IN THE MATTER OF

CITY STORES COMPANY

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

Docket 7871. Complaint, Apr. 19, 1960—Decision, Mar. 27, 1962

Order dismissing complaint charging a corporation with headquarters in New York City with making deceptive use of comparative prices in advertisements of two divisions it operated as department stores, i.e., Lansburgh's of Washington, D.C., and Lit Brothers of Philadelphia, Pa.

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

PARAGRAPH 1. Respondent City Stores Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 100 West Tenth Street, in the city of Wilmington, State of Delaware.

Said corporate respondent operates, as Divisions, a large number of department stores located in various states of the United States and in the District of Columbia, among them being Lansburgh Division of City Stores Company, located in Washington, D.C., and Lit Brothers, located in Philadelphia, Pa. Said Divisions operate branch stores in states adjacent to their aforesaid main stores.

PAR. 2. Respondent, through its said Divisions, is now, and for some time last past has been, engaged in advertising, offering for sale, sale and distribution of general department store merchandise to the public.

PAR. 3. Lansburgh Division of City Stores Company and Lit Brothers operate central warehouses in the District of Columbia and in Philadelphia, respectively. Merchandise shipped across state lines is received at said warehouses and is thereafter shipped across state lines to the branch stores of said Divisions. Said Divisions have their central business offices at their main stores and carry on an extensive commercial intercourse in commerce between said main stores

and their branch stores and with their credit customers located in other states.

Lansburgh Division sells merchandise in its store in the District of Columbia and it and Lit Brothers ship merchandise to purchasers located in states other than the state in which the sale is made.

Respondent, through its said Divisions, is engaged in a substantial course of trade in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Respondent, through its said Divisions, advertises its merchandise in numerous newspapers which have an extensive circulation across state lines and has engaged in the practice of using fictitious prices in said advertisements. Among and typical of such practices, but not limited thereto, are the following statements:

Advertisements of Lansburgh Division of City Stores Company:

12 Modern Reclining Chairs with Vibrators, assorted
Orig. 59.95 to 69.95—Now 29.99
Sale
famous Calloway 9′ x 12′ rugs formerly 59.95—$38.
matching 6′ x 9′ size, formerly 34.95—24.95
120 revolving car washers by Orsow
Orig. 6.98 now 3.99
6.95 new Chatham scale by Detecto * * * 4.88
21 Munsey toaster oven—Orig. 6.98—now 4.59

Advertisements of Lit Brothers:

25 Visnova sewing machines, orig. $209
Brand new portable with carry-case 79.95
10 Trilmont electric heaters, orig. 29.95—14.99
Imagine, 50 pcs. stainless steel tableware
Service for 8, orig. 19.98—10.99
Amana air conditioner—Orig. 249.95—$118.
Save $4.00 on this Perfection Deluxe automatic heating pad! Formerly 8.95, now only 4.95

PAR. 5. Respondent, through the use of the amounts in connection with the words "Orig." and "Formerly", and through prices set forth without a descriptive prefix, have represented that said amounts were the prices at which the merchandise advertised had been usually and customarily sold by it at retail in the recent regular course of business and that the differences in said amounts and the lesser sale prices represented savings from respondent's usual and customary retail prices of said merchandise.

PAR. 6. Said statements and representations were false, misleading and deceptive. In truth and in fact, the amounts used in connection with the words "Orig." and "Formerly", and prices set forth without a prefix, were fictitious and in excess of amounts at which respond-

ent had sold the advertised merchandise at retail in the recent regular course of its business and, therefore, the differences between said amounts and the lesser sale prices, did not represent savings from respondent's usual and customary price of said merchandise.

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

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

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

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

Mr. Samuel D. Goodis and *Mr. Stanford S. Hunn* for *Folz, Bard, Kamsler, Goodis & Greenefield*, of Philadelphia, Pa., for respondent.

INITIAL DECISION BY LEON R. GROSS, HEARING EXAMINER

I. PRELIMINARY STATEMENT

This proceeding is being dismissed because counsel supporting the complaint has failed to sustain by reliable, probative and substantial evidence the burden of proof imposed upon him by § 7(c) of the Administrative Procedure Act,[1] and §§ 3.14 and 3.21(b) of the Rules of Practice for Adjudicative Proceedings of the Federal Trade Commission.[2]

[1] "Except as statutes otherwise provide, the proponent of a rule or order shall have the burden of proof. . . . But . . . no . . . order be issued except . . . in accordance with the reliable, probative, and substantial evidence."

[2] § 3.14: ". . . counsel supporting the complaint shall have the burden of proof, but the proponent of any factual proposition shall be required to sustain the burden of proof with reference thereto."

§ 3.21(b): ". . . initial decisions . . . shall be based upon a consideration of the whole record and supported by reliable, probative and substantial evidence."

The issue presented for decision in this proceeding is comparatively simple: Did respondent's department stores, Lit Brothers of Philadelphia, Pa., and Lansburgh's of Washington, D.C., violate the Federal Trade Commission Act by the deceptive use of comparative prices in advertisements offering their merchandise for sale?

In this record, counsel supporting the complaint has failed to prove such deception by a preponderance of reliable, substantial and probative evidence.

The fact that respondents have stipulated the challenged advertisements into the record does not make out a prima facie case in support of the complaint. Commission counsel has the burden, which he has not met, of *proving* wherein said advertisements are false, misleading or deceptive. He must prove considerably more than that the ads were actually published. He must prove that the comparative prices characterized in the ads as "usually," "regularly," "formerly," and "originally" were in fact *not* prices at which the advertised articles were offered for sale or sold by the seller in the usual, recent, regular course of business in the trade area involved.

Use of the words "regularly" or "originally" (or abbreviations thereof), in juxtaposition to, and in conjunction with, comparative prices in advertisements constitutes a representation by the seller to prospective buyers that such regular or original prices were the seller's usual and customary price in his recent regular course of business for identical merchandise in the same trade area.[3]

To support a cease and desist order by the Federal Trade Commission in this type of proceeding, there is no need to show injury to the purchasing public.[4]

> . . . capacity to deceive and not actual deception is the criterion by which practices are tested under the Federal Trade Commission Act.[5]

The public does not weigh each word in an advertisement or representation. It is important to ascertain the impression that is likely to be created upon the prospective purchaser.[6] It is in the public interest to prevent the sale of commodities by the use of false and misleading statements and representations.[7] Advertisements are not to be judged by their effect upon the scientific or legal mind, which will dissect and analyze each phrase but rather by their effect upon the average member of the public who more likely will be influenced by

[3] Bond Stores, Inc., Docket No. 6789, Commission's Opinion of January 7, 1960; Arnold-Constable Corporation, Docket No. 7657.

[4] *Jacob Siegel* v. *FTC*, 150 F. 2d 751, 755.

[5] *Goodman* v. *FTC*, 244 F. 2d 584, 604 (C.A. 9th 1957).

[6] *Kalwajtys* v. *FTC*, 237 F. 2d 654, 656 (*cert. denied* 352 U.S. 1025).

[7] *Parke, Austin & Lipscomb* v. *FTC*, 142 F. 2d 437.

the impression gleaned from a first-glance at the most legible words.[8]

This complaint was issued April 19, 1960, against respondent City Stores Company, a Delaware corporation, charging it with the deceptive use of comparative prices in advertising promulgated by two of the department stores which it operates, i.e., Lit Brothers, Inc., of Philadelphia, Pa., and Lansburgh's of Washington, D.C. Issue was joined in the answer. Several prehearing conferences and hearings were either suspended or canceled to permit counsel to work out a stipulation of facts. A "Prehearing Stipulation" was filed on July 19, 1961, with accompanying exhibits. These constitute the entire record in this proceeding. Certain statements made at a prehearing conference have also been cited by counsel as proof of certain formal facts which are not decisive as to the issues presented. The "Prehearing Stipulation" is not a stipulation of fact but more in the nature of a stipulated record. Proposed findings, conclusions and suggested order have been filed. The Prehearing Stipulation, inter alia, recites:

> The exhibits identified herein are stipulated as being authentic and the statements in explanation of the respective exhibits are accepted with the same force and effect as if witnesses had testified under oath.
>
> It is further stipulated that no testimony or exhibits will be introduced in rebuttal of the material herein stipulated, and the evidence and testimony of record and this stipulation constitute the entire record in this case.

Motions heretofore made which have not previously been ruled upon hereby are specifically denied unless otherwise indicated in this decision. Requested findings which are not specifically incorporated herein in haec verbae or in substance are rejected and refused. The fact that findings do not incorporate specifically evidence which is in the record must not be construed as indicating that such evidence has not been fully considered. It indicates merely that the evidence which has been incorporated in the findings contains all of the relevant, reliable, probative and preponderant facts essential to a proper adjudication of the issues.

The hearing examiner makes the following:

FINDINGS OF FACT

1. The Federal Trade Commission has jurisdiction over the parties and the subject matter of this proceeding, and the proceeding is in the public interest. The complaint filed herein states a good cause of action under the Federal Trade Commission Act.

2. Respondent City Stores Company is a corporation organized, existing and doing business under and by virtue of the laws of the

[8] *Ward Laboratories, Inc., et al. v. FTC*, 276 F. 2d 952 (C.A. 2d 1960).

State of Delaware, with its principal office at 132 West 31st Street, New York, N.Y.

3. Respondent operates as Divisions a large number of retail department stores located in various states of the United States and in the District of Columbia, among them being Lansburgh's, Washington, D.C., and Lit Brothers, of Philadelphia, Pa. The Lansburgh's and Lit Brothers Divisions operate branch stores in states adjacent to their aforesaid main stores.

4. Respondent is engaged in commerce as "commerce" is defined in the Federal Trade Commission Act.

5. Lansburgh's and Lit Brothers are separate Divisions of respondent and act independently of respondent with full local autonomy as to their advertising, the prices advertised therein, and the comparative pricing employed therein.

6. During the period involved in these proceedings Lansburgh's advertised over 6,000 items with comparative prices and Lit Brothers advertised over 10,000 items with comparative prices.

7. The advertisements of Lansburgh's and of Lit Brothers for the items stated appeared on the dates and in the words set forth hereinafter. Lansburgh's advertised in the Washington Post and Times-Herald, a morning newspaper, and the Washington Evening Star, an afternoon newspaper, both having general interstate circulation in the District of Columbia, Virginia, and Maryland. Lit Brothers advertised in the Philadelphia Evening Bulletin and the Philadelphia Inquirer, both newspapers of general circulation in the Philadelphia area. It is not essential to this decision to specify hereafter the particular newspaper in which the particular advertisement appeared since only the date and the wording of the advertisement are material to the decision.

8. Lansburgh's and Lit Brothers advertised the item hereinafter described in newspapers of general circulation on the dates indicated. A finding whether such item had previously been sold in the usual, recent, regular course of business in the trading area involved at the comparative price stated in the advertisement must be predicated solely upon the record made in the Prehearing Stipulation and accompanying exhibits.

9. The dates and the items advertised by Lansburgh's and Lit Brothers were:

LANSBURGH'S ADVERTISEMENTS:

A. On January 25, 1959:

12 modern reclining chairs with vibrators, assorted, orig. 59.95 to 69.95 now 29.99.

Mr. Foster of Lansburgh's would testify and the examiner finds, in the absence of evidence to the contrary, that the 69.95 chairs were sold by Lansburgh's at 69.95 until September 6, 1958. Mr. Foster would further testify and the examiner finds, in the absence of evidence to the contrary, that the 59.95 chairs were sold by Lansburgh's at 59.95 until January 23, 1959, except one chair which it sold on December 22, 1958, at 42.77. The reclining chairs, therefore, were not deceptively advertised.

B. On April 1, 1959:

9 x 12 rug formerly 59.95—38.00.

The advertisement also stated: "Sale—Lansburgh's buys out entire stock of manufacturer's discontinued patterns in long-wearing twisted loop pile." Counsel admit based upon RX 1–A, B and C that these rugs purchased at $37 were marked to sell at $59.95 Counsel supporting the complaint has failed to prove that the comparative price of $59.95 which was used in the advertisement was false, misleading, and deceptive.

C. On January 25, 1959:

120 revolving car washers by Osrow orig. 6.98 now 3.99.

On February 20, 1959:

6.98 revolving car washing brushes by Osrow 3.99.

Mr. Rollins, Associate Buyer of Housewares, would testify, and there is no evidence to the contrary, that the articles were to show a reduction in price from $6.98 to $3.99, and those in the later ads were on the floor at the same time marked as reduced from $4.44 to $3.99. The evidence involving Lansburgh's prior prices for the revolving car washers (Stip. p. 3) does not support a finding that the $6.98 comparative price used in the advertisement was false, misleading and deceptive. The evidence is too incomplete and inconclusive to support such finding.

D. On March 8, 1959:

6.95 new Chatham Scales 4.88.

CX–5–B indicates that the manufacturer's suggested retail price was $7.95 and that Lansburgh's used the figure of $6.95. The Stipulation does not contain facts from which the examiner may conclude whether Lansburgh's had or had not offered for sale or sold the scales at $6.95 in the usual, regular course of business prior to the time of the advertisement. The examiner, therefore, is unable to make a finding because of the inadequacy of the proof. The burden of proving that Lansburgh's had not sold the scales at $6.95 is upon counsel supporting the complaint.

E. On January 25, 1959:

21 Munsey Toaster-Ovens orig. 6.98 now 4.59

CX–6–C, which is an invoice from Munsey Products, Inc., indicates that the same toaster was sold by Lansburgh's at $6.95. This is confirmed in CX–6–E. The challenged advertisement was, therefore, not false, misleading and deceptive.

F. On March 4, 1959:

New Adjustable Ironing Board reg. 6.99—4.99.

CX–7–D, an invoice dated October 13, 1958, for 200 of the ironing tables, indicates that the retail price of the ironing boards had been $6.99. Since this is the only proof in the record, the examiner finds that counsel supporting the complaint has not sustained the burden of proving that the advertisement was false, misleading and deceptive.

G. On February 20, 1959:

6.95 Skotch Portable Barbeque Grill . . . 1.99.

Mr. Rollins, Associate Buyer of Lansburgh's Housewares Department, which handles this item, would testify that, and, in the absence of contradictory testimony, the examiner finds, Lansburgh's purchased these items locally and sold them in the store for $6.95. The merchandise purchased from Kastner was identical to the merchandise sold by Lansburgh's at $6.95. Counsel supporting the complaint has failed to sustain the burden of proving that the grills were falsely and deceptively advertised.

H. On January 25, 1959:

Four French Provincial Buffets, Fruitwood, orig. 99.95, now 64.95.

CX–9–B shows that this item was sold at Lansburgh's at $99.95. Two sales, one on December 1, 1958, and one on December 23, 1958, were at $99.95. Sales had been made in 1957 at $99.95. There is no evidence of deceptive advertising of the French Provincial Buffets.

I. On April 5, 1959:

Wear-ever Hallite Casseroles reg. 8.75—6.12, 8 inch.

The 8-inch casserole was retailed by Lansburgh's at $8.75 (CX–10–C, D, E, and F). Respondent's witness would testify that Wear-ever semiannually has special sales that they offer to their dealers on selected items. These items are sold to the dealers at a special price for a limited time only. After the sale the prices revert to the original figure. Lansburgh's correctly advertised the former price at which the casseroles were regularly sold prior to the special sale (Stip. p. 7).

J. On March 11, 1959:

5.98 Enamel Toilet Seat—3.99.

Two separate styles of toilet seats were sold by this store. The style referred to in the advertisement was Model 121 (Stip. p. 8). Style 121 had been sold by Lansburgh's at a retail price of $5.98. Style 510 had been sold by them at retail for $3.99. The challenged advertisement has not been proven to be false, misleading and deceptive.

LIT BROTHERS ADVERTISEMENTS:

K. On February 1, 1959:

DuPont Mylar Auto Seat Covers orig. 32.95 Save 20.95 Monday $12.00.

On May 12, 1959:

Save 19.96 M DuPont Mylar Auto Covers orig. 32.95 12.99.

The recitals in the Stipulation (pp. 9, 10 and 11) justify a finding, which the examiner hereby makes, that counsel supporting the complaint has failed to prove by reliable, substantial and probative evidence that these seat covers had not previously been offered for sale or sold at retail by Lit Brothers on their floor for $32.95. The use of this comparative price in the advertisements of February 1 and May 12, 1959, was not false, misleading nor deceptive.

L. On October 17, 1958:

VISNOVA Mfr's List $299 Anniversary price 149.95.

On February 10, 1959:

25 VISNOVA Sewing Machines orig. $209—$79.95.

It was misleading for Lit Brothers to use "Mfr's List $299" in the advertisement unless it had offered for sale or sold the machines in its stores for $299 or unless the sewing machines had been generally sold in its regular trade area in the recent regular course of business for $299. According to the handwriting across CX–14–B and C, which are not contradicted, these machines were in the store originally at $299. They did not sell so were marked down to $209. They still did not "move" so were marked down to $79.95. They were finally reduced and sold at $49.95. The recitals on pages 13 and 14 of the Stipulation do not warrant a finding that counsel supporting the complaint has sustained the burden of proof imposed upon him.

M. On February 10, 1959:

10 Trilmont Electric Heaters orig. 29.95—14.99.

This item was sold a year before the ad appeared at $32.95 and the manufacturer's list price was $29.95. Eleven Trilmont heaters which were in stock on the 10th of February, 1959, priced at $19.97 were

reduced to $14.99, and three Trilmont Heaters which were in stock on February 10, 1959, priced at $19.99 were also reduced to $14.99. CX–15–D is a price change form indicating that on March 19, 1959, 15 heaters priced at $14.99 were reduced to $10.

The November, 1956, advertisement of Strawbridge & Clothier in the Wilmington Morning News and the October 28, 1956, advertisement of Stern's in the Evening Bulletin, are not shown in the stipulation to relate to the time period and trade area presented by the Lit advertisement so as to be relevant to the issues. The recitals in the Stipulation (pp. 13, 14, and 15) do not establish the facts which counsel supporting the complaint must prove in order to sustain the burden imposed upon him. The evidence is inconclusive.

N. On February 18, 1959:

Stainless steel tableware Service for 8, Orig. 19.98 10.99.

On the basis of the facts in the Stipulation, the hearing examiner finds that with exception of pattern the identical merchandise had been sold by Lit's in its recent regular course of business in the trade area involved at the price of $19.98. The challenged advertisement has not been proven to have been false, misleading, and deceptive within the intent and meaning of the Federal Trade Commission Act.

O. On March 31, 1959:

Melmac 45pc Dinner set for 8, Half price 14.97 orig. 29.95.

