Complaint

IN THE MATTER OF

GUARANTEE RESERVE LIFE INSURANCE COMPANY OF HAMMOND ET AL.

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

Docket 6243. Complaint, Oct. 14, 1954—Decision, July 23, 1962

Order dismissing without prejudice—the evidence relating to practices too remote in point of time to support the recommended order—complaint charging a Hammond, Ind., insurance company with false advertising.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as that Act is applicable to the business of insurance under the provisions of Public Law 15, 79th Congress (U.S.C., Title 15, Secs. 1011 to 1015, inclusive), and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the Guarantee Reserve Life Insurance Company of Hammond, a corporation, sometimes hereinafter referred to as respondent corporation, and Ben Jaffe, Jerome F. Kutak and Eugene Jaffe, individually and as officers of respondent corporation, sometimes hereinafter referred to as individual 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 Guarantee Reserve Life Insurance Company of Hammond is a corporation organized, existing and doing business under and by virtue of the laws of the State of Indiana, with its office and principal place of business located at 128 State Street, Hammond, Ind.

PAR. 2. Respondents Ben Jaffe, Jerome F. Kutak and Eugene Jaffe are President, Vice President and Secretary, respectively, of the respondent corporation and as such direct, dominate and control the acts and practices of respondent corporation at all times herein mentioned. The business address of each of the aforesaid individual respondents is 128 State Street, Hammond, Ind.

PAR. 3. Respondents are now, and for more than two years last past have been, engaged as insurers in the business of insurance in commerce, as "commerce" is defined in the Federal Trade Commission Act, by entering into insurance contracts with insureds located in various States of the United States other than the State of Indiana,

in which states the business of insurance is not regulated by state law to the extent of regulating the practices of respondents alleged in this complaint to be illegal. Respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in said insurance policies in commerce between and among the several States of the United States.

Respondents, during the two years last past have issued a variety of policies providing indemnification for losses resulting from sickness or accident including those designated by it as Forms AS–2–51–1 (SD); A.S. 2–51–1; A.S. 197; H. 91–51; L–53 B–52; N–192–52A; L–53A–51; A–27–40–1; A–27–60–1; A–27–80–1 and LS–52–50.

The respondents are licensed as provided by the respective state laws to conduct an insurance business in the States of Indiana, Illinois, Kentucky, Ohio, Missouri, Virginia, West Virginia, Florida and Delaware. Respondents are not now, and for more than two years last past have not been, licensed as provided by the state law to conduct an insurance business in any state other than those last above mentioned.

Respondents solicit business by mail in the various States of the United States in addition to the State of Indiana. As a result thereof they have entered into insurance contracts with insureds located in many states in which they are not licensed to do business. Respondents' business practices are not regulated by any of those states as it is not subject to the jurisdiction of such states. In addition respondents enter into contracts of insurance through agents in each of the states in which they are licensed to conduct an insurance business.

PAR. 4. In the course and conduct of their said business, and for the purpose of inducing purchasers of said insurance policies, respondents have made, and are now making, numerous statements and representations concerning the benefits provided in said policies of insurance, by means of stuffers, circulars, folders, and other advertising material distributed throughout the various States of the United States. Typical, but not all inclusive of such statements and representations, are the following:

1. Age 10 to 79
   No reduction in benefits or increase in premiums on account of age.
   No termination age.
   For people up to age 80
2. *The policy covers all Accidents and every sickness. We do not specify* the various accidents or sickness covered by this policy for the simple reason that it covers *all* accidents and *every* sickness except insanity, venereal disease, childbirth and pregnancy. *This is not a limited type policy.*
   24-hour-a-day protection on or off the job
   $100 per month regular monthly income for every sickness and all accidents
   * * * any accident, any confining sickness

