Labeling Act by failing to show on invoices the true animal name of furs and when furs were artificially colored; invoicing rabbit fur as "Sealene", "Beaverette", and "Coney"; failing to set forth the terms "Persian Lamb", "dyed Mouton Lamb", and "secondhand" where required; and failing in other respects to comply with invoicing requirements.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Josef Meisels, an individual trading as J. Meisels, hereinafter referred to as respondent, has violated the provisions of said Acts and the Rules and Regulations promulgated under the Fur Products Labeling Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Josef Meisels is an individual trading as J. Meisels, with his principal office and place of business located at 130 West 29th Street, New York, N.Y.

PAR. 2. Subsequent to the effective date of the Fur Products Labeling Act on August 9, 1952, and more especially for the past seven years, the respondent has been and is now engaged in the introduc-

tion into commerce, and in the sale, advertising and offering for sale in commerce, and in the transportation and distribution in commerce, of fur products; and has sold, advertised, offered for sale, transported and distributed fur products which have been made in whole or in part of fur which had been shipped and received in commerce; and has introduced into commerce, sold, advertised and offered for sale in commerce, and transported and distributed in commerce, furs, 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 there was not on or affixed to said fur products any label showing any of the information required under the provisions of Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder.

PAR. 4. Certain of said furs and fur products were falsely and deceptively invoiced by the respondent 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 furs and fur products, but not limited thereto, were invoices pertaining to such furs and fur products which failed:

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

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

PAR. 5. Certain of said furs and fur products were falsely and deceptively invoiced in that they were falsely and deceptively identified with respect to the name of the animal or animals that produced the fur in violation of Section 5(b)(2) of the Fur Products Labeling Act.

Among such falsely and deceptively invoiced furs and fur products, but not limited thereto, were furs and fur products invoiced with the names "Sealene", "Beaverette" and "Coney" to describe Rabbit.

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

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

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

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

(d) The names of fictitious and non-existent animals, namely "Sealene" and "Beaverette", were used in invoicing furs and fur products in violation of Rule 11 of the said Rules and Regulations.

(e) The disclosure "secondhand", where required, was not set forth on invoices relating to fur products, in violation of Rule 23 of said Rules and Regulations.

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

PAR. 7. The aforesaid acts and practices of respondent, as herein alleged, are in violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder and constitute unfair and deceptive acts and practices 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 respondent named in the caption hereof with violation of the Federal Trade Commission Act and the Fur Products Labeling 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, 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 Josef Meisels is an individual trading as J. Meisels with his principal office and place of business located at 130 West 29th Street, New York, N.Y.

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 Josef Meisels, individually and trading as J. Meisels or under any other trade name, and respondent's representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce, of 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; or 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, 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 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 furs or fur products by:

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

B. Setting forth on invoices pertaining to furs or fur products any form of misrepresentation or deception, directly or by implication, as to the name of the animal or animals which produced the fur.

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

(d) The names of fictitious and non-existent animals, namely "Sealene" and "Beaverette", were used in invoicing furs and fur products in violation of Rule 11 of the said Rules and Regulations.

(e) The disclosure "secondhand", where required, was not set forth on invoices relating to fur products, in violation of Rule 23 of said Rules and Regulations.

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

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

Complaint

IN THE MATTER OF

TENAX, INC., ET AL.

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

Docket C-103. Complaint, Mar. 26, 1962—Decision Mar. 26, 1962

Consent order requiring the corporate operator of a freezer food purchasing plan through 10 wholly owned subsidiaries in large eastern cities, along with its advertising agency, to cease misrepresenting the cost of the freezers and food purchased under their plan and the savings involved, and making a variety of other deceptive practices as in the order below indicated.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Tenax, Inc., a corporation, and Leon C. Hirsch and Peter R. Ross, individually and as officers of said corporation, and The Metlis and Lebow Corporation, a corporation, and Stanley E. Lebow and Sanford H. Metlis, 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 Tenax, Inc. (formerly known as Metropolitan Food Service Corp. and as Federated Foods Corporation), 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 575 Lexington Avenue, New York, N.Y.

Respondents Leon C. Hirsch and Peter R. Ross are officers of said corporation. They formulate, direct and control the policies, acts and practices of said corporate respondent, including the acts and practices hereinafter set forth. Their address is the same as that of respondent Tenax, Inc.