Mrs. Haas of Lit Brothers would testify, and in the absence of rebutting testimony, the hearing examiner finds that the same dinner set was sold during 1958 at $29.95. Mrs. Haas' testimony would be substantiated by that of Mr. Egendorf. Use of the words "orig. 29.95" in the advertisement for the Melmac dinner set was not false, misleading and deceptive.

P. On February 27, 1959:

Amana Air Conditioner Orig. 249.95 $118.00.

Attached to CX–18–A to D, inclusive, is a note: "Actually sold at Lit Brothers for $249.95. Mark-down was taken on just five left. This was a clearance." (Stip. p. 17) In the absence of contradictory evidence, the examiner finds that Amana Air Conditioners originally were offered for sale or did sell for $249.95. The advertisement stating that fact was not false, misleading and deceptive within the intent and meaning of the Federal Trade Commission Act.

Q. On March 8, 1959:

Half price! Famous 29.95 Salon-type Vibra-Slim Massager only 14.97 * * *.

The evidence in the Stipulation supports a finding, and the hearing examiner finds, that the massager had been selling at Lit's for $29.95

and that the advertisement was not false, misleading and deceptive (Stip. pp. 18–19).

R. On March 22, 1959:

Save $4 on this Perfection
Deluxe automatic heating pad!
Formerly 8.95,
now only
4.95.

This heating pad had been sold in the store for $8.95 by S. Hollander, Inc., of Chicago, Illinois, a licensee of Lit's. Respondent has been unable to find any sales checks evidencing sales at $8.95; however, the burden of proving that the heating pad had not been sold or offered for sale at $8.95 was on counsel supporting the complaint, and he has failed to sustain that burden. Mrs. Haas, of Lit Brothers' staff, the buyer of Hollander's, and Mr. Egendorf of Lit Brothers, would testify that the item was on Lit Brothers' floor at the comparative price stated in the advertisement. The evidence is too inconclusive to justify a finding that the advertisement was false, misleading and deceptive.

S. On March 29, 1959:

1000 Ice tea spoons orig. 2.00 50¢.

This spoon sold in Lit's stock at $2; it was fair-traded by Holmes & Edwards. This was a discontinued pattern and was not being sold by Lit Brothers at the time of the ad, but had been sold previously at $2. This was a special purchase for the purpose of disposing of a discontinued pattern. Counsel supporting the complaint has failed to sustain the burden imposed upon him with reference to the advertisement for these spoons according to all the facts stated in the Stipulation (p. 20).

T. On March 29, 1959:

2000 aluminum skillets
orig. 2.98
1.55

These sold on the floor at $2.98 during January and February 1959 (Stip. p. 20). The advertisement for the skillets was not false, misleading or deceptive.

U. On May 19, 1959:

Westinghouse Streamliner
Air Conditioner
Last Year 329.95
158.88

Mrs. Haas of Lit's would testify and there is no evidence to the contrary that the Westinghouse air conditioner had sold "last year" for $329.95. In the absence of rebutting evidence, the hearing examiner finds that the air conditioner had been offered for sale or sold in Lit Brothers for $329.95 (Stip. pp. 21–22), and the above advertisement is found not to have been false, misleading or deceptive.

10. All of the 23 items advertised (fndg 9A–9U incl.) are non-seasonal items as that term is understood in the retail department store business.

DISCUSSION

The complaint alleges in Paragraph Six:

> The amounts used in connection with the words "orig." and "formerly," and prices set forth without a prefix were fictitious and in excess of amounts at which respondents had sold the advertised merchandise at retail in the recent regular course of its business and, therefore, the differences between said amounts and the lesser sale prices, did not represent savings from respondent's usual and customary price of said merchandise.

Only ten Lansburgh's advertisements out of 6,000, and thirteen Lit Brothers' advertisements out of 10,000 published have been challenged in these proceedings. In no instance has counsel supporting the complaint established even as to the 23 challenged advertisements by reliable, probative and substantial evidence that the comparative prices stated in such twenty-three advertisements were in fact false, misleading and deceptive within the intent and meaning of the Federal Trade Commission Act.

An "automatic" mark-down policy and practice has been followed by some very successful retail department stores for the purposes, among others, of turning over their stocks frequently, insuring fresh merchandise on the floor, and to move slow moving items such as the Visnova Sewing Machines (fdg 9L). Some successful department stores seek more frequent turnover of their stock than do others. Obviously rate of turnover is one essential ingredient in successful retail department store operations.

The increase in the number of "discount houses" has also complicated the retail merchandising picture, and created new problems in connection with policing the advertising practices of such discount houses.

In this case, however, none of these elements has been inserted in the record, nor brought up for evaluation. The evidence in this record does not support a finding that as to the ten Lansburgh advertisements out of 6,000 and the thirteen Lit Brothers advertisements out of 10,000 the comparative prices used were "fictitious and in excess of amounts at which respondent had sold the advertised mer-

chandise at retail in the recent regular course of its business," as charged in the complaint. In most of the 23 advertisements, the stipulated record proved just the opposite, and in a few other instances the facts are too inconclusive to support any finding of fact other than that counsel supporting the complaint has failed to sustain the burden of proof imposed upon him.

The word "recent" in the expression "recent, regular course of business" should not be too inflexibly defined. RX–10 is a letter dated November 14, 1958, from the Chairman of the Federal Trade Commission to the Better Business Bureau of New York City approving insofar as they do not conflict with the policies and practices of the Federal Trade Commission certain standards for Retail Advertising promulgated by the Better Business Bureau of New York City, Inc. Neither the letter nor the standards constitute binding authority but it appears appropriate to state that respondent's advertising in this case conforms to the spirit of said Standards for Retail Advertising of Price Reduction, Comparison and Savings Claims. This is reproduced in substance on page 22 of the Prehearing Stipulation:

I. Saving or Reduction in Your Own Price

1. *immediately preceding price* if based on your own usual price immediately before reduction, terms such as these may be used: * * * "regularly," "usually," "formerly" * * *

2. *Intermediate reductions.* if intermediate markdowns during "recent course of business" "your first price during period may be described as "original." "Recent course of business" is defined by BBB as the current selling season for seasonal merchandise such as apparel, sporting goods, etc., and not more than 12 months for non-seasonal merchandise such as furniture, jewelry, appliances, etc."

The advertisements here involved were for (a) reclining chairs, (b) rugs, (c) car washers, (d) scales, (e) toaster-ovens, (f) ironing boards, (g) barbeque grills, (h) buffets-furniture, (i) Wear-Ever Casseroles, (j) enamel toilet seats, (k) automobile seat covers, (l) sewing machines, (m) electric heaters, (n) stainless steel tableware, (o) Melmac dinner ware, (p) air conditioners, (q) Massager, (r) heating pads, (s) teaspoons, (t) aluminum skillets, and (u) air conditioners. Interestingly enough, these are all in the non-seasonal category.

Based upon the application of pertinent rulings to the facts, the examiner makes the following:

CONCLUSIONS

1. The Federal Trade Commission has jurisdiction over the parties and the subject matter of this complaint and this complaint is in the public interest.

2. Respondent is engaged in commerce as "commerce" is defined in the Federal Trade Commission Act.

3. Use of the words "formerly" and "originally" (and abbreviations thereof) in retail store advertisements in conjunction with and juxtaposition to a comparative price connotes to the prospective purchaser that the advertised item formerly was offered for sale by the store in its trade area in the recent regular course of its business at the comparative price stated. A twelve-month period preceding the challenged advertisements may constitute the "recent" regular course of business.

4. In order to establish that such comparative prices are false, misleading and deceptive under the Federal Trade Commission Act, it is incumbent upon counsel supporting the complaint to prove by reliable, probative and substantial evidence that the merchandise being offered was neither sold nor offered for sale at the comparative price stated in the advertisement in the recent regular course of business of respondent in the trade area involved. In this proceeding counsel supporting the complaint has not sustained this burden.

The deficiencies of the evidence in this record have been stated, as the examiner has made findings with respect to each of the 23 challenged advertisements. Such evidence does not prove that Lansburgh's and Lit Brothers' advertisements were, in fact, false, misleading and deceptive within the intent and meaning of the Federal Trade Commission Act.

Counsel supporting the complaint has failed to sustain the burden of proof imposed upon him by law, the Federal Trade Commission Act, the Administrative Procedure Act, and the Rules for Adjudicative Proceedings of the Federal Trade Commission. The complaint and this proceeding ought to be and

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

OPINION OF THE COMMISSION

By ANDERSON, *Commissioner:*

The complaint herein charges respondent, City Stores Company, with violation of the Federal Trade Commission Act by virtue of the comparative price representations made in the advertisements of two of its divisions which it operates as department stores, namely, Lansburgh's of Washington, D.C., and Lit Brothers of Philadelphia, Pa.

Specifically, the complaint alleges that respondent's advertisements setting forth certain amounts preceded by descriptions such as "Orig." or "Formerly" or by no prefix at all in comparison with a lower sales price represented the higher amounts, contrary to fact, as respondent's

usual and customary prices in its recent regular course of business, and, further, that the differences between the higher amount and the sales price did not, as represented, constitute savings from respondent's usual and customary prices for the advertised merchandise.

The matter is now before us on the appeal of counsel supporting the complaint from the initial decision dismissing the complaint for failure of proof. Counsel supporting the complaint argues that the record documents two methods employed by respondent in utilizing fictitious pricing, viz., the use of comparative prices not applicable to the identical merchandise offered for sale and, second, respondent's reliance on comparative prices in effect in a period too remote to constitute the respondent's recent regular course of business.

The record herein consists entirely of a forty-page transcript, certain exhibits, and a stipulation by counsel for both sides explaining the exhibits. Support for the allegations of the complaint must be found, if at all, in the aforesaid stipulation. On a review of the record, we hold that the hearing examiner correctly ruled that counsel supporting the complaint has not sustained the burden of proof in this matter. At best the facts of record here do no more than support a surmise that certain of the allegedly fictitious prices may not have been respondent's usual and customary prices in the recent regular course of business. The facts presented by this record do not constitute that reliable, probative and substantial evidence required to support an order.

The stipulated facts are inconclusive on the central point at issue here, namely, whether the allegedly fictitious prices were in excess of respondent's usual and customary prices in the recent regular course of business. The evidence herein with respect to the retail prices charged by respondent for the merchandise in question is inadequate for an evaluation of the veracity of respondent's pricing claims, since the facts stipulated are by and large unclear as to whether respondent regularly adhered or failed to adhere to any particular retail price, including the allegedly fictitious prices, in an ascertainable period prior to the alleged misrepresentations.[1]

[1] E.g., counsel supporting the complaint challenged respondent's advertisement of a rug manufacturer's discontinued stock in the April 1, 1959, Washington, D.C., Evening Star, which represented Callaway rugs as "formerly $59.95"—on sale at Lansburgh's for $38.

The stipulated facts record respondent's purchase of the rugs from Callaway Mills under invoice dated February 26, 1959, and the manufacturer's wholesale price for the advertised rugs. Counsel concluded the stipulation on this point with the irrelevant statement that invoices dated September 1958 showed rugs "purchased [from another source than Callaway] at $37 were marked to sell at $59.95".

Even assuming that the February 26, 1959, invoice recorded an intended retail price of $39.95 for the shipment in question, counsel supporting the complaint has not satisfied the burden of proof. The record does not disclose the actual prices paid by customers for the

We are compelled to disagree, therefore, with certain of the hearing examiner's findings holding, in effect, that the truthfulness of the comparative pricing claims in particular advertisements is proven by this record,[2] as well as with the examiner's conclusion that in case of most of the challenged advertisements that the record tends positively to rebut the allegations of the complaint.

Nor do we agree that a consideration of the "Standards for Retail Advertising of Price Reduction, Comparison and Savings Claims" promulgated by the Better Business Bureau of New York City is appropriate in our disposition of this matter as the initial decision implies. The criteria to be applied in a Commission proceeding for definition of the term "recent, regular course of business", of course, is a question to be resolved by the Commission and may not be governed by the determination of an outside body.

In light of our views already expressed in this opinion and for additional reasons set forth below, we are obliged to modify the initial decision. Specifically, paragraph 9 of the Findings of Fact, the examiner's analysis of the evidence relating to specific instances of respondent's pricing representations, will be deleted and our own finding substituted therefor, since we do not agree with the examiner that the record supports the truthfulness of respondent's pricing claims in the case of certain advertisements. That portion of the initial decision, entitled "Discussion", will be stricken primarily because of the reliance therein on the criteria promulgated by the Better Business Bureau of New York City for determining the recent regular course of business in the case of seasonal and nonseasonal merchandise. In this connection, paragraph 10 of the Findings of Fact to the effect that the advertised items in issue here are nonseasonal items will be deleted as not germane to our decision. Furthermore, the examiner's comments in

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rugs received in this shipment and, further, it is completely silent on the question of whether Lansburgh's had previously received and sold these Callaway rugs in the case of other shipments. On the basis of this evidence no affirmative finding can be made that the allegedly fictitious prices were, in fact, in excess of respondent's usual and customary retail price for this product in its recent regular course of business.

[2] E.g., in the case of Lit Brothers' advertisement in the Philadelphia Evening Bulletin of May 19, 1959, of a Westinghouse Air Conditioner as "Last Year 329.95—158.88", the hearing examiner found on the basis of the stipulated facts that ". . . the air conditioner had been offered or sold in Lit Brothers for 329.95 . . . and *the above advertisement is found not to have been false, misleading, or deceptive.*" [Emphasis supplied.]

The stipulation, however, states no more than that one of Lit's employees would testify that she had been told by the buyer that the item "had sold around town last year at $329.95" and that at the time of the Commission's investigation no one, including Westinghouse, could verify this statement. The stipulated facts are inconclusive on the point at issue here and insufficient to sustain the burden of proof incumbent on counsel supporting the complaint. On the other hand, this evidence clearly does not support an affirmative finding that respondent's comparative pricing in this instance was not false, misleading or deceptive.

the "Discussion" on automatic markdown policy and the increase in number of discount houses are irrelevant to a resolution of the issues presented by this record and as already stated, we reject the examiner's conclusion in this part of the initial decision that the stipulated record proves the truthfulness of most of the challenged pricing representations.

Certain of the initial decision's "Conclusions" will also be deleted. In this portion of the initial decision, statements that the words "formerly" and "originally" in comparative pricing claims connote that the advertised items had been offered for sale by the store in the recent regular course of its business are incomplete, since they ignore the necessary inference that representations of this nature imply that the comparative price in question was the advertiser's usual and customary price in his recent and regular course of business. Further, for the reasons already indicated, the conclusion that a twelve-month period preceding the date of the challenged advertisements may constitute the recent regular course of business is not warranted by this record.

The appeal of counsel supporting the complaint is denied and the initial decision, as modified in the accompanying order, is adopted as the decision of the Commission.

FINAL ORDER

This matter having come before the Commission upon the appeal of counsel supporting the complaint from the hearing examiner's initial decision, upon briefs and oral argument in support thereof and in opposition thereto; and the Commission, after consideration of the entire record, having rendered its decision denying the appeal and directing modification of the initial decision:

It is ordered, That the initial decision be modified by striking paragraph 9 from the Findings of Fact and substituting therefor the following:

9. The record herein consisting primarily of a stipulation of facts covering respondent's representations of comparative prices challenged by the complaint does not support a finding that respondent has engaged in the practice of representing as its customary prices amounts which are in excess of its customary and usual prices in the recent regular course of business.

It is further ordered, That the initial decision be modified by striking therefrom paragraph 10 of the Findings of Fact, that section entitled "Discussion" beginning on page 633 with the words "The complaint alleges in Paragraph Six" and ending on page 634 with the words "these are all in the nonseasonal category", and the first three

paragraphs of page 635 of the initial decision beginning with the words "Use of the words 'formerly' " and ending with the words "and meaning of the Federal Trade Commission Act."

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

IN THE MATTER OF

INTERNATIONAL LATEX CORPORATION

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

Docket 8145. Complaint, Oct. 17, 1960—Decision, Mar. 28, 1962

Consent order requiring a corporation with headquarters in Dover, Del., to cease representing as "fabric-lined" or "cotton-lined," its "Playtex" household rubber gloves which were lined, not with a woven or knitted fabric as thus implied, but with a material known as flock consisting of short fibers of cotton attached in random fashion to the inside surface of the gloves.

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

PARAGRAPH 1. Respondent International Latex Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at Playtex Park, in the city of Dover, State of Delaware.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the advertising, offering for sale, sale and distribution of household rubber gloves under the trade name "Playtex" to distributors, jobbers and retailers for resale to the public.

PAR. 3. In the course and conduct of its business, respondent now causes, and for some time last past has caused, its said product, when sold, to be shipped from its place of business in the State of Delaware to purchasers thereof located in various other states of the United

States and in the District of Columbia, and maintains, and at all times mentioned herein has maintained, a substantial course of trade in said product in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of its business, and for the purpose of inducing the sale of its gloves, respondent has made certain statements with respect to the character or type of lining contained in its gloves, in advertisements on television broadcasts, on the packages in which the gloves are sold and in various other ways, of which the following are typical.

fabric—lined
cotton—lined
cotton—lining

PAR. 5. By and through the use of the term "fabric lined" the respondent represented and now represents, directly or by implication, that its said rubber gloves are lined with woven or knitted material and through the use of the terms "cotton-lined" and "cotton-lining" that said gloves are lined with cotton.

PAR. 6. Said statements and representations were and are false, misleading and deceptive. In truth and in fact respondent's said gloves are neither lined with a woven or knitted material nor are they cotton-lined or lined with cotton, as such terms are understood and accepted by the rubber glove industry but are lined with a material known as flock which consists of short fibers of cotton attached to the inside surface of the gloves in a random fashion.

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

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

PAR. 9. The aforesaid acts and practices of respondent, as herein alleged, were and are all to the prejudice and injury of the public and of respondent's competitors and constituted, and now constitute, un-

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

DECISION AND ORDER

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

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

1. Respondent International Latex Corporation is a corporation existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at Playtex Park, in the city of Dover, State of Delaware.

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 the respondent, International Latex Corporation, a corporation, and its officers, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of rubber gloves, or any other product, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or indirectly, that its rubber gloves, or any other product, are fabric lined unless the lining consists of a woven or knitted material; or are cotton lined or contain a cotton lining when such lining consists of short fibers of cotton known as flock or fluff, attached to the inside of the glove or other product.

2. Misrepresenting, in any manner, the material of which the lining of its gloves, or any other product, is composed.

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

IN THE MATTER OF

KORBER HATS, INC., ET AL.

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

Docket 8190. Complaint, Nov. 28, 1960—Decision, Mar. 28, 1962

Order requiring Fall River, Mass., hat manufacturers to cease representing falsely that their straw hats—actually made of a braid manufactured in Japan of Philippine hemp—were made in and imported from Italy by imprinting on attached tags and labels and on the sweatbands such statements as "Genuine MILAN", "Genuine MILAN Imported Braid", etc.