3. $100.00 a month if disabled by accident payable from the very first day of medical attention at the rate of $25.00 per week for a maximum of twelve weeks if caused by a great many specified accidents such as while traveling on trains, or in private automobiles or as a pedestrian.
4. Non-confining sickness up to 12 months.
   You do not have to be House Confined to collect full benefits.
5. Guarantee Plan also pays your family $750.00 to $20,000 for any accidental death * * * regardless where or how the accident occurs.
   In addition to the benefits paid your family for accidental death, this Guarantee policy also pays *you* cash benefits for specific losses, as result of accident, of certain members of your body—such as hands, feet, eyes, etc.,—in sums ranging up to $2,500.00.
   In case of accident or sickness * * * for surgical fees up to $650.00.
6. What will it mean to you to have $100 a month for the rest of your life, if totally disabled by sickness or accident?
   Pays up to $100.00 per month income for the rest of your life * * * payable as long as you are disabled and cannot work because of any accident or any confining sickness.
7. Only 25¢ puts your policy in force for 1 full month.
   For only 25¢—the full first month premium—you can put in force this new life time income sickness and accident policy that gives you cash insurance protection for all your life.

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

1. That the indemnification provided in all the said insurance policies may and will be continued, at the option of the insured, to the age of 80 so long as the insured continues to make premium payments within the time and in the amounts provided by the policy.

2. That the indemnification contained in said insurance policies provide for payment of cash benefits to the insured for loss occasioned by any sickness or accident suffered by the insured.

3. That said insurance policies provide indemnification in the form of cash benefits, for a maximum of twelve weeks when disabled while traveling in a train, private automobile or as a pedestrian.

4. That cash benefits are payable up to twelve months for loss of time due to total disability resulting from non-confining sickness.

5. That said insurance policies provide cash benefits up to $20,000.00 for all accidental loss of life, up to $2,500.00 for all accidental loss of limbs or sight and a maximum of $650.00 for the surgical operations necessitated because of any one accident or sickness.

6. That said insurance policies provide for the monthly payment of cash benefits, in a specific amount, to the insured when totally disabled by any accident or confined by any sickness for the duration of such total disability up to a life time.

7. That for the payment of twenty-five cents the respondents will issue an insurance policy to the insured which will provide indemnification for loss occasioned by accident or sickness from the date of its issuance for one month.

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

1. The indemnification provided in all of said insurance policies may not be continued to the age of 80, or any other age, at the option of the insured by the timely and required payment of premiums, but, on the contrary, under the terms of certain of said insurance policies the respondents may refuse to accept renewal premiums and thus cancel the said insurance policies thereby terminating the indemnification provided therein. Further, said insurance policies and the indemnification provided therein are automatically cancelled upon the payment of any cash benefit for loss of limb or sight.

2. The indemnification contained in said insurance policies do not provide for the payment of cash benefits to the insured for loss occasioned by any sickness or accident suffered by the insured. On the contrary, said insurance policies do not cover loss by accident unless bodily injury is sustained, independently of all other causes solely through accidental means or independent of other causes through violent, external and accidental means. No loss resulting from sickness is indemnified if the cause of such sickness is traceable to a condition existing prior to or within 15 or 30 days of the effective date of the policy.

Said insurance policies further provide that no loss will be indemnified resulting from an accident occurring or sickness contracted outside the United States or Canada; or loss caused by venereal disease, syphilis, pregnancy, childbirth or complications therefrom; insanity or mental infirmity; or losses caused by tuberculosis, heart trouble and disease of the organs which are peculiar to women, such occurring within six months after the effective date of the policy; and losses resulting in sickness or disease excluded by specific provision of certain of the policies.

3. Said insurance policies do not provide indemnification in the form of cash benefits for a maximum of twelve weeks when disabled while traveling in a train, private automobile or as a pedestrian. On the contrary, the described cash benefits for twelve weeks will not be paid unless injury occurs, while riding as a fare-paying passenger in a train, or in a private automobile of the exclusive pleasure type and is not being used for a business purpose and by reason of it being wrecked or disabled; or as a pedestrian unless injury results from

actual contact with a moving conveyance. The said disability must require the regular treatment of a physician or surgeon and continuously and wholly prevent the insured from attending to any and every kind of business or labor.