These respondents, hereinafter referred to as respondents Tenax, are now, and for some time last past have been, engaged in the advertising, offering for sale and sale of home food freezers and in the solicitation of subscribers to a freezer food purchasing plan through the following wholly-owned subsidiary corporations:

Federated Foods of Washington, Inc., Washington, D.C. (formerly Capital Home Food Service Corp.)

Federated Foods of Maryland, Inc., Baltimore, Md. (formerly Delmar Food Service Corp.)
Federated Foods of Philadelphia, Inc., Philadelphia, Pa. (formerly Penn-Standard Food Corp.)
Massachusetts Federated Foods, Inc., Boston, Mass. (formerly Yankee Food Service Corp.)
Federated Foods of New Jersey, Inc., New York, N.Y. (formerly Thrift Food Service Corp.)
Federated Foods of Rhode Island, Inc., Providence, R.I.
Federated Foods of Pennsylvania, Inc., Pittsburgh, Pa.
Thor Food Service Corp., New York, N.Y.
Budget Food Service Corp., New York, N.Y.
Federated Foods of Connecticut, Inc.

PAR. 2. In the course and conduct of their business as aforesaid respondents Tenax now cause, and for some time last past have caused, the freezers sold by them to be shipped from their warehouse in the State of New York, or from the state where such freezers are manufactured, to warehouses maintained by respondents Tenax in the various other states of the United States, and in the District of Columbia, where their subsidiary sales corporations are located. In many instances the aforesaid subsidiary sales corporations have shipped and have caused the aforesaid freezers, when sold, to be shipped to the purchasers thereof, many of whom are located in states of the United States other than the state of origin of said shipment, and in the District of Columbia. They have also caused the shipment of foods to subscribers to the freezer food purchasing plan, many of whom are located in states of the United States other than the state of origin of said shipments.

Respondents Tenax maintain, and at all times mentioned herein have maintained, a substantial course of trade, as aforesaid, in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 3. In the course and conduct of their business, at all times mentioned herein, respondents Tenax have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of freezers and freezer food purchasing plans.

PAR. 4. Respondent The Metlis and Lebow Corp. 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 200 West 57th Street, New York, N.Y. This respondent is an advertising agency and is now and for some time last past has been the advertising representative of the respondents named in paragraph 1 hereof. As such it prepares and places and

has prepared and placed advertising material used by the aforesaid respondents, including that hereinafter referred to, to promote the sale of the aforesaid home food freezers and freezer food purchasing plan.

Respondents Stanley E. Lebow and Sanford H. Metlis are officers of The Metlis and Lebow Corporation. They formulate, direct and control the policies, acts and practices of said corporate respondent, including the acts and practices hereinafter set forth. Their address is the same as that of said corporate respondent.

PAR. 5. The respondents act in conjunction and cooperation with one another in the performance of the acts and practices hereinafter alleged.

PAR. 6. In the course and conduct of their business respondents have disseminated and caused the dissemination of certain advertisements by the United States mails and by various means in commerce, including but not limited to radio and television broadcasts, as "commerce" is defined in the Federal Trade Commission Act, for the purpose of inducing and which were likely to induce directly or indirectly, the purchase of food as the term "food" is defined in the Federal Trade Commission Act, and have disseminated and caused the dissemination of advertisements by various means, including those aforesaid, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of food in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 7. By means of advertisements disseminated as aforesaid and by the oral statements of sales representatives respondents have represented, directly or by implication:

1. That all of the subsidiary sales corporations of Tenax, Inc., are engaged in the purchase and resale of foods.

2. That for $14.99 a week or other stated amounts purchasers of or subscribers to the aforesaid freezer food plan will receive all their food requirements and a freezer.

3. That purchasers of or subscribers to the aforesaid freezer food plan will receive the same amount of food and a freezer for the same or less money than they have been paying for food alone.

4. That trained "Home Economists" will assist purchasers of or subscribers to the aforesaid freezer food plan in planning their food orders.

5. That all food orders are delivered free of charge.

6. That purchasers of or subscribers to the aforesaid freezer food plan receive one or several items as a free gift.

7. That purchasers of or subscribers to the aforesaid freezer food plan can "trade-in" their old refrigerator thus reducing the amount to be paid to respondents Tenax.