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 Korber Hats, Inc., a corporation, and Sidney Korber, 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 Korber Hats, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Massachusetts, with its principal office and place of business located at 420 Quequechon Street, in the city of Fall River, State of Massachusetts.

Respondent Sidney Korber is an individual and is an officer of the corporate respondent. He formulates, directs and controls the acts, practices and policies of the corporate respondent, including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the manufacturing, advertising, offering for sale, sale and distribution of hats to distributors and jobbers.

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 Massachusetts to purchasers thereof located in various other States of the United States and in the District of Columbia, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business, and for the purpose of inducing the sale of their said hats, respondents have imprinted certain representations on the tags, labels and sweatbands of men's straw hats respecting the origin, method of construction and material from which the said hats are made. Typical and illustrative of such representations are the following from separate hats:

1. On the label, "Genuine MILAN imported handblocked"; on the sweatband, "Genuine Milan".

2. On the sweatband, "Genuine Imported Milan".

3. On the label, "Genuine MILAN imported braid"; on the sweatband, "Genuine MILAN".

PAR. 5. Through the use of the aforesaid statements respondents have represented, directly and indirectly:

That said hats are manufactured in Italy and are of the same material, construction, design and workmanship as men's straw hats manufactured in Italy and designated by the term "Milan".

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

Said hats are not manufactured in Italy. Said hats are manufactured by respondents in the United States. Said hats are not of the same material, construction, design and workmanship as men's straw hats manufactured in Italy and designated by the term "Milan". Men's straw hats designated as "Milan" are made in Italy of wheat straw braid which is of a narrow width with a distinctive style of weave. Respondents' hats are made of a braid manufactured in Japan of Philippine hemp. The said braid is not of the same style and characteristic as the braid used in the manufacture of the "Milan" hats.

PAR. 7. Through the foregoing acts and practices respondents have thereby placed in the hands of retailers and dealers the means and instrumentalities through and by which the buying public may be misled and deceived concerning the origin, material, construction, design and workmanship of said hats.

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 men's hats of the same general kind and nature of 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. As a consequence thereof, substantial trade in commerce has been, and is being, unfairly diverted to respondents from their competitors and substantial injury has thereby been, and is being, done to competition in commerce.

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

Mr. Terral A. Jordan for the Commission.

Mr. Isador S. Levin, of *Levin and Levin*, of Fall River, Mass., for the respondents.

INITIAL DECISION BY WALTER R. JOHNSON, HEARING EXAMINER

In the complaint the respondents are charged with mislabeling of hats manufactured and sold by them in violation of the Federal Trade Commission Act. After answer, three days of hearings were held in New York, N.Y., at which time the Commission put in its case and the respondents submitted their defense. Proposed findings were submitted in support of the complaint but not on behalf of the respondents. The proposed findings are sustained by the evidence and are approved.

Respondent Korber Hats, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Massachusetts, with its principal office and place of business located at 420 Quequechon Street, in the city of Fall River, State of Massachusetts.

Respondent Sidney Korber is an individual and is an officer of the corporate respondent. He formulates, directs and controls the acts, practices and policies of the corporate respondent, including the acts

and practices hereinafter set forth. His address is the same as that of the corporate respondent.

Respondents are now, and for sometime last past have been, engaged in the manufacturing, offering for sale, sale and distribution of hats to distributors and jobbers.

In the course and conduct of their business, respondents now cause, and for sometime last past have caused, their said products, when sold, to be shipped from their place of business in the State of Massachusetts 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.

In the course and conduct of their business, and for the purpose of inducing the sale of their said hats, respondents have imprinted certain representations on the tags, labels, and sweatbands of men's straw hats respecting the origin, method of construction and material from which the said hats are made. Typical and illustrative of such representations are the following from separate hats:

(1) On the label, "Genuine MILAN Imported Hand Blocked"; on the sweatband "Genuine Milan".

(2) On the sweatband, "Genuine Imported Milan".

(3) On the label, "Genuine MILAN Imported Braid"; on the sweatband, "Genuine MILAN".

Through the use of the aforesaid statements, respondents have represented, directly or indirectly:

That said hats are imported from Italy and that said hats are of the same material, construction, design and workmanship as men's straw hats made in whole or in substantial part in Italy and designated by the term "Milan".

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

Said hats are not manufactured in Italy. Said hats are manufactured by respondents in the United States. Said hats are not of the same material, construction, design and workmanship as men's straw hats manufactured in Italy and designated by the term "Milan". Men's straw hats designated as "Milan" are made in Italy of wheat straw braid which is of a narrow width with a distinctive style of weave. Respondents' hats are made of a braid manufactured in Japan of Philippine hemp. The said braid is not of the same style and characteristics as the braid used in the manufacture of the "Milan" hats.

Through the aforesaid acts and practices respondents have thereby placed in the hands of retailers and dealers the means and instrumentalities through and by which the buying public may be misled and deceived concerning the origin, material, construction, design and workmanship of said hats.

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 men's hats of the same general kind and nature as those sold by respondents.

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

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

ORDER

It is ordered, That respondents Korber Hats, Inc., a corporation, and its officers and Sidney Korber, 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 hats 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 "Milan", "Genuine Milan" "Imported Milan", "Genuine Imported Milan" or any other substantially similar representation as descriptive of men's straw hats not manufactured in Italy of wheat straw.

(2) Using the terms "Milan", "Genuine Milan" "Imported Milan", "Genuine Imported Milan" or any other substantially similar representation as descriptive of men's straw hats not of the same construction, design and workmanship as that traditionally characteristic

of men's straw hats manufactured in Italy and designated as "Milan".

(3) Using any words or phrases which, directly or indirectly, represent that said products are manufactured in a given country or out of certain materials or in a particular manner or style unless such is a fact.

(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 inhibited.

ORDER DENYING PETITION FOR REVIEW, DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

The initial decision of the hearing examiner having been filed in this matter on January 23, 1962, and respondents, on February 9, 1962, having filed a petition for review of said initial decision pursuant to § 4.20 of the Commission's Rules of Practice; and

The Commission having examined the petition and the entire record and being of the opinion that a determination of the questions presented for review is not necessary nor appropriate under the law to insure a just and proper disposition of the proceeding and to protect the rights of respondents; and

The Commission having also determined that said initial decision is appropriate in all respects to dispose of this proceeding:

It is ordered, That said petition for review, filed February 9, 1962, be, and it hereby is, denied.

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

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

IN THE MATTER OF

PRESIDENT MANUFACTURING COMPANY, INC., ET AL.

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

Docket C-104. Complaint, Mar. 28, 1962—Decision, Mar. 28, 1962

Consent order requiring Providence, R.I., distributors of men's and women's costume jewelry to jobbers and retailers, to cease misrepresenting their prod-

ucts by such practices as attaching to them tickets bearing excessive prices, represented thereby as the usual retail prices; affixing stickers or labels reading "24 Karat gold plated" to products having only an electrolytic application of gold; and affixing stickers to boxes of imitation pearl necklace and earring sets which stated they were made of "genuine fresh water pearls".

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 President Manufacturing Company, Inc., a corporation, and Joslin Oken, William R. LeBlanc, William J. LeBlanc and Henry Oken, 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 President Manufacturing Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Rhode Island, with its principal office and place of business located at 43 Stukely Street, Providence, R.I.

Respondents Joslin Oken, William R. LeBlanc, William J. LeBlanc and Henry Oken 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 offering for sale, sale and distribution of men's and ladies' costume jewelry to distributors, jobbers and retailers for resale to the public.

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

PAR. 4. Respondents, for the purpose of inducing the purchase of their products, have engaged in the practice of using fictitious prices in connection therewith, and misrepresenting the material of which their products are made or composed, by the following methods and means:

(a) By attaching, or causing to be attached, tickets to their said products upon which a certain amount is printed, thereby representing, directly or by implication, that said amount is the usual and regular retail price of said products. In truth and in fact, said amount is fictitious and in excess of the usual and regular retail price of said products in some of the trade areas where the representations are made.

(b) By affixing stickers, or labels to certain of their products containing statements thereon that such products are "24 Karat gold plated." In truth and in fact, said products are not 24 carat gold plated. The gold deposited thereon is not a substantial surface plating of gold applied by mechanical process but is an electrolytic application.

(c) By affixing stickers or labels to the boxes or containers with statements thereon that certain necklaces and earring sets are made of "genuine fresh water pearls." In truth and in fact, said necklace and earring sets are not made of fresh water pearls but are imitations.

PAR. 5. Respondents, on their labeling, use the word "guaranteed", thereby representing that said products are guaranteed in every respect. Said statement and representation was false, misleading and deceptive. In truth and in fact, the guarantee is limited and the terms, conditions and the extent to which said guarantee applies and the manner in which the guarantor will perform thereunder are not disclosed.

PAR. 6. By the aforesaid practices, respondents place in the hands of dealers and others the means and instrumentalities by and through which they may mislead the public as to the quality and usual and regular retail prices of said products.

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

PAR. 8. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of respondents' products by reason of said erroneous and mistaken belief.

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

unfair and deceptive acts and practices 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, President Manufacturing Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Rhode Island, with its office and principal place of business located at 43 Stukley Street in the city of Providence, State of Rhode Island.

Respondents Joslin Oken, William R. LeBlanc, William J. LeBlanc and Henry Oken 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 respondents President Manufacturing Company, Inc., a corporation, and its officers, and respondents Joslin Oken, William R. LeBlanc, William J. LeBlanc and Henry Oken, individually and as officers of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of jewelry, or any other products, in commerce, as "com-

merce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from, directly or indirectly:

1. Representing, by preticketing or in any other manner, that any amount is the usual and regular retail price of merchandise when such amount is in excess of the price at which said merchandise is usually and regularly sold at retail in the trade area or areas where the representations are made.

2. Using the term "gold-plated", or any other word or words of similar import or meaning, to designate, describe or refer to an article which does not have a surface plating of gold or gold alloy applied by a mechanical process, provided, however, that any product, or part thereof, on which a substantial coating of gold or gold alloy has been affixed by an electrolytic process may be marked or described as gold electroplate or gold electroplated.

3. Using the word "pearls" or any other word or words of similar import or meaning to describe imitation pearls; *provided however*, that the foregoing shall not be construed to prohibit the use of the word "pearls" to describe the appearance of said imitation pearls if, whenever used, the word "pearls" is immediately preceded, in equally conspicuous type, by the word "imitation" or the word "simulated", or other word of similar import or meaning, so as to clearly indicate that said imitation pearls are not genuine pearls but imitations thereof.

4. Representing in any manner that imitation pearls are genuine pearls.

5. Placing in the hands of dealers and others a means and instrumentality by and through which they may misrepresent the usual and customary retail price of their merchandise, the gold content of their merchandise or the character and quality of the stones in their jewelry.

6. Representing that any merchandise sold or offered for sale is guaranteed, unless the nature and extent of the guarantee and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed.

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 FLYNN & SONS, INC., ET AL.

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

Docket C-105. Complaint, Mar. 28, 1962—Decision, Mar. 28, 1962

Consent order requiring Salem, Mass., processors of leathers for manufacture into ladies' shoes and other articles, to cease representing falsely that their leathers were produced from deer and elk hides by such practices as using in advertisements in trade publications and on invoices and hangtags distributed to purchasers the terms "DEERELK by Flynntan" and "Flynntan GluvElk".

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 John Flynn & Sons, Inc., a corporation, and Patrick H. Flynn and Michael F. Flynn, individually and as officers of John Flynn & Sons, Inc., hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows:

PARAGRAPH 1. Respondent John Flynn & Sons, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts, with its office and principal place of business located at 80 Burton Street, Salem, Mass. Individual respondents Patrick H. Flynn and Michael F. Flynn are officers of John Flynn & Sons, Inc., and their address is the same as that of said corporate respondent. The individual respondents, acting in cooperation with each other, formulate, direct and control all of the policies and acts of said corporation.

PAR. 2. Respondent John Flynn & Sons, Inc., is now, and has been for more than two years last past, engaged in processing, advertising, offering for sale, selling and distributing domestic leathers to be manufactured into ladies' shoes and other articles 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, said domestic leathers, when sold, to be shipped from their place of business in the State of Massachusetts to the purchasers thereof located in other States of the United States and maintain, and at all times mentioned

herein have maintained, a substantial course of trade in said domestic leathers in commerce, as "commerce" is defined in the Federal Trade Commission Act. The volume of business done by respondents in said domestic leathers in commerce is now, and has been, substantial.

PAR. 4. In the course and conduct of their business and for the purpose of inducing the purchase of their leathers, the respondents have placed advertisements in trade publications, and statements on invoices and on hangtags distributed to purchasers of said leathers. Among and typical of the false and misleading representations used by respondents are the following:

DEERELK by Flynntan

Flynntan GluvElk

PAR. 5. Through the use of the foregoing statements and representations and others of similar import and meaning not specifically set out herein, respondents have represented, directly or indirectly, that their leathers are produced from deerhides and elkhides.

PAR. 6. In truth and in fact, the said "DEERELK" and "GluvElk" leathers and leather products are made from leather materials other than the hides of deer and elk.

PAR. 7. Respondents by means of the aforesaid acts and practices have furnished to others the means and instrumentalities of deceiving the public as to the composition of said leather products.

PAR. 8. In the course and conduct of their business, respondents are in substantial competition in commerce with corporations, firms and individuals engaged in the sale of deer and elk leathers.

PAR. 9. The aforesaid acts and practices of the respondents have the capacity and tendency to confuse the public as to the composition of their leathers and to mislead the public into the erroneous and mistaken belief that the said leathers are deer and elk leathers and into the purchase thereof by reason of such erroneous and mistaken belief.

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

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with violation

of the Federal Trade Commission Act, and the 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 John Flynn & Sons, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts, with its office and principal place of business located at 80 Burton Street, in the city of Salem, Commonwealth of Massachusetts.

Respondents Patrick H. Flynn and Michael F. Flynn 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, John Flynn & Sons, Inc., a corporation, and its officers, and Patrick H. Flynn and Michael F. Flynn, 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 their products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the terms "Deerelk" or "GluvElk" or the words "deer" or "elk", or any colorable simulation or any other representation thereof, to designate, describe or refer to a product not composed of those respective hides; provided, however, that in the case of a leather or other product containing leather which has been processed to simulate or imitate the appearance of deer leather or elk leather, the

words "deer" or "elk" may be used to describe truthfully the simulated appearance of the product as, for example, "Simulated Elk Grain," when immediately accompanied by a clear and conspicuous disclosure of the kind of leather of which the product is made.

2. Misrepresenting in any manner the composition of any of their products.

3. Furnishing to others any means or instrumentalities by or through which the public may be misled with respect to any of the matters prohibited under paragraphs 1 and 2 hereof.

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

IN THE MATTER OF

HARVEY LAURENT, ALSO KNOWN AS HARVEY S. LEVINE, TRADING AS UNITED STATES MILLS CO.

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

Docket C-106. Complaint, Mar. 28, 1962—Decision, Mar. 28, 1962

Consent order requiring a New York City distributor of textile fabrics which he purchased, to cease representing falsely by use of the word "Mills" in his trade name that he operated factories in which his fabrics were manufactured.

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 Harvey Laurent, also known as Harvey S. Levine, trading as United States Mills Co., hereinafter referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Harvey Laurent, also known as Harvey S. Levine, is an individual trading as United States Mills Co., with his principal office and place of business located at 208 Central Park South, New York 19, N.Y.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the advertising, offering for sale, sale and distribution of textile fabrics to distributors and jobbers.

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

PAR. 4. In the course and conduct of his business in soliciting the sale of and in selling textile fabrics, respondent does business under the name United States Mills Co., and uses said name on letterheads, invoices, labels and tags, and in various advertisements of his product.

PAR. 5. Through the use of the word "Mills" as part of respondent's trade name, respondent represents that he owns or operates mills or factories in which the textile fabrics sold by him are manufactured.

PAR. 6. Said representation is false, misleading and deceptive. In truth and in fact, respondent does not own or operate the mills or factories in which the textile fabrics sold by him are manufactured but buys said fabrics from others.

PAR. 7. There is a preference on the part of many dealers to buy products, including textile fabrics, direct from factories or mills, believing that by so doing lower prices and other advantages thereby accrue to them.

PAR. 8. In the conduct of his business, at all times mentioned herein, respondent has been in substantial competition, in commerce, with corporations, firms and individuals in the sale of textile fabrics of the same general kind and nature as those sold by respondent.

PAR. 9. The use by respondent of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead retailers and other purchasers into the erroneous and mistaken belief that said statements and representations were, and are, true, and into the purchase of substantial quantities of respondent's products by reason of said erroneous and mistaken belief.

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

DECISION AND ORDER

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

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

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

1. Respondent, Harvey Laurent, also known as Harvey S. Levine, is an individual trading as United States Mills Co., with his principal office and place of business located at 208 Central Park South, New York 19, 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 Harvey Laurent, also known as Harvey S. Levine, an individual trading as United States Mills Co., or under any other trade name, and his representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of textile fabrics in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from directly or indirectly, using the word "Mills", or any other word of similar import or meaning, in or as a part of respondent's trade name, or representing in any other manner that respondent is the manufacturer of the fabrics sold by him unless and until respondent owns and operates, or directly and absolutely controls, the manufacturing plant wherein said fabrics are woven or made.

It is further ordered, That the respondent herein shall, within sixty (60) days after service upon him of this order, file with the Commis-

sion a report in writing setting forth in detail the manner and form in which he has complied with this order.

IN THE MATTER OF

ZENITH LABORATORIES, INC., ET AL.

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

Docket 8426. Complaint, June 15, 1961—Decision, Mar. 30, 1962

Consent order requiring Englewood, N.J., distributors of drugs to wholesale and retail sellers, to cease representing falsely in advertisements in periodicals and catalogs, letters, and other mailing pieces, that they had "quality control" and exercised "exacting controls and assays"; that their timed disintegration capsules disintegrated over a stated period and at an even rate; and that their laboratory was equipped with experimental animals.

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 Zenith Laboratories, Inc., a corporation, and Benjamin Wiener, Harry Wiener and Thomas Baty, individually and as officers of said corporation, hereinabove 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 Zenith Laboratories, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its principal office and place of business located at 130–150 S. Dean Street, in the city of Englewood, State of New Jersey.

Respondents Benjamin Wiener, Harry Wiener and Thomas Baty 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 have been for more than one year last past, engaged in the sale and distribution to retail druggists and pharmacists, and drug wholesalers and distributors, of drugs and preparations containing ingredients which come within the classification of drugs and foods as the terms "drug" and "food" are defined in the Federal Trade Commission Act.