4. None of respondents' said insurance policies provide for the payment of cash benefits up to six months for loss of time resulting from total disability if the insured is not continuously confined within doors. One policy (L–53A–51) provides such a payment up to three months; and the other (L–53B–52) provides a payment up to one month.

5. Said insurance policies do not provide cash benefits up to $20,000.00 for all accidental loss of life, up to $2,500.00 for all accidental loss of limbs or sight and up to $650.00 for surgical operations necessitated because of any one accident or sickness. On the contrary, said insurance policies provide that the accidental loss of life must occur while the insured is a passenger of common carrier for passenger service, then only when such loss shall be caused by the disablement or wrecking of the car or steamship in which the insured is riding, or the accidental loss is within the insuring clause of said insurance policies and death occurs within sixty days from the date of accident and the insured has been wholly and continuously disabled since the date of such accident. None of said policies provide a maximum of $20,000.00 for accidental loss of life.

The indemnification for accidental loss of limb or sight provides fixed cash benefits if the loss occurs within 30 days, 60 days or 100 days depending upon the time period defined in each of said policies. Further, the insured must have been wholly and continuously disabled from the date of the accident to the date of the loss.

Further, the said insurance policies providing cash benefits for surgical operations contain a "Schedule of Operations" in which operations are listed with the maximum amount payable for each scheduled operation performed but none of said operations so listed indemnify the insured to a maximum of $650.00. The great majority of the listed operations in all of said insurance policies range from a maximum of $5.00 to $75.00 and it is provided in said insurance policies that only one cash benefit is payable for any one operation performed because of any one sickness or accident.

Under the insuring clause, the operations necessitated by many sicknesses and accidents are not included; also the said insurance policies specifically exclude the insured from being indemnified because of any operation performed on account of sickness unless the policy has been in effect at least six months.

6. Said insurance policies do not provide monthly indemnification, in a specific amount, to the insured when totally disabled by any accident or confined by any sickness for the duration of such total disability or confining sickness up to a life time. On the contrary, many disabling accidents and confining sicknesses which the insured may suffer or contract are excluded for the reason set out in subparagraph 2 herein of this paragraph 6.

The terms of said policies not only require that the insured be disabled in case of accident but provide that the disability must wholly and continuously prevent the insured from performing the duties of any occupation, and require the professional care and regular attendance of a physician or surgeon.

If the insured receives one of the cash benefits for the loss of limb or sight, no monthly indemnification will be paid to the insured. Loss resulting from sprain or lame back will receive the represented indemnification for only 30 days. Certain of said insurance policies reduce the specific amount of the indemnification when the insured reaches a stated age.

7. The respondent, upon the payment of twenty-five cents, will not issue an insurance policy to the insured providing indemnification for loss occasioned by accident or sickness from the date of its issuance. All of said insurance policies prevent the insured, by the terms thereof, from receiving idemnification because of loss from sickness until the policy has been in force at least fifteen or thirty days and excludes all losses from certain sicknesses until the policy has been in force at least six months.

PAR. 7. The use by the respondents of said false statements and representations with respect to its insurance policies has had, and now has, the capacity and tendency to mislead and deceive, and has misled and deceived, a substantial portion of the purchasing public into the erroneous and mistaken belief that the statements and representations were and are true, and to induce such portions of the purchasing public to purchase a substantial number of said insurance policies by reason of said erroneous and mistaken belief.

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

Mr. R. D. Young for the Commission.