8. That purchasers of or subscribers to the aforesaid freezer food plan receive an enclosed cabinet for storing foods.

9. That the freezers received by purchasers of or subscribers to the aforesaid freezer food plan are self-defrosting.

10. That purchasers of or subscribers to the aforesaid freezer food plan make one monthly payment which covers both food and freezer.

11. That purchasers of or subscribers to the aforesaid freezer food plan can have their contracts financed through financial institutions of their own choosing.

12. That purchasers of or subscribers to the aforesaid freezer food plan pay the standard or list price for their freezer.

13. That purchasers of or subscribers to the aforesaid freezer food plan can sign blank contracts with the assurance that when such contracts are filled in the terms and conditions of sale as set forth therein will be the same as agreed upon and disclosed at the time of sale.

PAR. 8. The advertisements disseminated as aforesaid 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, and the aforesaid statements and representations are false, misleading and deceptive. In truth and in fact:

1. Not all of the subsidiary sales corporations of respondent Tenax, Inc., are engaged in the purchase and resale of foods. In many instances food orders submitted by subscribers to the aforesaid freezer food plan are filled by others than respondents Tenax or their subsidiary sales corporations.

2. Purchasers of or subscribers to the aforesaid freezer food plan do not receive a freezer and all of their food requirements for $14.99 a week or for the other amounts stated in the aforesaid advertisements.

3. Purchasers of or subscribers to the aforesaid freezer food plan do not receive a freezer and the same amount of food for the same or less money than they have been paying for food alone.

4. The individuals sent to help purchasers of or subscribers to the aforesaid freezer food plan in planning their food orders are not "Home Economists". They have not had sufficient or proper training to warrant calling them "Home Economists".

5. All food orders are not delivered free of charge.

6. Purchasers of or subscribers to the aforesaid freezer food plan do not receive a free gift. The price charged by respondents Tenax

for their freezers contains a high enough mark-up to cover a part or all of the cost of the so-called free gift.

7. In some instances purchasers of or subscribers to the aforesaid freezer food plan have been informed that their old refrigerator would not be taken as a trade-in.

8. Purchasers of or subscribers to the aforesaid freezer food plan do not receive an enclosed cabinet for storing foods. What they receive is a set of shelves which are open on all sides.

9. Many purchasers of or subscribers to the aforesaid freezer food plan have received freezers that were not self-defrosting.

10. Purchasers of or subscribers to the aforesaid freezer food plan are required to make two monthly payments, one for food and one for the freezer.

11. In many instances the contracts of purchasers of or subscribers to the aforesaid freezer food plan are financed through financial institutions other than those chosen by such subscribers.

12. The price paid by purchasers of or subscribers to the aforesaid freezer food plan for the freezer is in excess of the standard or list price of said freezers. The manufacturer's suggested list prices for the freezers sold by respondents Tenax range from $275.00 to $350 depending on the capacity and model thereof, whereas respondents Tenax charge $999.95 plus $59.05 for "Free labor for one year if repairs or adjustments are necessary" plus credit charges and interest.

13. All of the terms and conditions of sale are not always disclosed at the time of sale. In many instances when contracts which have been signed in blank are filled in, the terms and conditions of sale as set forth therein are not the same as agreed upon and disclosed at the time of sale.

PAR. 9. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of freezers and freezer food plans from respondents Tenax and of food, by reason of said erroneous and mistaken belief.

PAR. 10. The aforesaid acts and practices of respondents, as herein alleged, including the dissemination by respondents of false advertisements as aforesaid, were and are all to the prejudice and injury of the public and of respondents Tenax's competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices, in commerce, within the intent

and meaning of the Federal Trade Commission Act and in violation of Section 5(a)(1) of said 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, Tenax, 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 575 Lexington Avenue, in the city of New York, State of New York.

Respondents Leon C. Hirsch and Peter R. Ross are officers of said corporation, and their address is the same as that of said corporation.

Respondent, The Metlis and Lebow Corporation, 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 200 W. 57th Street, in the city of New York, State of New York.