Among, but not all inclusive of, the said preparations are those designated as follows:

1. WEIGHT-A-WAY 900 Calorie Food Concentrate.
2. Vitamin B–12 25 micrograms (Tablets).
3. Digitalis Tablets Enteric Coated 1½ grams Green.
4. Ferrous Sulfate 5 gr. (Tablets).
5. Thyroid Tablets 1 grain.
6. Pentaerythritol Tetranitrate Lapsules 30 mg. Sustained Action Capsules.
7. Zenidex 15—Dextro Amphetamine Sulfate, 15 mg. (Tablets).
8. Special Vitamins and Mineral T.D. Capsules.

PAR. 3. Respondents cause their said drugs and preparations, when sold, to be transported from their place of business in the State of New Jersey to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said drugs and preparations in commerce, as "commerce" is defined in the Federal Trade Commission Act. The volume of business in such commerce has been and is substantial.

PAR. 4. In the course and conduct of their said business, respondents have disseminated, and caused the dissemination of, certain advertisements concerning the said drugs and preparations by the United States mails and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, including, but not limited to, advertisements inserted in periodicals and catalogs, letters and other mailing pieces, for the purpose of inducing, and which were likely to induce, directly or indirectly, the purchase of said drugs and preparations by drug wholesalers and distributors, and have disseminated, and caused the dissemination of, advertisements concerning said drugs and preparations by various means, including but not limited to the aforesaid media, for the purpose of inducing, and which were likely to induce, directly or indirectly, the purchase of said drugs and preparations in commerce, as "commerce" is defined in the Federal Trade Commission Act.

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

QUALITY CONTROLS

To assure continuance of superior quality which has become synonymous with the Zenith name, a complete modern laboratory is maintained for the prime purpose of exercising exacting controls and assays. Frequent analysis of the quality of raw materials used and systematic spot checking of finished products assures the high standard of accuracy and reliability expected in Zenith pharmaceuticals.

ZENITH LAPSULES (R)

* * *

TIMED DISINTEGRATION CAPSULES

The Controlled Rate-Of-Disintegration Capsule For 8 to 12 Hours Of Even Therapeutic Effect.

Developed through long research by Zenith Laboratories and checked through intensive testing, LAPSULES offer the most reliable method of sustaining an even flow of medication. An even disintegration period of 8 to 10 hours assures a smooth therapeutic effect lasting up to 12 hours while avoiding the "highs" and "lows" often associated with other sustained-release medications.

RESEARCH &
CONTROL LABORATORIES

A fully equipped laboratory, including animal cages and experimental animals, supplies our clients with complete laboratory service.

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

1. By stating that they have "quality control" and that they exercise "exacting controls and assays," that they employ an adequate control system.

2. That their timed disintegration capsules:

(a) Disintegrate over a period of eight (8) to ten (10) hours.

(b) Disintegrate at an even rate.

3. That respondents' laboratory includes experimental animals.

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

1. Respondents do not have an adequate control system.

2. Some of respondents' timed disintegration capsules:

(a) Disintegrate in a significantly lesser period of time than eight (8) to ten (10) hours.

(b) Do not disintegrate at an even rate.

3. Respondents' laboratory is not equipped with experimental animals.

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

Mr. Berryman Davis, supporting the complaint.

Bernstein, Kleinfeld & Alper, by *Mr. Sheldon E. Bernstein* of Washington, D.C., for respondents.

INITIAL DECISION BY DONALD R. MOORE, HEARING EXAMINER

The complaint in this proceeding was issued on June 15, 1961, charging respondents with violating the Federal Trade Commission Act in connection with the sale of food and drug products.

Subsequently, the corporate respondent and two of the individual respondents, Benjamin Wiener and Harry Wiener, together with their counsel and counsel supporting the complaint, entered into an "Agreement Containing Consent Order to Cease and Desist." That agreement, dated January 3, 1962, was approved by the Chief, Division of Food and Drug Advertising, and the Director, Bureau of Deceptive Practices, and submitted to the Hearing Examiner on January 17, 1962, under the provisions of Rule 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings, issued May 6, 1955, as amended.

The agreement identifies respondent Zenith Laboratories, Inc., as a corporation existing and doing business under and by virtue of the laws of New Jersey, with its office and principal place of business at 130–150 S. Dean Street, Englewood, N.J. It further identifies respondents Benjamin Wiener and Harry Wiener as officers of the corporate respondent, who formulate, direct and control its acts and practices, and whose address is the same as that of the corporate respondent.

In providing for the dismissal of the complaint as to Thomas Baty, individually and as an officer of the corporate respondent, the agreement recites that Thomas Baty had resigned as an officer and severed all connections with the corporate respondent before issuance of the complaint in this proceeding; that his present whereabouts are unknown; and that the complaint has not been served on him. These allegations are supported by the affidavit of respondent Benjamin Wiener, which has been attached to the agreement as exhibit A and incorporated by reference.

Accordingly, in accordance with the recommendation contained in the agreement, the complaint is being dismissed as to Thomas Baty, individually and as an officer of the corporate respondent, and the term respondents, as used hereafter, shall not include Thomas Baty.

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

Respondents waive any further procedural steps before the hearing examiner or the Commission; the making of findings of fact or

conclusions of law; and all of the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement. All parties agree that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and the agreement, including the affidavit annexed as exhibit A; that the agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission; that the order to cease and desist, as contained in the agreement, when it shall have become a part of the decision of the Commission, shall have the same force and effect as if entered after a full hearing, and may be altered, modified or set aside in the manner provided for other orders; that the complaint herein may be used in construing the terms of the order; and that the agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

Having considered the allegations of the complaint and the provisions of the agreement containing the consent order, the Hearing Examiner is of the opinion that such agreement and order provide an adequate basis for appropriate disposition of this proceeding.

Accordingly, the hearing examiner accepts the agreement containing consent order to cease and desist, and pursuant to its terms, makes the following jurisdictional findings and enters the following order:

FINDINGS

1. Respondent Zenith Laboratories, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of New Jersey, with its office and principal place of business located at 130–150 S. Dean Street, in the city of Englewood, State of New Jersey.

Respondents Benjamin Wiener and Harry Wiener are officers of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent. Their address is the same as that of the corporate respondent.

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

ORDER

It is ordered, That respondents, Zenith Laboratories, Inc., a corporation, and its officers, and Benjamin Wiener and Harry Wiener,

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 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) Uses the terms "quality control" or "exacting controls", or any other words or terms of similar import or meaning; or

(b) Represents, directly or indirectly:

(1) That respondents have an adequate control system, or misrepresents the nature or extent of the procedures used by them in the manufacture, preparation or distribution of drugs or food.

(2) That respondents' timed disintegration capsules disintegrate over a period of eight (8) to ten (10) hours, unless such is the fact, or otherwise misrepresents the time periods or manner in which timed disintegration capsules disintegrate.

(3) That respondents' laboratory includes experimental animals.

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 drugs or food, which advertisement contains any of the terms or representations prohibited in paragraph 1 hereof.

It is further ordered, That the complaint be, and the same hereby is, dismissed as to Thomas Baty, individually and as an officer of Zenith Laboratories, Inc., a corporation.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, published May 6, 1955, as amended, the initial decision of the hearing examiner shall, on the 30th day of March 1962, become the decision of the Commission; and, accordingly:

It is ordered, That respondents, Zenith Laboratories, Inc., a corporation, and Benjamin Wiener and Harry Wiener, individually and as officers of said corporation, shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist.

IN THE MATTER OF

RAYEX CORPORATION, ET AL.

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

Docket 7346. Complaint, Jan. 6, 1959—Decision, Apr. 2 1962

Order requiring assemblers of sunglasses in Flushing, Queens, N.Y., to cease representing falsely—as they did on shipping containers and on tickets and labels affixed to the sunglasses—that the glasses contained lenses having a diopter curve of 6 and met the specifications and standards of the United States Air Force or Department of Defense; and to cease preticketing their sunglasses with fictitious prices, represented thereby as the usual retail selling prices.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Rayex Corporation, a corporation, and Ray Tunkel, Harry Kramer, and William Jonas, 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 Rayex Corporation is a corporation organized, existing and doing business under the laws of the State of New York, with its office and principal place of business located at 133-30 37th Avenue, Flushing 54, Queens, N.Y. Respondents Ray Tunkel, Harry Kramer, and William Jonas are officers of the corporate respondent. They formulate, control and direct the acts, practices and policies of the corporate respondent, including the acts and practices hereinafter set out. The address of the individual respondents is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and have been for some time, engaged in the assembling, sale and distribution of sunglasses.

In the regular and usual conduct of their business, respondents now cause, and have caused, said products, when sold, to be transported from their place of business in the State of New York to the purchasers thereof, many of whom are located in various other States of the United States.

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

PAR. 3. In the course and conduct of their business, respondents have made, and are making, deceptive and misleading statements with respect to their products. These statements are, and have been, made on cartons and in sales brochures, counter display cards and other promotional material supplied to jobbers, retailers and dealers, and also on tickets and labels affixed by respondents to such sunglasses prior to their sale and distribution as aforesaid.

Among and typical, but not all-inclusive, of such statements are the following:

6
BASE
HARD (R) GLASS
CERTIFIED
LENSES
one pair GLASSES, FLYING PERSONNEL
HIGH SPEED—CLEAR VISION
SPECIFICATION No. 8306-21200
CONTRACT No. 290412
LENSES, GROUND and POLISHED, THEREAFTER THERMALLY CURVED
MFGD. TO CS-79-40 SPECIFICATIONS

PAR. 4. Through the use of the foregoing statements, and others similar thereto but not specifically set forth herein, respondents have represented, and now represent, directly or by implication:

(a) That their sunglasses by reason of the designation "6 Base" contain lenses having a diopter curve of 6;

(b) That their sunglasses described above as manufactured to CS-79-40 Specifications meet the specifications and standards of the United States Air Force or the Department of Defense.

PAR. 5. The aforesaid statements and representations are false, misleading and deceptive. In truth and in fact, (a) the sunglass lenses designated by respondents as "6 Base" do not have a diopter curvature of 6; (b) the sunglasses described by respondents as "MFGD. TO CS-79-40 SPECIFICATIONS" do not meet the specifications and standards of the United States Air Force or the Department of Defense.

PAR. 6. In the further course and conduct of their business, respondents have made, and are making, deceptive and misleading representations with respect to the prices of their sunglasses. Respondents attach, or cause to be attached, to certain of their sunglasses, labels or tickets upon which various prices are printed, thereby representing, directly and by implication, that such prices are the regular and usual retail prices for said sunglasses. In truth and in fact, the said prices are not the regular and usual retail prices for said sunglasses, but are fictitious and exaggerated prices.

PAR. 7. Respondents also purchase and resell sunglasses manufactured in Japan. In connection with the sale of certain of said sunglasses of Japanese manufacture, respondents do not clearly and conspicuously disclose by markings or labels on the product that said sunglasses were manufactured in Japan.

PAR. 8. There is a preference among a substantial number of the purchasing public for products manufactured in the United States over those manufactured in Japan. The aforesaid practice of the respondents as described in Paragraph Seven, of failing to clearly and conspicuously disclose that said sunglasses were manufactured in Japan, has the capacity and tendency to create the mistaken and erroneous belief among purchasers and prospective purchasers that said sunglasses are of domestic origin.

PAR. 9. By furnishing to jobbers, retailers and dealers the cartons, sales brochures, counter display cards and other promotional material, and preticketed, labeled sunglasses, and by failure to clearly and conspicuously disclose the foreign origin of their sunglasses, as aforesaid, respondents provide to such jobbers, retailers and dealers means and instrumentalities through and by which they may mislead and deceive the purchasing public.

PAR. 10. In the course and conduct of their business, respondents are in direct and substantial competition with corporations, firms and individuals engaged in the manufacture, sale and distribution of sunglasses in commerce.

PAR. 11. The use by the respondents of the aforesaid false, misleading and deceptive statements and representations has had, and now has, the capacity and tendency to mislead and deceive members of the purchasing public into the erroneous and mistaken belief that such statements and representations were, and are, true and into the purchase of substantial quantities of respondents' products because of such erroneous and mistaken belief. As a result thereof, substantial trade in commerce has been, and is being, unfairly diverted to respondents from their competitors and substantial injury has been done to competition in commerce.

PAR. 12. The aforesaid acts and practices of respondents, as herein alleged, were and are, all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair and deceptive acts and practices and unfair methods of competition, in commerce, within the intent and meaning of the Federal Trade Commission Act.

Mr. Morton Nesmith for the Commission.

Mr. Gilbert Ehrenkranz, of Orange, N.J., for respondents.

INITIAL DECISION BY EDGAR A. BUTTLE, HEARING EXAMINER

Respondents are charged in the Commission's complaint issued on January 6, 1959, with having made false, misleading and deceptive statements with respect to their sunglasses in the conduct of their business:

(a) in that they designated their sunglass lenses as "6 Base" when they did not have a diopter curvature of 6;

(b) in that they described their sunglasses as "manufactured to Specification No. 8306–21200, Contract No. 290412" and that respondents' sunglasses did not meet the specifications and standards of the United States Air Force or the Department of Defense;

(c) in that they did not clearly and conspicuously disclose by markings or labels on their sunglasses that such sunglasses were manufactured in Japan;

(d) in that they engaged in the practice of using fictitious price tickets in connection with the labeling and advertising of their sunglasses; all of the foregoing in violation of the Federal Trade Commission Act.

At the conclusion of the presentation of evidence and testimony by counsel supporting the complaint, on respondents' motion, charges herein numbered (b) and (c), above, were stricken from the complaint by order of the hearing examiner dated March 9, 1960, because of the insufficiency of the evidence to establish a prima facie case. On motion of counsel supporting the complaint the hearing examiner, in his discretion, by order dated April 18, 1960, permitted a reopening with respect to (b), above, to permit counsel in support of the complaint to adduce additional evidence.

Respondents' answer is essentially a general denial of the charges of deception.

Following hearings on the issues and pursuant to leave granted by the hearing examiner, proposed findings of fact and conclusions and proposed orders were filed by counsel in support of the complaint and counsel for the respondents. Oral argument was had thereon on March 23, 1961. The examiner has carefully reviewed and considered the proposed findings and briefs, the replies thereto, and oral argument of counsel. Proposed findings which are not herein adopted, either in the form proposed or in substance, are rejected as not supported by the record or involving immaterial matters.

Upon the entire record in the case the hearing examiner makes the following:

FINDINGS OF FACT

1. Respondent Rayex Corporation is a corporation organized, existing and doing business under the laws of the State of New York, with its office and principal place of business located at 133-30 37th Avenue, Flushing 54, Queens, N.Y. Respondents Ray Tunkel, Harry Kramer, and William Jonas are officers of the corporate respondent. They formulate, control and direct the acts, practices and policies of the corporate respondents, including the acts and practices hereinafter set out. The address of the individual respondents is the same as that of the corporate respondent.[1]

2. Respondents are now, and have been for some time, engaged in the assembling, sale and distribution of sunglasses. In the regular and usual conduct of their business, respondents now cause, and have caused, said products, when sold, to be transported from their place of business in the State of New York to the purchasers thereof, many of whom are located in various other states of the United States.

3. In the course and conduct of their business, respondents have made deceptive and misleading statements with respect to their products. These statements have been made on containers and boxes in which respondents' sunglasses are shipped to jobbers, retailers and dealers and also on tickets and labels affixed by respondents to such sunglasses prior to their sale and distribution to such jobbers, retailers and dealers.

Among and typical, but not all-inclusive, of such statements are the following:

6
BASE
HARD (R) GLASS
CERTIFIED
LENSES
one pair GLASSES, FLYING PERSONNEL
HIGH SPEED—CLEAR VISION
SPECIFICATION No. 8306-21200
CONTRACT No. 290412
LENSES, GROUND and POLISHED, THEREAFTER THERMALLY CURVED * * *

[1] In *Federal Trade Commission* v. *Standard Education Society*, 302 U.S. 112, the Supreme Court held that officers, directors or stockholders of a corporation may be included in a Commission order to cease and desist when necessary for such order to be fully effective in preventing the unfair practice found to exist. Subsequent to that decision, the courts have repeatedly held that an officer of a corporation who is responsible for initiating unfair trade practices or who participates in the use of such practices may properly be included in the order in his individual capacity. *International Art. Co.* v. *Federal Trade Commission*, 109 F. 2d 393; *Sebrone Co.* v. *Federal Trade Commission*, 135 F. 2d 676; *Parke, Austin & Lipscomb, Inc.* v. *Federal Trade Commission*, 142 F. 2d 437; *Steelco Stainless Steel, Inc.* v. *Federal Trade Commission*, 187 F. 2d 693; Consumer *Sales Corp.* v. *Federal Trade Commission*, 198 F. 2d 404.

4. Through the use of the foregoing statements respondents represented directly or by implication:

(a) That their sunglasses by reason of the designation "6 Base" contain lenses having a diopter curve of 6;

(b) That their sunglasses, flying personnel described above as manufactured to Specification No. 8306–21200, Contract No. 290412, meet the specifications and standards of the United States Air Force or the Department of Defense.

5. The statements and representations hereinbefore set forth were false, misleading and deceptive. In truth and in fact, (a) the sunglass lenses designated by respondents as "6 Base" do not have a dioptic curvature of 6; and (b) the sunglasses described by respondents as glasses, flying personnel . . . Specification No. 8306–21200, Contract No. 290412, do not meet or comply with the specifications and standards of the United States Air Force or the Department of Defense.

6. In the further course and conduct of their business, respondents have made deceptive and misleading representations with respect to the prices of their sunglasses. Respondents attached to certain of their sunglasses, labels or stickers upon which various prices were printed, thereby representing, directly or by implication, that such prices were the regular and usual retail prices for their sunglasses. In truth and in fact, said prices were not the regular and usual retail prices for respondents' sunglasses but were fictitious and exaggerated prices.

7. By furnishing to jobbers, retailers and dealers the cartons, marked "Flying Personnel" with specification and contract numbers, and the preticketed and labeled sunglasses, indicative of price and "6 Base" precision, respondents have provided to such jobbers, retailers and dealers means and instrumentalities through and by which they may mislead and deceive the purchasing public.

8. In the course and conduct of their business, respondents are in direct and substantial competition with corporations, firms and individuals engaged in the manufacture, sale and distribution of sunglasses in commerce.

9. Respondents purchase for resale sunglasses manufactured in Japan. In connection with such sale of certain of said sunglasses of Japanese manufacture, respondents do clearly and conspicuously disclose by markings or labels on products that sunglasses were manufactured in Japan.