Mr. A. Alvis Layne, Jr., and *Mr. T. S. L. Perlman*, of Pennsylvania Building, Washington, D.C., for respondents.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

This proceeding involves some seven types or categories of alleged unfair and deceptive advertising practices of respondents with respect to respondent corporation's policies of health and accident insurance.[1]

This initial decision finds generally that the material allegations of the complaint have been sustained by the evidence in the record and specifically finds that the respondent corporation in each of the seven said particulars alleged has violated the Federal Trade Commission Act, as that Act is affected and amended by Public Law 15, 79th Congress, since respondent corporation disseminated in interstate commerce a substantial amount of false, misleading, and deceptive advertising matter relating to its health and accident insurance policies. It is concluded therefrom that the Federal Trade Commission has jurisdiction over the subject matter of this proceeding which is clearly and substantially maintainable in the public interest. A cease and desist order appropriate to the findings made and conclusions drawn is issued herewith against the respondent corporation and also against the individual respondents for reasons hereinafter stated.

This proceeding was instituted October 14, 1954, by the filing of a complaint against respondent insurance corporation and the respondents Ben Jaffe, Jerome F. Kutak, and Eugene Jaffe, individually and as officers of said corporation. After lawful service of process upon them, respondents filed their joint answer on December 22, 1954, within the time fixed therefor by the hearing examiner on respondents' motion for additional time in which to answer. Respondents also appeared by counsel at a pre-trial conference on December 6, 1954. On January 3, 1955, a hearing was held on respondents' objections to the jurisdiction of the Federal Trade Commission over the subject matter of the proceeding, which objections the hearing examiner overruled by an interlocutory order dated March 31, 1955. Respondents perfected an interlocutory appeal from this order, which the Commission denied on May 25, 1955.

On May 27, the examiner set the initial hearing for July 7. Thereafter, on June 7, the hearing examiner issued a subpoena duces tecum

[1] Unless the context indicates otherwise, the terms "health and accident insurance" or "health and accident insurance policies" or like terms, as used herein, include and mean respondent corporation's personal accident, health, sickness, medical, surgical, hospitalization and income protection insurance or policies. Respondent corporation's life insurance business and its group health and accident insurance policies are not involved herein. Certain policies such as its "family polio" policies which are involved herein are in fact individual policies written on the family head and covering family members as well. They are not true group insurance as authorized and recognized by the statutes of the several States.

directed to the respondent Ben Jaffe as president of respondent corporation, which subpoena was duly served on June 9. On June 20, respondents filed a motion to limit or quash said subpoena with a supporting memorandum and affiidavit, and on June 29 also filed a motion for a statement limiting and clarifying issues, to both of which motions Commission's counsel made separate answers. By separate orders on July 1, the examiner denied each of said motions. The initial hearing, however, proceeded on July 7 and 8 as theretofore ordered. By agreement of counsel, respondent Jerome F. Kutak, vice president, was substituted for respondent president Ben Jaffe, and during the hearing, Kutak having failed and refused to produce some of the subpoenaed documents, the examiner ordered such documents produced. Respondents' appeal from such order was denied by the Commission on September 9. The hearing meanwhile was necessarily recessed until September 12, 1955. Prior to said hearing of September 12, the examiner issued subpoenas duces tecum for Richard D. Slott, respondent corporation's vice president and director of agents, and for William H. Youngerman, said respondent corporation's advertising agent, which respondents opposed on September 9 by a motion to limit or quash said subpoenas, which motion was orally denied on September 12 in the course of the hearing and a further hearing ordered for November 17, which verbal order was later confirmed by written order dated October 24. An appeal from this order denying respondents' motion to limit or quash said subponeas was denied by the Commisison on October 28, 1955, except to clarify the subpoena duces tecum served upon Richard D. Slott and limit the documents to be produced by him to advertising which related only to respondents' health and accident insurance. As originally issued such subpoena inadvertently was broad enough to probably encompass respondents' life insurance advertising not in issue in this proceeding.