Respondents, Stanley E. Lebow and Sanford H. Metlis, 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

PART I

It is ordered, That respondents Tenax, Inc., a corporation, The Metlis and Lebow Corporation, a corporation, and their officers, and Leon C. Hirsch and Peter R. Ross, individually and as officers of Tenax, Inc., and Stanley E. Lebow and Sanford H. Metlis, individually and as officers of The Metlis and Lebow Corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device in connection with the offering for sale, sale, or distribution of any food or any purchasing plan involving food, 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 that any subsidiary of respondent Tenax, Inc., is engaged in the purchase and resale of food when the subsidiary to which such advertisement relates is not engaged in the food business;

(b) Represents that purchasers of or subscribers to a freezer food purchasing plan will, for a stated price, receive all of their food requirements and a freezer;

(c) Represents that purchasers of or subscribers to a freezer food purchasing plan will receive foods or other items which are not available under said plan, and which they do not actually receive;

(d) Represents that purchasers of or subscribers to a freezer food purchasing plan will receive the same amount of food, and a freezer for the same or less money than they have been paying for food alone;

(e) Misrepresents in any manner the savings realized by purchasers of or subscribers to any freezer purchasing plan;

(f) Represents that purchasers of or subscribers to a freezer food purchasing plan will have the assistance or help of trained "Home Economists" or other qualified individuals in planning their food orders;

(g) Represents that food orders are delivered free of charge when purchasers of or subscribers to a freezer food purchasing plan are required to make payments for the delivery of food orders;

(h) Represents that purchasers of or subscribers to a freezer food purchasing plan receive a free gift;

(i) Represents that purchasers of or subscribers to a freezer food purchasing plan can "trade-in" their old refrigerator or freezer when

the subsidiary to which the advertisement relates does not accept old refrigerators or freezers as trade-ins;

(j) Misrepresents the physical characteristics or qualities of any article or item received by purchasers of or subscribers to a freezer food purchasing plan;

(k) Represents that purchasers of or subscribers to a freezer food purchasing plan receive self-defrosting freezers;

(l) Represents that purchasers of or subscribers to a freezer food purchasing plan make but one monthly payment covering both food and freezer.

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 any food or any purchasing plan involving food in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement contains any of the representations or misrepresentations prohibited in paragraph 1 hereof.

PART II

It is further ordered, That respondents Tenax, Inc., a corporation, The Metlis and Lebow Corporation, a corporation, and their officers, and Leon C. Hirsch and Peter R. Ross, individually and as officers of Tenax, Inc., and Stanley E. Lebow and Sanford H. Metlis, individually and as officers of The Metlis and Lebow Corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device in connection with the offering for sale, sale or distribution of freezers, food or a freezer food purchasing plan in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing directly or by implication that:

(a) Any subsidiary of respondent Tenax, Inc., is engaged in the purchase and resale of food, when such subsidiary is not engaged in the food business;

(b) Purchasers will, for a stated price receive all of their food requirements and a freezer;

(c) Purchasers will receive food or other items which are not available, and which they do not actually receive;

(d) Purchasers will receive the same amount of food and a freezer for the same or less money than they have been paying for food alone;

(e) Purchasers will have the assistance or help of trained "Home Economists" or other qualified individuals in planning their food orders;

(f) Food orders are delivered free of charge, when purchasers are required to make payment for the delivery of food orders;

(g) Purchasers receive a free gift;

(h) Purchasers from any subsidiary of Tenax, Inc., can "trade-in" their old refrigerator or freezer, when such subsidiary does not accept old refrigerators or freezers as "trade-ins";

(i) Purchasers receive self-defrosting freezers;

(j) Purchasers of or subscribers to a freezer food purchasing plan make but one monthly payment covering both food and freezer.

2. Misrepresenting in any manner:

(a) The savings realized by purchasers of or subscribers to a freezer food purchasing plan;

(b) The qualities, appearance or physical characteristics of any article or item received by purchasers.

PART III

It is further ordered, That respondent Tenax, Inc., a corporation, and its officers and Leon C. Hirsch, and Peter R. Ross, individually and as officers of Tenax, 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 freezers, food or freezer food purchasing plans in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing that purchasers of or subscribers to a freezer food purchasing plan, or purchasers of food or freezers, can have their installment contracts financed through financial institutions of their own choosing, unless where such a representation is made such contracts are in fact financed through the institution chosen by such purchasers or subscribers;

2. Representing in any manner that the price charged for any freezer or refrigerator-freezer is the standard or list price thereof;

3. Inducing purchasers of or subscribers to a freezer food purchasing plan, or purchasers of food or freezers, to sign any contract to purchase which does not at that time contain all of the terms and conditions of sale.

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.