COMMENTS RELATIVE TO FINDINGS

1. In connection with the issue as to whether or not the sunglasses represented to be "6 Base" are in fact "6 Base," the evidence does not disclose as indicated by counsel for respondents that the Commission's witnesses were experts in the ophthalmic or eye corrective profession and that their opinion of required precision under the terminology "6 Base" must necessarily vary from the opinion of the respondents' experts who were engaged in the manufacturing of sunglasses. According to the respondents' counsel, the opinion of the experts in the manufacturing of sunglasses should prevail. As the evidence indicates, the experts in the ophthalmic profession testified "6 Base" lens should be required to have a curvature of 6 diopters or a 6-dioptric curvature, whereas the experts in the sunglass or non-ophthalmic industry testified that 6 Base merely means a lens manufactured on a 6 Base tool even though at points it may measure 4 diopters only. Counsel for respondents also emphasize the fact that there are different standards under the Trade Practice Rules for the ophthalmic industry and the sunglass industry. These arguments overlook the fact that the respondents have imputed precision equivalent to that recognized in the ophthalmic industry in representing that their sunglass lenses are 6 Base. If a misrepresentation were not intended to indicate 6 Base precision, there would be no point in so identifying the lenses. It is elemental that a purchaser is interested in representations as to the quality of the product he buys and not as to the representations concerning the type of equipment (i.e., a 6 Base tool) used in its manufacture. Measurement of the lenses sold by the respondents indicates they do not have a 6-diopter curvature throughout and that, therefore, their precision is misrepresented.

2. With respect to the issue involving whether or not there is a misrepresentation that the respondents' sunglasses meet the standards and specifications of the United States Army, Air Force and Department of Defense, an expert testified that respondents' sunglasses have not met the specifications of the Air Force and Navy Department in their entirety during and after 1948. The opinion was premised upon one sale of sunglasses only. Respondents, in this connection, urge that the Commission has not examined a representative group of sunglasses and that expert opinion with regard one pair of sunglasses sold is not proof that the specifications as represented have not been normally met.

The evidence is unequivocally clear, however, that the Commission's exhibit, the pair of sunglasses in question, was sold by the National Retail Stores on or about May 15, 1958. The evidence is equally clear that the proof adduced in the Commission's case does not establish that the sunglasses were sold by the respondents or placed on the market by them upon any specific date. Nevertheless, it is reasonable to infer that the sunglasses in question, which were sold in the retail market in May 1958, were made available for sale in that market within the period contemplated by the complaint. It would seem unreasonable to conclude that the sunglasses in question would have been in the store of the National Outlet Stores for a period in excess of ten years before being sold in the retail market, in the absence of evidence to the contrary.

Respondents had the opportunity of going forward with the evidence to establish, if they could, that the sunglasses, which have been identified as their sunglasses, were not representative of their product or were not marketed by them during the period contemplated by the complaint, contrary to the reasonable inference which must otherwise be drawn from the evidence now before the hearing examiner. However, they elected to rest their case without the adduction of such evidence.

It is well established that the trier of the facts may draw all reasonable inferences and deductions from the evidence adduced. *Caldwell* v. *U.S.*, D.C., Pa. 30 F. Supp. 308 affirmed, CCA, 114 F. 2d 995, 32 C.J.S. 1130, 31 Sec. 1044 citing 18 states following this doctrine. See also *Republic Aviation Corp.* v. *N.L.R.B.*, 324 U.S. 793, as quoted and followed in *Radio Officers* v. *N.L.R.B.* (1954), 347 U.S. 17, 48–49; also *F.T.C.* v. *Pacific States Paper & Trade Assn.* (1927), 273 U.S. 52; *Brown Fence & Wire Co.* v. *F.T.C.* (C.C.A. 6, 1933), 64 F. 2d 934; *E. F. Drew & Co., Inc.* v. *F.T.C.*, 235 F. 2d 735. A reasonable inference is as truly evidence as the matter on which it is based, and is not a mere presumption or guess. *Stickling* v. *Chicago R.I. & R. Ry. Co.*, 247 N.W. 642 (Iowa); *Hodgson* v. *Bigelow*, 7A 2d 338 (Pa.).

Indeed, it is the duty of the trier of the facts to give consideration to all inferences and deductions which may properly be drawn. 32 C.J.S. 1131, Sec. 1044, Note (4). In determining whether or not inferences may be drawn from certain facts the conclusions and tests of every day experience must control the standards of legal logic. Wigmore on Evidence (2nd Edition) Vol. 1, Sec. 27, p. 232.

As regards the same issue, respondents also contend that the language identifying the sunglasses by specification and contract number

does not impute an Armed Forces specification or contract number since no reference is made to personnel using them except flying personnel. However, the hearing examiner is of the view that the combination of flying personnel specifications and contract numbers does reasonably infer that the product is Armed Forces surplus since such surplus has been similarly advertised nationwide so that the public have become accustomed to associating such language with the sale of Armed Forces surplus. Official notice is taken of the public cognizance in this respect.

3. As regards the issue of price ticketing at a fictitious price, the record discloses that a wholesaler testified that a sale of sunglasses with a sticker thereon of $4.95 was purchased by him from the respondents. He further testified that he paid $9 a dozen for these glasses and sold them to retailers for $14.40 a dozen, and that the general retailer sold his glasses for roughly $2.50 per pair. It was the further testimony of this witness that he requested this markup in price which request was honored by Rayex. He further testified that respondents had affixed these prices to lenses and that he had affixed nothing thereto.

Another witness testified that he bought sunglasses from a National Outlet Store, in Hartford, Connecticut, and that there was a sticker attached to the lens marked $7.95, among other things, which was affixed thereto when he purchased the sunglasses. He further testified he paid therefor $3.07, $2.98 plus 9¢ tax. The price paid was supported by a receipt which was received in evidence.

The foregoing proof appears to establish prima facie evidence of the fact that the manufacturer's ticketed price is not the usual and regular price in the sense that the price pattern as evidenced indicates the nonexistence of a usual and regular price. Under these circumstances, unless explained by the respondents in going forward with the evidence, which they failed to do, it would appear that the price tickets provided by the respondents are meaningless and if so, fictitious. This inference is nonetheless reasonable because there is a growing number of discount houses in the market place which sell at less than the manufacturer's ticketed price. The effect of this increasingly competitive market for goods that appear to be sold at reduced prices may in and of itself have caused manufacturer's preticketing at a specified price to become misrepresentative of a regular and usual price. However, the intention of the manufacturer is not an issue. The real issue would seem to be whether or not the manufacturer's indicated price is a misrepresentation in substantial segments of the market where it is usually and regularly not the adopted retail price. See *Household Sewing Machine Company*, Docket 6148, 52 FTC 250; *The Orloff Company, Inc.*, Docket 6184, 52 FTC 709;

The Clinton Watch Company, FTC Docket 7434, and *The Baltimore Luggage Company*, FTC Docket 7683.

CONCLUSIONS

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

2. The aforesaid acts and practices of respondents, as hereinabove found, are all to the prejudice and injury of the public and of respondents' competitors and constitute unfair and deceptive acts and practices and unfair methods of competition, in commerce, within the intent and meaning of the Federal Trade Commission Act. The following order shall therefore issue:

ORDER

It is ordered, That the respondents, Rayex Corporation, a corporation, and its officers, and Ray Tunkel, Harry Kramer, and William Jonas, individually, and as officers of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of sunglasses, or any other merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication:

(a) That their sunglass lenses have a given dioptic curve unless such is the fact; provided, however, that in the case of ground and polished sunglass lenses a tolerance not to exceed minus or plus $\frac{1}{16}$th diopters in any meridian and a difference in power between any two meridians not to exceed $\frac{1}{16}$th diopter and a prismatic effect not to exceed $\frac{1}{8}$th diopter shall be allowed.

(b) By preticketing, or otherwise, that a certain amount is the regular and usual retail price of merchandise, when such amount is in excess of the price at which such merchandise is usually and regularly sold at retail in a substantial segment of the market.

(c) That their sunglasses, or the lenses thereof, meet or comply with the specifications and standards of the United States Air Force or Department of Defense.

2. Placing in the hands of jobbers, retailers, dealers and others, means and instrumentalities by and through which they may deceive and mislead the purchasing public concerning the merchandise in the respects set out in paragraph 1, above.

It is further ordered, That the charges set forth in paragraph 7 and paragraph 8 of the Commission's complaint, are herein and hereby dismissed as provided in the hearing examiner's order of March 9, 1960, since the evidence discloses the national origin of the respondents' sunglasses has not been misrepresented by the respondents.

OPINION OF THE COMMISSION

By ELMAN, *Commissioner:*

This is an appeal by respondents from a hearing examiner's initial decision that they have violated Section 5 of the Federal Trade Commission Act (38 Stat. 719, as amended, 15 U.S.C. 45) by making certain false and misleading representations in connection with the sale of sunglasses which they manufacture and distribute.

While several issues are raised, the one most strongly contested has to do with the legality of respondents' practice of "preticketing" the sunglasses with labels or stickers bearing printed prices. The hearing examiner found these price tickets to be unlawfully misleading in that they conveyed the impression that the stated prices were the regular and usual retail prices for the sunglasses when in fact "the price pattern as evidenced indicates the nonexistence of a usual and regular price. Under these circumstances, * * * it would appear that the price tickets provided by the respondents are meaningless and if so, fictitious." (Initial Decision, p. 672) The Commission adopts this finding as substantiated by the evidence.

I

Preticketing, as it has come to be called, is the practice whereby manufacturers and distributors attach to their goods distinctive labels or stickers, bearing prices and other information, prior to passing them on to the dealers who sell to the general public. The abundance of recent Commission cases dealing with varying aspects of the practice indicates that it is prevalent in much of the economy.[1] Its

[1] See, *e.g.*, *Baltimore Luggage Co.* v. *Federal Trade Commission*, No. 8382, C.A. 4, Nov. 7, 1961; *Clinton Watch Co.* v. *Federal Trade Commission*, 291 F. 2d 838 (C.A. 7).

significance depends on the factual setting into which it is introduced.

The danger inherent in price preticketing is that, whatever other purpose it may serve, it gives many consumers the impression that the stated price is the retail price generally prevailing in the area. Everyone loves, and hopes to find, bargains. It is this universal human trait which is exploited by the practice of fictitious pricing, whatever its form. In *George's Radio & Television Company, Inc.*, Docket 8134, decided January 19, 1962, we held that "The representation 'Mfr's Sug. List' creates the impression that there is a usual and customary retail price for the product in the trade area, and that that price is the specified 'Mfr's Sug. List' price." (Opinion, p. 3) The record there showed that "the products in question were being widely sold in the trade area at a variety of retail prices significantly lower than" the "Mfr's Sug. List" price. (*Ibid.*) Accordingly, the Commission found that the public had been misled.

There is, of course, no convention requiring manufacturers and distributors to use preticketing as a means for "suggesting" resale prices to their dealers. They could as well simply enclose a list of suggested prices with each shipment. That procedure would involve no possibility of the sort of deception with which we are here concerned, assuming that the price list information was not passed on to the public. Such conduct would not necessarily be immune from scrutiny under other statutory provisions regulating business activity. For example, it might in some circumstances suggest the existence of illegal anti-competitive pricing conditions in the industry.[2] But ordinarily there would be no occasion to question such a practice on the ground that it is deceptive.

However, when resale prices supplied to dealers—whether through preticketing or some similar practice—*are* made public, the consequences may vary considerably. It may be, for example, that the industry in which the practice is undertaken is characterized by price rigidity or uniformity. That is to say, all dealers in a particular product may be content to sell at the same price. If a manufacturer of such a product pretickets it at what is in fact the uniform retail price in the area, he is not engaging in false or misleading pricing. Of course, rigidity and uniformity of price may make preticketing even more suspect as a manifestation of some form of illegal restraint of trade, but in such circumstances the practice is not vulnerable as deceptive to consumers.

A different problem is presented by an industry in which the manufacturer habitually labels his product at a given price and his dealers

[2] Compare, *e.g.*, *United States* v. *Parke, Davis & Co.*, 362 U.S. 29.

in a trade area, or many of them, just as habitually market it for substantially less. This is the context of classic "fictitious" pricing. In such circumstances, the preticketing's tendency to deceive, and hence its illegality, are settled matters. As the court stated in *Clinton Watch*, *supra*, note 1, a case involving factory preticketing of watches at a price substantially in excess of the "normal" retail price:

> Preticketing at fictitious and excessive prices must be deemed to have the tendency of deceiving the public as to the savings afforded by the purchase of a product thus tagged as well as to the value of the product acquired. Petitioners' practice places a means of misleading the public into the hands of those who ultimately deal with the consumer. Notwithstanding the prevalence of these practices and the familiarity therewith among members of the trade, these activities are proscribed to protect the interest of the public. *Federal Trade Commission* v. *Winsted Hosiery Co.*, 258 U.S. 483, 494, (1922).
>
> Misrepresentation as to the retail value of merchandise by means of an attached, fictitious price and deception as to savings afforded by the purchase of the product at a substantially lower price than that indicated thereon constitute unfair methods of competition. *Niresk Industries, Inc.* v. *Federal Trade Commission*, 278 F. 2d 337, 340 (7th Cir. 1960), cert. denied 364 U.S. 883; *Harsam Distributors, Inc.* v. *Federal Trade Commission*, 263 F. 2d 396, 397 (2d Cir. 1959). 291 F. 2d, at 840.

In such a situation there is a substantial likelihood of deception, whether the dealers resell the product to the public at a uniform lower price or at a widely varying range of lower prices. Since the preticketed price is not in fact the usual or regular price generally prevailing in the area, the public may be misled. In appraising the capacity of a business practice to deceive and mislead, it is not the understanding or purpose of the manufacturer or distributor or dealer that is of critical importance; rather, it is the public impression created by that practice.[3] And, so far as many members of the public are concerned, the impression made by preticketing is that it is the manufacturer's indication of the approximate retail value of his product, i.e., his representation that this is what it should and generally does sell for in the sales area.[4]

The manufacturer or distributor who provides his dealers with a spurious indication of a normal and generally prevailing price places

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[3] *E.g.*, *Koch* v. *Federal Trade Commission*, 206 F. 2d 311, 319 (C.A. 6); *P. Lorillard Co.* v. *Federal Trade Commission*, 186 F. 2d 52, 58 (C.A. 4); *Charles of the Ritz Distributors Corp.* v. *Federal Trade Commission*, 143 F. 2d 676, 679 (C.A. 2).

[4] The Commission so finds in the discharge of its duty to make the necessary factual determination of the impression on the public that advertising creates. See, *e.g.*, *Niresk Industries, Inc.* v. *Federal Trade Commission*, 278 F. 2d 337 (C.A. 7); *Kalwajtys* v. *Federal Trade Commission*, 237 F. 2d 654, 656 (C.A. 7); *Rhodes Pharmacal Co.* v. *Federal Trade Commission*, 208 F. 2d 382 (C.A. 7).

in their hands a ready-made instrument of deception.[5] If the buyer believes—as the preticketed price may well lead him to believe—that that is the going price generally being charged for the product, he will be forestalled from seeking it at a lower price elsewhere. The dealer can thus induce the consumer not to shop among his competitors for a bargain. Obviously, both consumers and competitors are thereby prejudiced.

II

Viewed in the light of these general principles, respondents' preticketing practice is clearly illegal. At the requests of some customers, they affix price stickers to the lenses of their sunglasses. These stickers contain in prominent letters the word "Rayex" (the name of respondent corporation) and a price (*e.g.*, $4.95, $7.95), as well as a brief set of cryptic abbreviations in much smaller print. Respondents freely admit to putting different price tags on different pairs of the same quality sunglasses. They assert that this merely reflects the different prices that different dealers can obtain for the glasses, because of differences in competitive situations.

To illustrate, one type of sunglasses in evidence is marked $4.95. This type, it is said, was very popular on Madison Avenue in New York City for a time, and shops in that area could in fact get $4.95 for them. A retailer located elsewhere in Manhattan might be able to obtain only $2.95. Or, to cite another example described by respondents' counsel, a pair of sunglasses that could command as much as $10.00 in a shop located in the Waldorf-Astoria Hotel might bring only $2.95 in a drugstore on Times Square. In each instance, respondents would charge their distributors the same price for the same type of glasses. Only the retail-price tags placed on them were different.

It should be apparent, on this state of facts, that respondents have aided and abetted in a deception of the public. They are providing the high-priced dealers with a deceptive crutch upon which to carry their goods to market. Respondents stressed the fact that the Waldorf-Astoria shop and the Times Square drugstore are not in competition. Assuming this to be true, a major factor in eliminating any chance of competition between them is respondents' preticketing practice. By affixing stickers with different prices to accommodate different retailers, respondents give prospective buyers two false and misleading impressions: first, that the Rayex price tickets on the same product are the same throughout the area; and second, that the

[5] See *Federal Trade Commission* v. *Winsted Hosiery Co.*, 258 U.S. 483; *Baltimore Luggage, supra,* note 1; *C. Howard Hunt Pen Co.* v. *Federal Trade Commission,* 197 F. 2d 273 (C.A. 3).

preticketed price is actually the prevailing retail price in the area. In a market not characterized by a uniform price level for the product, price preticketing, as respondents have engaged in it, is inherently deceptive and misleading within the meaning of Section 5.

Additional evidence of record supports the examiner's finding that respondents engaged in fictitious pricing.

First, there is the fact that one pair of sunglasses, appearing as an exhibit in the record, was purchased by a Commission investigator for $2.98 plus $.09 tax, despite having been preticketed by Rayex at $7.95. Even more damaging is the testimony of Mr. Milton Spielman, a longtime wholesaler of sunglasses. Mr. Spielman testified that he bought one type of Rayex sunglasses for $9.00 per dozen and sold them to retailers for $14.40 per dozen, i.e., $1.20 per pair. He stated that he knew that "these particular glasses sold anywhere between $1.98, $2.50, and . . . $4.95." When asked what the "general trend" of prices for these glasses was, he replied "the two-and-a-half-dollar mark." Yet these sunglasses were preticketed by Rayex at $4.95.

Mr. Spielman further testified that Rayex would preticket its sunglasses with the price that he, a wholesaler, requested. He also stated that he expected many of the glasses to sell for less than the preticketed price, and, significantly, that he had no control over the ultimate price his retailer customers actually charged for them. In a market of the sort involved in this case—in which different dealers sell the same item at widely disparate prices—respondents may not so casually and indifferently place a tool of deception at the disposal of dealers eager to promote the myth that they are giving customers a discount bargain.

III

Two other types of representations by Rayex were found deceptive by the hearing examiner. They appear in statements made on containers and boxes in which the sunglasses were shipped and on tickets and labels affixed to the glasses by Rayex. Typical of these statements are the following:

6
BASE
HARD (R) GLASS
CERTIFIED
LENSES
one pair GLASSES, FLYING PERSONNEL HIGH SPEED—CLEAR VISION
SPECIFICATION NO. 8306–21200
CONTRACT NO. 290412
LENSES, GROUND AND POLISHED, THEREAFTER THERMALLY
CURVED . . .