On November 17, further evidence was adduced by Commission's counsel, after which the Commission's case-in-chief was rested. Respondents' counsel then requested and were given until January 31, 1956, in which to file their proposed motion to dismiss the proceeding, together with their supporting brief, and reasonable time was also granted to Commission's counsel to answer the same. Meanwhile, on December 9, 1955, respondent filed a motion for specification of charges, and on January 5, 1956, a motion to suspend proceedings and to postpone the filing of respondents' motion to dismiss pending the conclusion of the Commission's Trade Practice Proceedings then pending to establish rules governing the advertising of health and accident insurance. Both of such motions were respectively denied by the ex-

aminer on January 17 and January 6, 1956. Respondents appealed to the Commission from the motion to suspend proceedings, which the Commission denied on February 15, 1956. Meanwhile, an extension of time to February 15 was granted to respondents in which to file their motion to dismiss the complaint and their supporting brief. Also on January 19, the examiner on his own motion, issued an order to show cause why paragraph 10 of respondents' answer should not be stricken as incompetent, irrelevant, and immaterial, to which respondents filed their showing of cause on February 10, 1956. On April 4, 1956, the examiner issued an order, for good legal reasons stated in said order, striking all of paragraph 10 of the respondents' answer.

Oral arguments having been set for March 26, 1956, upon respondents' motion to dismiss the complaint and Commission's counsel's answer thereto, the same were canceled and the matter taken under submission on the pleadings, records and briefs of counsel on March 2, 1956, after respondents' counsel had advised the hearing examiner they desired to waive such oral argument. On May 9, 1956, an order was entered denying respondents' said motion to dismiss the complaint. On May 25, hearing was ordered for July 2, whereat respondents could present their evidence in defense unless they should elect to stand upon the record and waive the presentation. This hearing was canceled on June 28, in view of respondents' election to offer no evidence in support of their answer and to rest the case on the record as then made, waiving further hearing. In due course thereafter, the parties submitted their respective proposed findings, conclusions, and order, upon which oral argument was heard September 24, 1956, and the case taken under submission upon the whole record. All hearings at which evidence was taken in this proceeding took place in Chicago, Illinois, while other hearings referred to were held in Washington, D.C.

The complaint alleges the corporate capacity of the respondent life insurance company and the official status of the individual respondents and that as officers of respondent corporation they direct, dominate, and control its acts and practices, which allegations are all admitted by the answer. As regards the statement of facts upon which the proceeding is premised, the complaint charges, in substance, that respondents, during two years preceding the filing of the complaint, had disseminated in interstate commerce, by means of advertisements consisting of stuffers, circulars, folders, and other advertising material, allegedly false, misleading, and deceptive statements and representations concerning the health and accident insurance policies issued by respondent corporation. Such statements and representations are grouped in the complaint into seven general

categories as hereinbefore stated. Respondent corporation in its answer denies each and all of said allegations of the complaint and further pleads that the business of the corporate respondent does not constitute "commerce" as defined in the Federal Trade Commission Act; that respondent corporation is not engaged in commerce; and that the business of said respondent is "regulated by state law" as provided in Public Law 15, 79th Congress, and, therefore, the Federal Trade Commission Act is not applicable to respondents nor to the business of respondent corporation. Respondents further, in paragraph 10 of their answer plead a matter which is, in substance, an estoppel against the Commission, which paragraph was stricken by the examiner as hereinbefore stated. The prayer of the answer is that the complaint be dismissed, first, on the ground that the Federal Trade Commission Act has no application to the business of respondents in question, and, in the alternative, that the complaint be dismissed and the matter referred to the Commission's Bureau of Consultation for handling and disposition under the procedures applicable to that Bureau. The answer does not pray for dismissal upon the merits, but inasmuch as the burden of proof under Section 7(c) of the Administrative Procedure Act is upon counsel for the Commission to establish the facts alleged in the complaint by a preponderance of the evidence, such omission by respondents in their prayer is not material.