The hearing examiner found that, by these descriptions of their products, respondents were representing, directly or by implication, (1) that their sunglasses contain lenses having what is known in the trade as a diopter curve of 6, a precision designation for lenses, and (2) that certain of their sunglasses met the specifications or standards of the United States Air Force or Department of Defense. The examiner further found that neither of these representations was true.

Respondents' exceptions to these rulings may be quickly disposed of. The gist of their argument as to the representation of "6 Base" precision is that, since the sunglass industry and the optical industry are not congruent, the hearing examiner should have rejected the testimony of expert witnesses from the latter industry in favor of the less exacting standards postulated by respondents' expert witness from the former. While the two industries may be distinct for some purposes, it does not follow that they are different in every respect. The existence of areas of total differentiation between the two in no way refutes a factual showing of areas of overlap. Whatever meaning "6 Base" may have for a manufacturer of sunglasses, it also carries ophthalmic connotations. The term is thus susceptible of two interpretations, one having a meaning, in terms of standards of precision, totally at variance with the actual degree of precision of respondents' lenses. In this state of facts, respondents' use of "6 Base" must be judged deceptive.[6]

Moreover, the danger that the deceptive, rather than the correct, inference will be drawn by prospective purchasers seems real and substantial. In ophthalmic usage, "6 Base" means having a curvature of 6 diopters. Respondents' counter-definition, to be applied only to sunglasses, is that "6 Base" means merely made on a "6 Base" tool, regardless of variance of the lens from a "6 Base" curve. But obviously, as the hearing examiner pointed out, the buying public is interested in representations as to the quality of respondents' lenses, not as to the instrument upon which they are made. The likelihood that the consumer will read respondents' precision representations in a sense truly useful to him—i.e., as having reference to the glasses, rather than to the equipment used in their manufacture—is considerable. Hence, the capacity of these representations to mislead the public is clear.

[6] See *Rhodes Pharmacal Co.* v. *Federal Trade Commission*, 208 F. 2d 382 (C.A. 7); *Ford Motor Co.* v. *Federal Trade Commission*, 120 F. 2d 175 (C.A. 6), cert. denied, 314 U.S. 668. *Cf., United States* v. *Ninety-Five Barrels (More or Less) Alleged Apple Cider Vinegar*, 265 U.S. 438, 442–443.

Respondents' objections to the examiner's finding that they have made misleading references to military standards and specifications are even less substantial. A review of the evidence, especially the expert testimony of Air Force Captain Donald G. Pitts, satisfies us that the examiner was correct in concluding both that one pair of sunglasses provides a sufficient sample for technical analysis, and that respondents' lenses have not conformed to United States Air Force or Department of Defense specifications for any period of years that could reasonably be considered relevant. Respondents' contention that the words "Specification No.," "Contract No.," and "Flying Personnel" do not warrant "the necessary and compelling inference" that the product has been manufactured to specifications of the Air Force or Defense Department lends no support to their position, even if we assume it to be true. An inference need not be "necessary and compelling," but only reasonable and probable, for it to be held unlawful when it has a tendency to mislead and deceive. That language used by respondents on the packaging of some of their sunglasses may reasonably be construed to imply conformance with military specifications cannot, we think, be seriously disputed; and, in fact, it does not seem to have been.

For the reasons stated, respondents' appeal is denied and an appropriate order will issue.

FINDINGS OF FACT

The Commission adopts the hearing examiner's findings of fact as its own, except that it amends finding "6" to read as follows:

6. In the further course and conduct of their business, respondents have made deceptive and misleading representations with respect to the prices of their sunglasses. Respondents attached to certain of their sunglasses labels or stickers upon which various prices were printed, thereby representing, directly or by implication, that such prices were the generally prevailing retail prices for their sunglasses. In fact, these were not the generally prevailing retail prices for respondents' sunglasses. The prices charged for respondents' sunglasses by different dealers in the same trade area varied considerably, so that no single uniform retail price existed. Further, respondents' sunglasses were widely sold in the same trade area at a variety of retail prices significantly lower than those stated on respondents' labels or stickers.

As so amended, finding "6" is adopted.

CONCLUSIONS

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

2. The use by the respondents of the aforesaid false, misleading, and deceptive statements and representations as to the precision of their lenses and the conformance of their sunglasses to military standards, has had, and now has, the capacity and tendency to mislead and deceive members of the purchasing public into the erroneous and mistaken belief that such statements and representations were, and are, true, and into the purchase of substantial quantities of respondents' products because of such erroneous and mistaken belief. As a result thereof, substantial trade in commerce has been, and is being, unfairly diverted to respondents from their competitors and substantial injury has been done to competition in commerce.

3. The use by the respondents of the aforesaid false, misleading, and deceptive representations as to prices has had, and now has, the capacity and tendency to mislead and deceive members of the purchasing public into the mistaken belief that the stated prices were the usual and regular retail prices for the sunglasses so marked, thus providing dealers in respondents' sunglasses with the means of deceiving the purchasing public.

4. The aforesaid acts and practices of respondents, as hereinabove found, are to the prejudice and injury of the public and of respondents' competitors, and constitute unfair and deceptive acts and practices and unfair methods of competition, in commerce, within the intent and meaning of the Federal Trade Commission Act.

FINAL ORDER

It is ordered, That the respondents, Rayex Corporation, a corporation, and its officers, and Ray Tunkel, Harry Kramer, and William Jonas, individually, and as officers of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of sunglasses, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication:

(a) That their sunglass lenses have a given dioptic curve unless such is the fact; provided, however, that in the case of ground and polished sunglass lenses a tolerance not to exceed minus or plus 1/16th diopters in any meridian and a difference in power between any two

meridians not to exceed 1/16th diopter and a prismatic effect not to exceed 1/8th diopter shall be allowed.

(b) That their sunglasses, or the lenses thereof, meet or comply with the specifications and standards of the United States Air Force or Department of Defense.

And further, That in the sale of any merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, that respondents do forthwith cease and desist from the act or practice of preticketing merchandise at an indicated retail price, or of otherwise conveying an impression to the public concerning retail prices, when there is no generally prevailing retail price for such merchandise in the trade area, or when the indicated retail price is in excess of the prices at which such merchandise is sold at retail in a substantial segment of the trade area.

And further, That respondents do forthwith cease and desist from placing in the hands of jobbers, retailers, dealers, and others, means and instrumentalities by and through which they may deceive and mislead the purchasing public concerning any merchandise in the respects set out above.

And further, That the charges set forth in paragraphs 7 and 8 of the Commission's complaint be, and they hereby are, dismissed.

It is further ordered, That respondents, Rayex Corporation, Ray Tunkel, Harry Kramer, and William Jonas, 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

ADMIRAL EXCHANGE CO., INC., ET AL.

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

Docket C-107. Complaint, Apr. 2, 1962—Decision, Apr. 2, 1962

Consent order requiring San Diego, Calif., distributors of combs to retailers to cease misrepresenting their non-rubber combs by such practices as branding them as "Rubber", "Hard Rubber", and "Rubber-Resin", and using the same terms on boxes, packages, circulars, invoices, and other advertising matter.

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 Admiral Exchange Co. Inc., a corporation, and Gail Edwards, Dean L. Edwards and Kathryn M. Redding, 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 Admiral Exchange Co., Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at 1443 Union Street in that city of San Diego, State of California.

Respondents Gail Edwards, Dean L. Edwards, and Kathryn M. Redding 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 advertising, offering for sale, sale and distribution of combs designed for use on human hair 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 product, when sold, to be shipped from their place of business in the State of California, and otherwise, to purchasers thereof located in various other states and territories of the United States, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said combs in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business, and at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale and distribution of combs designed for use on human hair.

PAR. 5. Respondents, in the course and conduct of their aforesaid business, and for the purpose of describing, and to induce the purchase of their combs, have stamped and branded said combs as "Rubber", "Hard Rubber" and "Rubber-Resin", thereby representing, directly or by implication, that said combs are made or composed of rubber or hard rubber. Respondents have also designated, referred to and represented their said combs as "Rubber", "Rubber-Resin" and

"Hard Rubber" on boxes, packages, circulars, invoices and in various other forms of advertising matter circulated by them.

PAR. 6. The said representations were and are false, misleading and deceptive. In truth and in fact, respondents' said combs so stamped, branded and referred to are not made or composed of rubber or hard rubber, but are made or composed of material other than rubber or hard rubber.

PAR. 7. There are among the purchasing public substantial numbers of persons who prefer combs made of rubber or hard rubber, as distinguished from combs made or composed of the materials used in respondents' said combs.

PAR. 8. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of respondents' product by reason of said erroneous and mistaken belief.

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 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, Admiral Exchange Co., 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 located at 1443 Union Street in the city of San Diego, State of California.

Respondents Gail Edwards, Dean L. Edwards, and Kathryn M. Redding 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 Admiral Exchange Co., Inc., a corporation, and its officers, and Gail Edwards, Dean L. Edwards, and Kathryn M. Redding, 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, in commerce, as "commerce" is defined in the Federal Trade Commission Act, of combs designed for use on human hair, do forthwith cease and desist from:

1. Using the word "rubber", or any other word of similar import or meaning, alone, or in combination with any other word or words, to designate, describe or refer to such combs which are not in fact made entirely of vulcanized hard rubber.

2. Representing in any manner that said combs are rubber or hard rubber or are made of rubber or hard rubber unless they are in fact made of vulcanized rubber.

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

GERALD M. WORMSER ET AL. TRADING AS WORMSER'S OF LAFAYETTE

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

Docket C-108. Complaint, Apr. 2, 1962—Decision, Apr. 2, 1962

Consent order requiring Lafayette, La., furriers to cease violating the Fur Products Labeling Act by labeling fur products with fictitious prices; failing to use the term "natural" on labels and invoices and in newspaper advertising to describe furs not artificially colored; failing to show the true animal name of fur, on labels and invoices; failing to show on labels when furs were artificially colored and to use the term "Persian Lamb" as required; making price and value claims in advertising without maintaining adequate records as a basis therefor; and failing in other respects to comply with requirements of the Act.

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 Gerald M. Wormser and Jack C. Wormser, individually and as copartners, trading as Wormser's of Lafayette, 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. Gerald M. Wormser and Jack C. Wormser are individuals and copartners trading as Wormser's of Lafayette, with their office and principal place of business located at East St. Mary Boulevard, Lafayette, La.

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

PAR. 3. Certain of said fur products were misbranded in that labels affixed thereto contained fictitious prices and misrepresented the regular retail selling prices of such fur products in that the prices represented on such labels as the regular prices of the fur products were in excess of the retail prices at which the respondent usually and regularly sold such fur products in the recent regular course of business, in violation of Section 4(1) of the Fur Products Labeling Act.

PAR. 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:

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

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

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

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

(b) The term "natural" was not used to describe fur products that were not pointed, bleached, dyed, tip-dyed or otherwise artificially colored, in violation of Rule 19(g) of said Rules and Regulations.

(c) Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was not set forth separately on labels with respect to each section of fur products composed of two or more sections containing different animal furs, in violation of Rule 36 of said Rules and Regulations.

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

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

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

(a) The term "natural" was not used to describe fur products that were not pointed, bleached, dyed, tip-dyed or artificially colored, in violation of Rule 19(g) of said Rules and Regulations.

(b) Information required under Section 5(b)(1) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was not set forth separately on invoices with respect to each section of fur products composed of two or more sections containing different animal furs, in violation of Rule 36 of said Rules and Regulations.

PAR. 8. Certain of said fur products were falsely and deceptively advertised in violation of the Fur Products Labeling Act in that respondents caused the dissemination in commerce, as "commerce" is defined in said Act, of certain newspaper advertisements, concerning said products, which were not in accordance with the provisions of Section 5(a) of the said Act and the Rules and Regulations promulgated thereunder; and which advertisements were intended to aid, promote and assist, directly or indirectly, in the sale and offering for sale of said fur products.

PAR. 9. Among and included in the advertisements as aforesaid, but not limited thereto, were advertisements of respondents, which appeared in issues of The Advertiser, a newspaper published in the city of Lafayette, State of Louisiana, and having a wide circulation in said State and various other States of the United States.

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

(a) Represented through the use of percentage savings claims such as "Savings up to 50%" that prices of fur products were reduced in direct proportion to the percentage of savings stated, when such was not the fact, in violation of Section 5(a)(5) of the Fur Products Labeling Act.

(b) Represented that the volume of merchandise offered for sale was ½ million dollars worth of furs and a $500,000 trunk showing, when in truth and in fact the merchandise offered for sale was worth substantially less than such amount, in violation of Section 5(a)(5) of the Fur Products Labeling Act.

(c) Failed to disclose that fur products which were not pointed, bleached, dyed, tip-dyed or otherwise artificially colored, were natural, in violation of Rule 19(g) of the Rules and Regulations promulgated under the Fur Products Labeling Act.

PAR. 10. Respondents falsely and deceptively advertised fur products in violation of Section 5(a)(5) of the Fur Products Labeling

Act by affixing labels to such fur products which contained fictitious prices, and misrepresented the regular retail selling prices of such fur products, in that the prices represented on such labels as the regular prices of the fur products were in excess of the retail prices at which the respondent usually and regularly sold such fur products in the recent regular course of business.

PAR. 11. Respondents in advertising fur products for sale as aforesaid, made claims and representations respecting prices and values of fur products. Said representations were of the types covered by subsections (a), (b), (c) and (d) of Rule 44 of the Rules and Regulations promulgated under the Fur Products Labeling Act. Respondents in making such claims and representations failed to maintain full and adequate records disclosing the facts upon which such claims and representations were based in violation of Rule 44(e) of said Rules and Regulations.

PAR. 12. The aforesaid acts and practices of respondents as herein alleged, are in violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder and constitute unfair and deceptive acts and practices and unfair methods of competition in commerce under the Federal Trade Commission Act.

DECISION AND ORDER

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

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

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

1. Respondents Gerald M. Wormser and Jack C. Wormser are individuals and co-partners trading as Wormer's of Lafayette, with their office and principal place of business located at East St. Mary Boulevard, in the city of Lafayette, State of Louisiana.

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 Gerald M. Wormser and Jack C. Wormser, individually and as copartners, trading as Wormser's of Lafayette, or under any other trade name, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the sale, advertising, or offering for sale in commerce, or the transportation or distribution in commerce, of any fur product; or in connection with the sale, advertising, offering for sale, transportation, or distribution, of any fur product which is made in whole or in part of fur which has been shipped and received in commerce, as "commerce", "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

1. Misbranding fur products by:

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

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.

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

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

E. Failing to disclose that fur products which are not pointed, bleached, dyed, tip-dyed or otherwise artificially colored are natural.

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

C. Failing to disclose that fur products which are not pointed, bleached, dyed, tip-dyed or otherwise artificially colored are natural.

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

A. Represents through the use of percentage savings claims that prices of fur products are reduced in direct proportion to the percentage of savings stated, when such is not the fact.

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

C. Represents directly or by implication that the volume of merchandise to be offered for sale is higher than is the fact.

D. Represents in any manner that savings are available to purchasers of respondents' fur products when contrary to fact.

E. Fails to disclose that fur products which are not pointed, bleached, dyed, tip-dyed, or otherwise artificially colored are natural.

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

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

IN THE MATTER OF

SOFSKIN, INC.

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

Docket C-109. Complaint, Apr. 2, 1962—Decision, Apr. 2, 1962

Consent order requiring a manufacturer of hand creams and related products, with principal place of business in New York City, to cease violating Sec. 2(d) of the Clayton Act by such practices as paying promotional allowances of $1400 to McKesson & Robbins, Inc., while not making such payments available on proportionally equal terms to all competing customers.

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 Sofskin, 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 595 Madison Avenue, New York, N.Y.

PAR. 2. Respondent is now and has been engaged in the business of manufacturing, selling and distributing hand creams and related products. It sells its products to drug and sundries wholesalers located throughout the United States. Respondent's total sales are substantial, having exceeded $650,000 in the year 1959.

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 1959 respondent contracted to pay and did pay to McKesson & Robbins, Inc., at least $1,400 as compensation or as an allowance for advertising or other services or facilities furnished by or through McKesson & Robbins, 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 McKesson & Robbins, Inc., in the sale and distribution of products 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.

DECISION AND ORDER

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

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

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

1. Respondent Sofskin, 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 595 Madison Avenue, New York, N. Y.

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

ORDER

It is ordered, That respondent Sofskin, Inc., a corporation, its officers, employees, agents and representatives, directly or through

any corporate or other device, in the course of business in commerce, as "commerce" is defined in the Clayton Act, as amended, do forthwith cease and desist from:

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

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

IN THE MATTER OF

TRANSAIR, INC., ET AL.

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

Docket 8409. Complaint, June 1, 1961—Decision, Apr. 5, 1962

Order requiring sellers of women's shoes and wearing apparel in Hollywood, Calif., to cease violating the Federal Trade Commission Act by advertisements in newspapers, magazines, and catalogs which read in part: "VALUES TO $39.95 EACH! 3 PAIRS BRAND NEW SHOES . . . ONLY $9.95" along with depictions of women's late style shoes with well-known brand names, ". . . Petite Panties . . . Imported from France", and "Thousands of beautiful blouses . . . all gorgeous imports . . .", when the shoes offered were not late style or of the name brands listed and the lingerie and some of the blouses were not imports; and by stating falsely "you must be 100% satisfied . . . or your money back"; and to cease violating the Textile Fiber Products Identification Act by failing to label women's wearing apparel as required and to maintain proper records showing the fiber content of the textile fiber products they manufactured.

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 Transair, Inc., and Prudential

Manufacturing, Inc., corporations, and Morris Kaplan, individually and as an officer of said corporations, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Textile Fiber Products Identification Act, and Barilen Corp., a corporation, and Harold C. Schlosberg, individually and as an officer of said Barilen Corp., and Nathan Katz, Miles Shefferman and Jack Blagman, individually and as copartners trading as The Blackwood Company, hereinafter referred to as respondents, have violated the provisions of the Federal Trade Commission 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 Transair, Inc., and Prudential Manufacturing, Inc., are corporations organized, existing and doing business under and by virtue of the laws of the State of California with their principal office and place of business located at 1085 North Oxford, Hollywood 29, Calif.

Respondent Morris Kaplan is an officer of the corporate respondents and formulates, directs and controls the acts, policies and practices of the corporate respondents. His address is the same as that of the corporate respondents.

Respondents advertise and sell their merchandise under the names of Maurice de Paree, Maurice of Hollywood and Langfords.

PAR. 2. Subsequent to the effective date of the Textile Fiber Products Identification Act on March 3, 1960, respondents named in paragraph 1 have been and are now engaged in the introduction, delivery for introduction, manufacture for introduction, sale, advertising, and offering for sale, in commerce, and in the transportation or causing to be transported in commerce, and the importation into the United States, of textile fiber products; and have sold, offered for sale, advertised, delivered, transported and caused to be transported, textile fiber products, which had been advertised or offered for sale in commerce; and have sold, offered for sale, advertised, delivered, transported and caused to be transported, after shipment in commerce, textile fiber products, whether in their original state or contained in other textile fiber products; as the terms "commerce" and "textile fiber products" are defined in the Textile Fiber Products Identification Act.

PAR. 3. Certain of said textile fiber products were misbranded by respondents named in paragraph 1 in that they were not stamped, tagged, or labeled as required under the provisions of 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 said Act.

Among such misbranded textile fiber products, but not limited thereto, was women's wearing apparel which had no stamp, tag, label or other means of identification on or affixed to such products.

PAR. 4. Respondents named in paragraph 1 have failed to maintain proper records showing the fiber content of the textile fiber products manufactured by them, in violation of Section 6(a) of the Textile Fiber Products Identification Act and Rule 39 of the Regulations promulgated thereunder.

PAR. 5. Respondents named in paragraph 1 in the course and conduct of their business, as aforesaid, were and are in substantial competition in commerce with corporations, firms and individuals likewise engaged in the manufacture and sale of textile fiber products.

PAR. 6. The acts and practices of respondents named in paragraph 1 as set forth above were, and are, in violation of the Textile Fiber Products Identification Act and the Rules and Regulations promulgated thereunder, and constituted, and now constitute unfair and deceptive acts and practices and unfair methods of competition in commerce, within the intent and meaning of the Federal Trade Commission Act.

PAR. 7. Respondents Transair, Inc., Prudential Manufacturing, Inc., and their officers, are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of women's shoes and wearing apparel.

PAR. 8. In the course and conduct of their business, respondents now cause, and for sometime last past have caused, their said apparel and shoes, when sold, to be shipped from their place of business in the State of California 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 merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 9. Respondent Barilen 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 730 Third Avenue, New York, N.Y.

Respondent Harold C. Schlosberg is an officer of respondent Barilen Corp. He formulates, directs and controls the acts, policies and practices of the corporate respondent. His address is the same as that of the corporate respondent.

Respondents Nathan Katz, Miles Shafferman and Jack Blagman are individuals and copartners trading as The Blackwood Company with their office and principal place of business located at 480 Lexington Avenue, New York, N.Y.

Respondents Barilen Corp. and The Blackwood Company are advertising agencies of the respondents Transair, Inc., and Prudential Manufacturing, Inc., who place and pay for the advertisements supplied by Transair, Inc., and Prudential Manufacturing, Inc., in newspapers and magazines and receive a percentage of proceeds of sales of merchandise resulting from said advertisements.

All of the respondents collaborate in carrying out the acts and practices hereinafter set forth.

PAR. 10. In the course and conduct of their business, and for the purpose of inducing the sale of said women's apparel and shoes, respondents have made certain statements with respect to the importation, the brand, and the style of certain of their products and the refund to purchasers of money paid therefor, in advertisements in newspapers, magazines and catalogs of which the following are typical:

GRAB BAG FANTASY!
VALUES TO $39.95 EACH!
3 PAIRS BRAND NEW SHOES
EACH PAIR DIFFERENT
ONLY $9.95
FOR ALL THREE PAIRS

THIS IS PROBABLY THE MADDEST SALE OF DRESS SHOES OF ALL TIME—AND VERY LIKELY THE MOST FANTASTIC BARGAIN YOU'LL EVER GET. * * * REMEMBER EACH PAIR OF SHOES IS BRAND NEW . . .

(Depiction of women's late style shoes with brand names such as I. Miller, Palizzio, Delman, De Liso Debs, etc.)

. . . Petite Panties . . .
Imported from France
Thousands of beautiful blouses . . . all gorgeous imports . . .

PAR. 11. Through the use of the aforesaid statements and depictions respondents represented:

1. That the purchaser will receive late style shoes similar to those depicted, each pair being one of the name brands listed.

2. That said lingerie is imported from France.

3. That all of said blouses are imported into the United States.

PAR. 12. Said statements and representations were false, misleading and deceptive. In truth and in fact:

1. The shoes offered in the advertisement were not late style shoes similar to those depicted and each pair was not one of the name brands listed.

2. Said lingerie was not imported from France but was manufactured in this country.

3. Certain of said blouses were not imported but were manufactured in this country.

PAR. 13. Respondents used such statements as "you must be 100% satisfied as to fit or quality or every penny will be refunded", "you must be 100% satisfied as to fit or quality or your money back" thereby representing that the purchase price will be refunded voluntarily and promptly to the purchaser upon demand.

PAR. 14. Said statements and representations were false, misleading and deceptive. In truth and in fact, the purchase price of merchandise is seldom refunded upon demand of the purchaser except after intervention of the Better Business Bureaus in the purchaser's behalf.

PAR. 15. Respondents Transair, Inc., and Prudential Manufacturing, Inc., in the conduct of their business, at all times mentioned herein, have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of women's apparel and shoes of the same general kind and nature as that sold by said respondents.

PAR. 16. Respondents Barilen Corp. and Harold C. Schlosberg and Nathan Katz, Miles Shefferman and Jack Blagman, individually and as copartners trading as The Blackwood Company are now, and have been, in substantial competition, in commerce, with corporations, firms and individuals engaged in the advertising business.

PAR. 17. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of respondents' product by reason of said erroneous and mistaken belief. As a consequence thereof, substantial trade in commerce has been, and is being, unfairly diverted to respondents from their competitors and substantial injury has thereby been, and is being, done to competition in commerce.

PAR. 18. The aforesaid acts and practices of respondents, as herein alleged, were, and are, all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair and deceptive acts and practices and unfair methods of com-

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

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

Mr. Howard A. Heffron of *Shapiro & Heffron*, of New York, N.Y., for Barilen respondents; *Mr. Arnold Katz*, of New York, N.Y., for Blackwood respondents; no appearance for other respondents.

INITIAL DECISION BY WILMER L. TINLEY, HEARING EXAMINER

The Federal Trade Commission, on June 1, 1961, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof charging them with unfair and deceptive acts and practices and unfair methods of competition in commerce in the advertising and sale of women's shoes and wearing apparel in violation of the Federal Trade Commission Act; and charging respondents Transair, Inc., Prudential Manufacturing, Inc., and Morris Kaplan with violations of the Textile Fiber Products Identification Act and the Rules and Regulations promulgated thereunder.

Upon the application of certain of the respondents, the time for answering the complaint as to all respondents was extended to September 15, 1961; and at the same time the initial hearing scheduled in the complaint for August 8, 1961, in Washington, D.C., was postponed and rescheduled for September 26, 1961. All of the parties were duly notified of such extension and postponement. Answer to the complaint was not filed by any respondent; and no appearance was made by or on behalf of any respondent at the hearing which was held on September 26, 1961, in Washington, D.C., before the undersigned hearing examiner, theretofore duly designated to hear this proceeding.

On September 6, 1961, a motion to dismiss, with supporting affidavit, was filed on behalf of respondents Barilen Corp. and Hyman C. Schlosberg (erroneously named in the complaint as Harold C. Schlosberg), which respondents are sometimes herein referred to as the Barilen respondents; and on September 22, 1961, a similar motion to dismiss, with supporting affidavit, was filed on behalf of respondents Nathan Katz, Miles Shefferman and Jack Blagman, individually and as copartners, trading as The Blackwood Company, which respondents are sometimes herein referred to as the Blackwood respondents. Both the Barilen and the Blackwood respondents requested further extension of time to answer the complaint in the event their motions to dismiss should be denied.

Counsel supporting the complaint appeared at the hearing on September 26, 1961, and stated that he did not desire to offer any evi-

dence in support of the charges of the complaint with respect to the Barilen and Blackwood respondents, and that he did not oppose the motions to dismiss as to those respondents.

At the hearing on September 26, 1961, counsel supporting the complaint stated that negotiations for the purpose of disposing of the charges by a consent order as to respondents Transair, Inc., Prudential Manufacturing, Inc., and Morris Kaplan were initiated on behalf of those respondents by their counsel (who has not filed a notice of appearance in this proceeding), but that those negotiations were unsuccessful and had been terminated. Counsel supporting the complaint also stated that he advised counsel for those respondents that in the event of their failure to answer the complaint and to appear at the initial hearing, he would ask that they be held in default and that an order to cease and desist be entered against them on that basis.

At the hearing on September 26, 1961, counsel supporting the complaint proposed a form of order (CX 1A and B) which he considered appropriate with respect to respondents Transair, Inc., Prudential Manufacturing, Inc., and Morris Kaplan, and moved that it be issued on the basis of default by those respondents by reason of their failure to answer the complaint or to appear at the initial hearing. In that order counsel supporting the complaint also proposed that the complaint be dismissed as to the Barilen and the Blackwood respondents.

Upon consideration of the foregoing circumstances disclosed by the record, the hearing examiner grants the motions to dismiss as to the Barilen and Blackwood respondents; and finds that the remaining respondents Transair, Inc., Prudential Manufacturing, Inc., and Morris Kaplan, are in default under the Commission's Rules of Practice by reason of their failure to answer the complaint or to appear at the initial hearing. He now, therefore, issues his initial decision, finding the facts as to the defaulting respondents to be as alleged in the complaint, entering an order considered by him to be warranted by such facts, the order being essentially that proposed at the hearing by counsel supporting the complaint, and dismissing the complaint as to the Barilen and Blackwood respondents.

FINDINGS OF FACT

1. The respondents named in subsections (a) and (b) of this section are the respondents hereafter referred to in these findings.

(a) Respondents Transair, Inc., and Prudential Manufacturing, Inc., are corporations organized, existing and doing business under and

by virtue of the laws of the State of California with their principal office and place of business located at 1085 North Oxford, Hollywood 29, Calif.

(b) Respondent Morris Kaplan is an officer of the corporate respondents and formulates, directs and controls the acts, policies and practices of the corporate respondents. His address is the same as that of the corporate respondents.

(c) Respondents advertise and sell their merchandise under the names of Maurice de Paree, Maurice of Hollywood and Langfords.

2. The corporate respondents and their officers are now, and for some time have been, engaged in the advertising, offering for sale, sale and distribution of women's shoes and wearing apparel.

3. In the course and conduct of their business, respondents now cause, and for some time have caused, their said apparel and shoes, when sold, to be shipped from their place of business in the State of California 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 merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act.

4. 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, delivery for introduction, manufacture for introduction, sale, advertising, and offering for sale, in commerce, and in the transportation or causing to be transported in commerce, and the importation into the United States, of textile fiber products; and have sold, offered for sale, advertised, delivered, transported and caused to be transported, textile fiber products, which had been advertised or offered for sale in commerce; and have sold, offered for sale, advertised, delivered, transported and caused to be transported, after shipment in commerce, textile fiber products, whether in their original state or contained in other textile fiber products. As used in this section, the terms "commerce" and "textile fiber products" are intended to have the meanings defined in the Textile Fiber Products Identification Act.

5. In the course and conduct of their business, and for the purpose of inducing the sale of said women's apparel and shoes, respondents have made certain statements with respect to the importation, the brand, and the style of certain of their products and the refund to purchasers of money paid therefor, in advertisements in newspapers, magazines and catalogs of which the following are typical:

GRAB BAG FANTASY!
VALUES TO $39.95 EACH!
3 PAIRS BRAND NEW SHOES
EACH PAIR DIFFERENT
ONLY $9.95
FOR ALL THREE PAIRS

THIS IS PROBABLY THE MADDEST SALE OF DRESS SHOES OF ALL TIME—AND VERY LIKELY THE MOST FANTASTIC BARGAIN YOU'LL EVER GET.
* * * REMEMBER EACH PAIR OF SHOES IS BRAND NEW . . .

(Depiction of women's late style shoes with brand names such as I. Miller, Palizzio, Delman, De Liso Debs, etc.)

. . . Petite Panties . . .
Imported from France
Thousands of beautiful blouses . . . all gorgeous imports . . .

6. Through the use of the aforesaid statements and depictions respondents represented:

(a) That the purchaser will receive late style shoes similar to those depicted, each pair being one of the name brands listed.

(b) That said lingerie is imported from France.

(c) That all of said blouses are imported into the United States.

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

(a) The shoes offered in the advertisements were not late style shoes similar to those depicted and each pair was not one of the name brands listed.

(b) Said lingerie was not imported from France but was manufactured in this country.

(c) Certain of said blouses were not imported but were manufactured in this country.

8. Respondents used such statements as "you must be 100% satisfied as to fit or quality or every penny will be refunded," "you must be 100% satisfied as to fit or quality or your money back," thereby representing that the purchase price will be refunded voluntarily and promptly to the purchaser upon demand.

9. Said statements and representations were false, misleading and deceptive. In truth and in fact, the purchase price of merchandise is seldom refunded upon demand of the purchaser except after intervention of the Better Business Bureaus in the purchaser's behalf.

10. Certain of said textile fiber products were misbranded by re-

spondents in that they were not stamped, tagged, or labeled as required under the provisions of 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 said Act. Among such misbranded textile fiber products, but not limited thereto, was women's wearing apparel which had no stamp, tag, label or other means of identification on or affixed to such products.

11. Respondents have failed to maintain proper records showing the fiber content of the textile fiber products manufactured by them as required by Section 6(a) of the Textile Fiber Products Identification Act and Rule 39 of the Regulations promulgated thereunder.

12. The corporate respondents and their officers in the conduct of their business, at all times mentioned herein, have been in substantial competition, in commerce with corporations, firms and individuals in the sale of women's apparel and shoes of the same general kind and nature as sold by respondents; and have been in substantial competition in commerce with corporations, firms and individuals likewise engaged in the manufacture and sale of textile fiber products.

13. The use by respondents, as hereinabove found, of the 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; and the misbranding of textile fiber products by respondents, and the failure of respondents to maintain proper records of such products, as hereinabove found, have contributed to the deceptive capacity and tendency of their practices in connection with such products. As a consequence thereof, substantial trade in commerce has been, and is being, unfairly diverted to respondents from their competitors and substantial injury has thereby been, and is being, done to competition in commerce.

CONCLUSIONS

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

The misbranding of textile fiber products by respondents, and the failure of respondents to maintain proper records showing the fiber

content of such products manufactured by them, as herein found, were, and are, in violation of the Textile Fiber Products Identification Act and the Rules and Regulations promulgated thereunder, and constituted, and now constitute, unfair and deceptive acts and practices and unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER

1. *It is ordered*, That respondents Transair, Inc., and Prudential Manufacturing, Inc., corporations, and their officers, and Morris Kaplan, individually and as an officer of said corporations, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of women's shoes, women's wearing apparel, or any other product, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

a. Representing, directly or by implication, that women's shoes, or any other product, are of a certain brand or style, or that they have any other attribute, unless such is the fact.

b. Representing, directly or by implication, that women's blouses, lingerie, or any other products, are imported, unless such is the fact.

c. Representing, directly or by implication, that respondents will make refunds for unsatisfactory goods or merchandise unless such refunds are made promptly upon demand by the purchaser.

2. *It is further ordered*, That respondents Transair, Inc., and Prudential Manufacturing, Inc., corporations, and their officers, and Morris Kaplan, individually and as an officer of said corporations, and respondents' representatives, agents and employees, directly or through any corporate or other device in connection with the introduction, delivery for introduction, manufacture for introduction, sale, advertising, or offering for sale in commerce, or the transportation or causing to be transported in commerce, or the importation into the United States of textile fiber products, or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, of textile fiber products which have been advertised or offered for sale in commerce, or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, after shipment in commerce, of textile fiber products, whether in their original state or contained in other textile fiber products (as "commerce" and "textile fiber products" are defined in the Textile Fiber Products Identification Act), do forthwith cease and desist from:

a. Misbranding textile fiber products by:

(1) Falsely or deceptively stamping, tagging, labeling, invoicing, advertising, or otherwise identifying such products as to the name or amount of constituent fibers contained therein;

(2) 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.

b. Failing to maintain records of fiber content of textile fiber products manufactured by them, as required by Section 6(a) of the Textile Fiber Products Identification Act and Rule 39 of the Regulations thereunder.

3. *It is further ordered*, That the complaint be, and the same hereby is, dismissed as to Barilen Corp., a corporation, and Hyman C. Schlosberg (erroneously named in the complaint as Harold C. Schlosberg), individually and as an officer of said corporation, and Nathan Katz, Miles Shefferman and Jack Blagman, individually and as copartners trading as The Blackwood Company.

FINAL ORDER

The Commission by its order of November 7, 1961, having placed this case on its own docket for review; and

The Commission now having concluded that the initial decision of the hearing examiner is appropriate in all respects to dispose of this proceeding:

It is ordered, That the initial decision of the hearing examiner filed October 5, 1961, be, and it hereby is, adopted as the decision of the Commission.

It is further ordered, That respondents, Transair, Inc., a corporation, and Prudential Manufacturing, Inc., a corporation, and Morris Kaplan, 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

COOPCHIK-FORREST, 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-110. Complaint, Apr. 5, 1962—Decision, Apr. 5, 1962

Consent order requiring New York City manufacturing furriers to cease violating the Fur Products Labeling Act by labeling and invoicing furs as "natural"

when they were artificially colored, and failing to show on labels and invoices when they were so colored; and by furnishing false guaranties that certain of their fur products were not misbranded, falsely invoiced, or falsely advertised.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act and by virtue of the authority vested in it by said Acts, the Federal Trade Commission having reason to believe that Coopchik-Forrest, Inc., a corporation, and Robert Coopchik, Alex Coopchik and Milton R. Forrest, 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 Coopchik-Forrest, 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.

Respondents Robert Coopchik, Alex Coopchik and Milton R. Forrest are president, vice president and secretary-treasurer, 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 there-

after 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, Coopchik-Forrest, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 333 Seventh Avenue, in the city of New York, State of New York.

Respondents Robert Coopchik, Alex Coopchik and Milton R. Forrest, 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 Coopchik-Forrest, Inc., a corporation, and Robert Coopchik, Alex Coopchik and Milton R. Forrest, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, or manufacture for introduction into commerce, or the sale, advertising or offering for sale, in commerce, or the transportation or distribution in commerce of fur products; or in connection with the sale, manufacture for sale, advertising, offering for sale, transportation or distribution, of 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 to purchasers of fur products invoices showing all the information required to be disclosed by each of the subsections of Section 5(b)(1) of the Fur Products Labeling Act.

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

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

BATAVIA MILLS, INC., ET AL.