The examiner, after hearing and observing the witnesses, has given full, careful, and impartial consideration to all of the many documentary exhibits received in the record, to all other evidence presented on the record, and to the fair and reasonable inferences arising therefrom, as well as to the facts stated in the complaint which are admitted by the answer. He has also given proper recognition to relevant matters of official notice as to which "any party shall on timely request be afforded an opportunity to show the contrary," as provided by Section 7(d) of the Administrative Procedure Act and Section 3.14(c) of the Commission's Rules of Practice for Adjudicative Proceedings. All arguments, contentions, and authorities presented by way of objections and motions or in oral arguments or written briefs have likewise been fully and fairly considered. Upon the whole record thus evaluated, weighed, and considered, it is found that the material allegations of the complaints are each and all fully and fairly established by the preponderance of the evidence, the examiner specifically finding as follows:

Respondent, Guarantee Reserve Life Insurance Company of Hammond, is, and was at all times herein referred to, a stock life in-

surance corporation, organized, existing, and doing business under and by virtue of the laws of the State of Indiana, with its home office and principal place of business located at 128 State Street, Hammond, Indiana. One of its vice presidents, Richard D. Slott, the company's agency director, and his staff, however, maintain their headquarters at 308 North Michigan Avenue, Chicago, Illinois, where agents are employed and trained and from which place the general agency business of the company is directed in the States wherein it is licensed.

At the time the complaint was filed and for many years prior thereto, the respondents Ben Jaffe, Jerome F. Kutak, and Eugene Jaffe were, respectively, president, vice president and general counsel, and secretary of the respondent corporation, and as such directed, dominated, and controlled the acts and practices of respondent corporation from the home office thereof at Hammond, Indiana. These matters will be discussed in more detail subsequently herein.

The said corporate respondent, under its charter and license to do business in the State of Indiana as a stock legal reserve life insurance company, is, and at all times herein referred to, has been authorized to engage in the business of life insurance and also of health and accident insurance. During the year 1953 said respondent corporation was not only licensed to do business in the domiciliary State of Indiana but was also licensed to do business in the States of Illinois, Kentucky, Missouri, Ohio, Virginia, and West Virginia, and in the District of Columbia. During that year it ceased to do business in the District of Columbia as a licensed company. In 1954, respondent corporation was licensed in the same States plus five additional States, namely, Alabama, Delaware, Florida, Georgia, and Nebraska. Official notice is taken that since 1954 respondent has further been licensed in the States of Arkansas and Tennessee. Official notice is also taken that for many years the development of the respondent corporation's insurance business was primarily by direct mail solicitation.

Respondent Kutak testified that the company was developing its agency business and being licensed in the various states as rapidly as possible. The record shows (Exhibit 20–B) that "One half of the accident and health business is sold by direct mail, the other half is sold by agents." See also Exhibit 34, where the mail order business in this field is shown to have been 49.32 percent of the premium income in 1953. The record further shows (Exhibits 158 and 159) that in 1953 and 1954 the direct mail order business of respondent corporation in each of the states other than the domiciliary State

of Indiana was quite substantial. Of its entire business in such states the percentages thereof which were direct mail order business ranged from that in West Virginia which was approximately 88 percent and 80 percent, respectively, in 1953 and 1954, to that in Kentucky which was approximately 15 percent and 11 percent, respectively, in 1953 and 1954. In Indiana, to which state all the other mail order business was credited, the percentages of such business to the company's total business was about 67 percent in 1953 and about 55 percent in 1954.