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

Docket C-111. Complaint, Apr. 5, 1962—Decision, Apr. 5, 1962

Consent order requiring New York City distributors of textile fabrics to various branches of the Armed Forces, the Veterans Administration and others, to cease representing falsely, through use of the word "Mills" in their corporate name, that they operated factories in which their products were manufactured.

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 Batavia Mills, Inc., a corporation, and William Horwitz and Abraham L. Schneider, 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 Batavia Mills, Inc., is a corporation, organized, existing and doing business under the laws of the State of

New York, with its principal office and place of business located at 73 Worth Street, New York 13, N.Y.

Respondents William Horwitz and Abraham L. Schneider 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 advertising, offering for sale, sale and distribution of textile fabrics to various branches of the Armed Forces, the Veterans Administration, and others.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, the said products, when sold, to be shipped from their place of business in the State of New York to purchasers thereof in various other states in 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 in soliciting the sale of and in selling the textile fabrics, the respondents have done business under the name of Batavia Mills, Inc., and use that name on letterheads and invoices.

PAR. 5. Through the use of the word "Mills" as part of the respondents' corporate name, respondents represent that they own or operate mills or factories in which the textile fabrics sold by them are manufactured.

PAR. 6. Said representation is false, misleading and deceptive. In truth and in fact, respondents do not own, operate or control the mills or factories in which the textile fabrics sold by them are manufactured but they buy said textile fabrics from others.

PAR. 7. There is a preference on the part of purchasers to buy products, including textile fabrics, direct from factories or mills, believing that by so doing lower prices and other advantages thereby accrue to them.

PAR. 8. In the course 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 textile fabrics with the same general kind and nature as that sold by respondents.

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

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

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

DECISION AND ORDER

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

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

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

1. Respondent Batavia 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 principal place of business located at 73 Worth Street, in the city of New York, State of New York.

Respondents William Horwitz and Abraham L. Schneider 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 Batavia Mills, Inc., a corporation, and its officers, and William Horwitz and Abraham L. Schneider, 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 textile fabrics in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from, directly or indirectly, using the word "Mills", or any other word of similar import or meaning, in or as a part of respondents' corporate or trade name, or representing in any other manner that respondents are manufacturers of the textile fabrics sold by them unless and until respondents own and operate, or directly and absolutely control, the manufacturing plant wherein said fabrics are woven or made.

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

QUALITY THRIFT FURS, INC., ET AL.

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

Docket 8445. Complaint, Oct. 11, 1961—Decision, Apr. 6, 1962

Order requiring St. Louis, Mo., furriers to cease violating the Fur Products Labeling Act by representing falsely on labels on fur products that fictitiously high sums were the regular retail prices, and that certain fur products were "samples"; failing to disclose in advertising the proper names of fur-producing animals, when furs were artificially colored, and the country of origin of imported furs, and naming an animal other than that producing certain furs; falsely advertising that purchasers would "save ½ and more" and that furs offered were "rental garments"; failing to keep adequate records to substantiate pricing claims; and failing in other respects to comply with requirements of the Act.

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 Quality Thrift Furs, Inc., a corporation, and Hopper Fur Company, Inc., a corporation, and Sylvia B. Hopper and Earl Hopper, individually and as officers of both corporations, and Edward Hopper, individually and as manager of both corporations, and Sig Tulper, individually and as a salesman of Quality Thrift Furs, Inc., 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. Quality Thrift Furs, Inc., is a corporation located at 501 North Seventh Street, St. Louis, Mo. Hopper Fur Company, Inc. is a corporation located at 425 North Seventh Street, St. Louis, Mo. Individual respondents Sylvia B. Hopper and Earl Hopper are officers in both of the said corporations. Individual respondent Edward Hopper is manager of both corporations and individual respondent Sig Tulper is a salesman of Quality Thrift Furs, Inc. All individual respondents control, direct and formulate the acts, practices and policies of the said corporate respondents. The office and principal place of business of all individual respondents is the same as that of the Hopper Fur Company, Inc.

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

PAR. 3. Certain of said fur products were misbranded in that labels affixed thereto contained fictitious prices and misrepresented the regular retail selling prices of such fur products in that the prices represented on such labels as the regular prices of the fur products were in excess of the retail prices at which the respondents usually and regularly sold such fur products in the recent regular course of business in violation of Section 4(1) of the Fur Products Labeling Act.

PAR. 4. Certain of said fur products were misbranded by being falsely and deceptively labeled in that labels affixed to fur products contained representations that the fur products were "samples" when such was not the fact in violation of Section 4(1) of the Fur Products Labeling Act.

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

PAR. 6. Among and included in the advertisements as aforesaid, but not limited thereto, were advertisements of respondents which appeared in issues of the St. Louis Globe Democrat and St. Louis Post Dispatch, newspapers published in the city of St. Louis, State of Missouri, and having a wide circulation in said State and various other States of the United States.

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

(a) Failed to disclose the name or names of the animal or animals that produced the fur contained in the fur product as set forth in the Fur Products Name Guide, in violation of Section 5(a)(1) of the Fur Products Labeling Act.

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

(c) Contained the name or names of an animal or animals other than those producing the fur contained in the fur product, in violation of Section 5(a)(5) of the Fur Products Labeling Act.

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

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

(f) Represented that fur products offered for sale were "rental garments" when such was not the fact in violation of Section 5(a)(5) of the Fur Products Labeling Act.

(g) Contained information required under Section 5(a) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder which was not set forth in type of equal size

and conspicuousness and in close proximity with each other, in violation of Rule 38(a) of said Rules and Regulations.

PAR. 7. In advertising fur products for sale as aforesaid respondents made pricing claims and representations of the type covered by subsections (a), (b), (c) and (d) of Rule 44 of the Regulations under the Fur Products Labeling Act.

Respondents in making such pricing claims and representations failed to maintain full and adequate records disclosing the facts upon which such claims and representations were based in violation of Rule 44(e) of said Rules and Regulations.

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

Mr. Robert W. Lowthian, supporting the complaint.

Blumenfeld, Abrams & Daniel, of St. Louis, Mo., by *Mr. Selden Blumenfeld* for respondents Quality Thrift Furs, Inc., Hopper Fur Company, Inc., Sylvia B. Hopper, Earl Hopper and Edward Hopper.

INITIAL DECISION BY WILLIAM K. JACKSON, HEARING EXAMINER

This proceeding was brought pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act by the issuance of a complaint on October 11, 1961, charging the above-named corporate respondents and the individual respondents with violations of both Acts by misbranding and falsely and deceptively labeling and advertising certain of their fur products.

By an amended joint answer filed January 15, 1962, Quality Thrift Furs, Inc., and Hopper Fur Company, Inc., the corporate respondents, and Sylvia B. Hopper, Earl Hopper, individually and as officers of said corporations, and Edward Hopper, individually and as manager of said corporations, admitted all the material allegations of the complaint and waived any hearing in the matter pursuant to Section 4.5(b)(2) of the Commission's Rules of Practice for Adjudicative Proceedings, effective July 21, 1961. The respondent Sig Tulper failed to file an answer within the time provided by the Commission's Rules of Practice for Adjudicative Proceedings and pursuant to Section 4.5(c) thereof is in default.

By order dated January 17, 1962, the hearing examiner afforded the parties an opportunity to file proposed findings of fact and conclusions of law by February 16, 1962. Counsel in support of the complaint filed proposed findings of fact and conclusions on Janu-

ary 31, 1962. 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 Quality Thrift Furs, Inc., is a corporation located at 501 North Seventh Street, St. Louis, Mo. Respondent Hopper Fur Company, Inc., is a corporation located at 425 North Seventh Street, St. Louis, Mo. The individual respondents Sylvia B. Hopper and Earl Hopper are officers in both of the said corporations. Individual respondent Edward Hopper is manager of both corporations and individual respondent Sig Tulper is a salesman of Quality Thrift Furs, Inc. All individual respondents control, direct and formulate the acts, practices and policies of the said corporate respondents. The office and principal place of business of all individual respondents is the same as that of the Hopper Fur Company, Inc.

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

3. Certain of said fur products were misbranded in that labels affixed thereto contained fictitious prices and misrepresented the regular retail selling prices of such fur products, in that the prices represented on such labels as the regular prices of the fur products were in excess of the retail prices at which the respondents usually and regularly sold such fur products in the recent regular course of business, in violation of Section 4(1) of the Fur Products Labeling Act.

4. Certain of said fur products were misbranded by being falsely and deceptively labeled in that labels affixed to fur products contained representations that the fur products were "samples" when such was not the fact, in violation of Section 4(1) of the Fur Products Labeling Act.

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

6. Among and included in the advertisements as aforesaid, but not limited thereto were advertisements of respondents which appeared in issues of the St. Louis Globe Democrat and St. Louis Post Dispatch, newspapers published in the city of St. Louis, State of Missouri, and having a wide circulation in said State and various other States of the United States.

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

(a) Failed to disclose the name or names of the animal or animals that produced the fur contained in the fur product as set forth in the Fur Products Name Guide, in violation of Section 5(a)(1) of the Fur Products Labeling Act.

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

(c) Contained the name or names of an animal or animals other than those producing the fur contained in the fur product, in violation of Section 5(a)(5) of the Fur Products Labeling Act.

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

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

(f) Represented that fur products offered for sale were "rental garments" when such was not the fact, in violation of Section 5(a)(5) of the Fur Products Labeling Act.

(g) Contained information required under Section 5(a) of the Fur Products Labeling Act and the Rules and Regulations promul-

gated thereunder which was not set forth in type of equal size and conspicuousness and in close proximity with each other, in violation of Rule 38(a) of said Rules and Regulations.

7. In advertising fur products for sale as aforesaid respondents made pricing claims and representations of the type covered by subsections (a), (b), (c) and (d) of Rule 44 of the Regulations under the Fur Products Labeling Act.

Respondents, in making such pricing claims and representations, failed to maintain full and adequate records disclosing the facts upon which such claims and representations were based, in violation of Rule 44(e) of said Rules and Regulations.

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 said respondents in misbranding and falsely and deceptively labeling and advertising 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 Quality Thrift Furs, Inc., a corporation, and its officers, and Hopper Fur Company, Inc., a corporation, and its officers, and Sylvia B. Hopper and Earl Hopper, individually and as officers of both corporations, and Edward Hopper, individually and as manager of both corporations, and Sig Tulper, individually and as a salesman of Quality Thrift Furs, Inc., and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the sale, advertising, or offering for sale in commerce, or the transportation or distribution in commerce of fur products, or in connection with the sale, advertising, offering for sale, transportation, or distribution of fur products which are made in whole or in part of fur which has been shipped and received in commerce, as "commerce", "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

1. Misbranding fur products by:

A. Falsely or deceptively labeling or otherwise identifying such products as to the regular prices or values thereof by any representa-

tion that the regular or usual prices of such products are any amount in excess of the prices at which respondents have usually and customarily sold such products in the recent regular course of business.

B. Representing directly or by implication on labels that fur products are "samples" or words of similar import, when such is not the fact.

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

A. Fails to disclose:

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

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

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

B. Sets forth the name or names of any animal or animals other than the name or names specified in the Fur Products Name Guide and as prescribed under the Rules and Regulations.

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

D. Represents directly or by implication that fur products offered for sale are "rental garments" or words of similar import when such is not the fact.

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

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

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 6th day of April 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

MARQUETTE CORPORATION

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

Docket C-112. Complaint, Apr. 16, 1962—Decision, Apr. 16, 1962

Consent order requiring a Minneapolis, Minn., manufacturer of home food freezers to cease making unwarranted claims, purportedly based on statistics of the Department of Agriculture and the Bureau of Labor Statistics, that a family could save money on food purchases by using a freezer; and representing falsely that the compressors in their freezers were backed by an unconditional lifetime replacement guarantee, and, through use of the name "Blue Ribbon Freezer-Food Institute", that it was a non-profit organization.

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

PARAGRAPH 1. Respondent Marquette Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 307 E. Hennepin Avenue, Minneapolis 14, Minn.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the manufacture, advertising, offering for sale, sale and distribution of home food freezers and various other products to distributors and retailers for resale to the public.

PAR. 3. In the course and conduct of its business, respondent now causes, and for some time last past has caused, its freezers, when sold, to be shipped from its factories or plants in the State of Minnesota to purchasers thereof located in various other states of the United States, and maintains, and at all times mentioned herein has main-

tained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Respondent is now, and at all times mentioned herein has been, in substantial competition in commerce with other corporations, firms, and individuals engaged in the sale and distribution of freezers.

PAR. 5. In the course and conduct of its business respondent, by the use of advertisements in magazines of national circulation, trade publications, and by use of various point-of-sale promotional materials, which it leases to distributors and retailers of its freezers and to sellers of freezer-food plans, has made certain representations with reference to its freezers of which the following are typical:

Here's what YOU CAN SAVE EACH MONTH ON FOOD PURCHASES . . . (chart showing savings per month for families of from 1 to 7 persons).

*Based on average per capita consumption of foods suitable for freezing purchased in quantity during lower priced "in season" months. "Per capita food consumption"—Dept. of Agriculture. "Seasonal price fluctuation"—Bureau of Labor Statistics.

A family of 4 can save $310.32 a year!

Extended Compressor Replacement Contract For Operating LIFETIME Of Appliances.

Lifetime Compressor Contract.

Blue Ribbon Freezer—Food Institute.

PAR. 6. Respondent, by means of the aforesaid advertisements and promotional materials, has represented, directly or by implication:

(1) That a savings chart included in point-of-sale promotional materials was compiled or prepared by the Department of Agriculture and/or the Bureau of Labor Statistics, or from information supplied by them.

(2) That information compiled or supplied by the Department of Agriculture and/or the Bureau of Labor Statistics establishes that a family of four can save $310.32 a year on food purchases by use of a freezer.

(3) That the compressors in respondent's freezers are backed by an unconditional replacement contract for the lifetime of the appliances and that when the operation of such compressors becomes impaired they will be replaced without charge.

(4) Through use of the name Blue Ribbon Freezer-Food Institute that it is an institute, or a non-profit organization.

PAR. 7. Said representations are false, misleading and deceptive. In truth and in fact:

(1) The savings chart included in point-of-sale promotional material was not compiled or prepared by the Department of Agriculture

and/or the Bureau of Labor Statistics, or from information supplied by them.

(2) Information compiled or supplied by the Department of Agriculture and/or the Bureau of Labor Statistics does not establish that a family of four can save $310.32 a year on food purchases by use of a freezer.

(3) The lifetime compressor replacement contract is not unconditional and compressors whose operation becomes impaired will not be replaced without charge at all times during the lifetime of the appliance.

(4) Respondent is not an organization for the promotion of learning, philosophy, the arts, science, research, or the like. It is a corporation engaged in business for a profit and, therefore, is not an institute or a non-profit organization.

PAR. 8. By the aforesaid practices respondent has placed, and is placing in the hands of distributors and retailers means and instrumentalities by and through which they may mislead the purchasing public into the belief that the aforesaid representations are true.

PAR. 9. The use by respondent of the aforesaid false, misleading and deceptive 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 representations were, and are true, and into the purchase of substantial quantities of respondent's product by reason of said erroneous and mistaken belief.

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

DECISION AND ORDER

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

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the complaint

to issue herein, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as set forth in such complaint, and waivers and provisions as required by the Commission's rules; and

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

1. Respondent Marquette Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business located at 307 E. Hennepin Avenue, in the city of Minneapolis, State of Minnesota.

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 Marquette Corporation, a corporation, and its officers, agents, representatives and employees, directly or through any corporate or other device in connection with the offering for sale, sale or distribution of freezers in commerce, as "commerce" is defined in the Federal Trade Commission Act, forthwith cease and desist from:

1. Representing directly or by implication that any data or promotional material was compiled or prepared by, or prepared from information supplied by, the United States Department of Agriculture, Bureau of Labor Statistics or any other department or agency of the United States Government; or otherwise misrepresenting the source of any such data or material.

2. Representing directly or by implication that information compiled or supplied by the United States Department of Agriculture, Bureau of Labor Statistics or any other department or agency of the United States Government establishes that a family of four can save $310.32, or that any family can save any specific amount, a year on food purchases by the use of a freezer; or otherwise representing that any savings, or savings in any amount, have been established in any manner or are supported by any data unless such representations have been authoritatively established or are supported by such data.

3. Using the word "institute" to designate, describe or refer to respondent's business or representing that it is any type of non-profit organization.

4. Placing in the hands of others the means and instrumentalities whereby they may mislead or deceive the public in the manner or as to the things herein prohibited and from continuing to permit others to use any advertising or promotional material, owned by it or over which it has control, which may mislead or deceive the public in the manner or as to the things herein prohibited.

It is further ordered, That respondent Marquette Corporation, a corporation, and its officers, agents, representatives and employees, directly or through any corporate or other device in connection with the offering for sale, sale or distribution of freezers or any other products in commerce as "commerce" is defined in the Federal Trade Commission Act, forthwith cease and desist from:

Representing directly or by implication that any such products or any parts thereof are guaranteed in any manner unless the nature and extent of the guarantee and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed in immediate conjunction with any such representation.

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

IN THE MATTER OF

SOLOMON KLEIN TRADING AS SOL KLEIN FURS

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

Docket C-113. Complaint, Apr. 16, 1962—Decision, Apr. 16, 1962

Consent order requiring a New York City furrier to cease violating the Fur Products Labeling Act by labeling and invoicing artificially colored furs as natural and failing to show on labels and invoices when fur was bleached, dyed, etc.; and by stating falsely on invoices that he 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 Solomon Klein, an individual trading as Sol Klein Furs, 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 Solomon Klein is an individual trading as Sol Klein Furs with his office and principal place of business located at 307 Seventh Avenue, New York, N.Y.

PAR. 2. Subsequent to the effective date of the Fur Products Labeling Act on August 9, 1952, respondent has been and is now engaged in the introduction into commerce, and in the manufacture for introduction into commerce, and in the sale, advertising and offering for sale, in commerce, and in the transportation and distribution, in commerce, of fur products; and has manufactured for sale, sold, advertised, offered for sale, transported and distributed fur products which have been made in whole or in part of fur which has been shipped and received in commerce, as the 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. Certain of said fur products were falsely and deceptively invoiced in violation of Section 5(b)(2) of the Fur Products Labeling Act in that such invoices contained statements to the effect that the respondent had a continuing guaranty on file with the Federal Trade Commission, when such was not the fact.

PAR. 8. 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, Solomon Klein, is an individual trading as Sol Klein Furs with his office and principal place of business located at 307 Seventh Avenue, in the city of New York, State of New York.

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 Solomon Klein, an individual trading as Sol Klein Furs, 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 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. Falsely or deceptively invoicing fur products by representing directly or by implication that respondent has a continuing guaranty on file with the Federal Trade Commission when such is not the fact.

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.