The respondent corporation differs both from either a regular agency company or a purely direct mail insurer in that it not only carries on an agency operation in each of the states in which it is licensed but also does business by direct mail in all of the States in which it is not licensed, plus the District of Columbia. It also most uniquely does a direct mail order type of business in competition with its agents in the States where it is licensed. Respondent Kutak testified this was a cheaper operation to obtain "leads" for the company's agents in the licensed States than to procure business in other ways, and that after the direct mail business had been "seasoned" for two or three months on the company's books, the names of such policyholders were then turned over to the licensed agents in the respective states so that they could follow through and procure other business from such persons. The respondent corporation therefore is doing its mail order type of business by advertising and soliciting insurance in direct competition with its agents with no evidence to show that the agents receive any commissions from this competitive direct mail business, the agents only getting the "leads" to possible other business.

Respondents distributed various types of direct mail insurance advertising material in all of the 48 States and the District of Columbia. All of such material is prepared and largely distributed from Chicago, Illinois, by respondent corporation's advertising agent, William Youngerman, who testified under subpoena duces tecum. Respondents' magazine ads also originate in Chicago. Much of the advertising matter, however, is sent directly from the home office in Hammond, Indiana, by mail to listed prospective buyers of the company's insurance. Other types are distributed to its licensed agents in the several States for their use. In those States wherein it is licensed, the corporate respondent makes use of magazines, newspapers, and direct mail in advertising its policies and soliciting business as well as by various solicitation methods used by its agents.

There is evidence that the corporation also uses radio broadcasts but since these primarily related to its life insurance business and not to health and accident business and the complaint does not allege the use of such media, such matter is of no materiality here insofar as the jurisdiction of the Federal Trade Commission is concerned although it has substantial bearing on the general interstate character of respondent corporation's entire business operation as an insurance company, about which there is no real factual dispute. In other jurisdictions than those wherein the company is licensed and has licensed agents, all of its business is done by direct mail solicitation and order.

The health and accident business done by the respondent corporation is quite substantial. The evidence shows that it collected premiums for such business in 1953 from the six States in which it was then licensed, other than Indiana, in the following amounts: Illinois, $554,429.33; Kentucky, $307,089.47; Missouri, $301,208.82; Ohio, $400,100.72; Virginia, $194,659.88, and West Virginia, $84,191.65. In that same year the premiums collected by its direct mail order business in all of the other States of the United States were accountable to and reported as received in the corporation's domiciliary State of Indiana. Since its license was terminated during 1954 after a short period of licensed operation in the District of Columbia, the proceeds received from the business in said District of Columbia were also reported as received by the corporation in the State of Indiana. The total amount of premiums collected accountable to the State of Indiana in that year were $2,681,659.93. In 1954, the company collected premiums for health and accident business from the eleven jurisdictions it was then licensed in other than Indiana in the following amounts: Alabama, $2,969.78; Delaware, $14,246.54; Florida, $172,274.23; Georgia, $24,082.93; Illinois, $923,036.58; Kentucky, $421,768.23; Missouri, $437,139.73; Nebraska, $2,753.23; Ohio, $629,716.53; Virginia, $250,275.31; West Virginia, $55,905.84. In this year for all of the other States and the District of Columbia, in all of which jurisdictions respondent corporation was doing business by direct mail order, the premiums were accountable to Indiana, the domiciliary State, such net premiums totaling $3,138,209.28. The total amount of health and accident business done by the corporation for the year 1953 was $4,409,704.07, and for 1954, $6,068,809.75. This business, of course, in these years was not all new business, and the stated figures include renewal premiums as well as premiums received from newly sold policies.

The exhibits which were received in evidence were all received as a part of the Commission's case-in-chief, and for brevity will be hereinafter referred to merely by their number or numbers as the case may be. Some 173 exhibits were actually received in evidence, most of which were respondent corporation's advertisements and policies of health and accident insurance. A few exhibits were in the nature of correspondence, claim files, or other matter not falling within the two general categories of advertisements and policies. Due to the strong resistance of respondents to the subpoenas duces tecum, the record had become somewhat confused by the reception in evidence of a considerable number of exhibits which were duplicates of earlier exhibits received in evidence. Upon the examiner's suggestion, respondents' counsel, on December 13, 1955, filed a motion to strike certain exhibits as duplicates of others. In due course the examiner sustained said motion in large part, and on May 8, 1956, ordered certain exhibits which were duplicates of other exhibits stricken but not physically stricken or deleted from the record, nor was any evidence pertaining to such exhibits stricken from the record. Despite all precautions, however, several duplicate exhibits were not stricken. Reference later made herein will illustrate.

At the time of the preliminary investigation of the Commission, formal request was made for the respondent corporation to submit certain organizational data and advertising material. (See Exhibit 69–A–C.) This letter of January 28, 1954, was in due course answered by respondent Kutak as vice president of the corporation. In his letter of April 13, 1954, he submitted a statement of organizational data as requested, "as well as a listing of *all* of our advertising materials with a statement of the methods in which it is used and the policy forms involved." (Exh. 20–A–D.) During the proceeding, however, counsel then supporting the complaint caused the said subpoenas to be issued to several of the officers of the corporation as well as to its advertising agent. After respondents had refused to comply with said subpoenas and their appeals from adverse rulings by the examiner had been denied by the Commission, as hereinbefore briefly referred to, there were finally produced a very substantial additional number of advertisements and policies which had not already been received by the Commission and received in evidence earlier in the course of the hearing.

The evidence in the case other than the documentary exhibits consisted of the testimony of the respondent Jerome F. Kutak, the corporation's vice president and general counsel, and its statistician Jack G. Boyd, its vice president and director of agents, Richard D. Slott,

and two advertising agents who were not officials of respondent corporation, Harold S. Schwartz and William Youngerman, all appearing under subpoenas duces tecum. Witness Schwartz, who prepared the magazine advertisements used by respondents, was the only witness so summoned who appeared and testified without first contesting his subpoena. Schwartz submitted his advertising copy to respondents, and it was approved by them before he placed it with the magazine publisher. The witness Youngerman, who is in the mail advertising business in Chicago, is more of a general advertising representative of respondents. He assisted in the preparation and dissemination of all their health and accident insurance advertisements sent out by mail. He received advertising copy from respondents prepared in Hammond, Indiana, wrote headlines and the like for it, and then resubmitted such matter to respondents in Hammond where respondent officials approved it. Youngerman had nothing to do with any newspaper or magazine advertising. The company officials approved all advertising promulgated by its agents.

The advertising of respondent corporation's health and accident policies also included a few newspaper advertisements, but almost entirely consisted of postal cards, brochures, and booklets which were distributed far and wide throughout the entire United States by mail, as well as advertisements soliciting direct dealings from prospective policyholders placed in a number of magazines of nationwide circulation. These publications, which included chiefly such types as thriller, sex, detective, and comic magazines appealing to an infinite number of various-class persons, ages, inclinations, and standards of education and culture, but not usually frequently read by those in the higher brackets of income and intelligence, were "Man to Man," "Sir," "Real Magazine," "Top Secret," "Real Detective," "Crime Detective," "Y," "Moose Magazine," "Private Lives," "Inside U.S.A.," "Police Files," "Police Dragnet Cases," "TV World Group," "Night and Day," "Complete Detective Magazine," "Amazing Detective Group," "Man's Magazine," "Hillman Women's Group," "Brief," "For Men Only," "Inside," "Picture Life," "Sensation, "Vital Detective," "Famous Police Cases," "Movie Annual," "TV Carnival," "TV Annual," "Motormen and Conductor and Motor Coach Operator," "Man Hunt Comic," "Tim Holt Comic," "Color Magazine," "Strange Medical Facts," "Now," and "Sport Life." The evidence shows that a majority of such magazines are distributed throughout the United States. The hearing examiner also takes official notice of the general interstate character of the business of the publisher, Hillman Periodicals, Inc. See *Hillman Periodicals, Inc., et al.* (1948), 44 F.T.C. 832,

affirmed *Hillman Periodicals, Inc.* v. *F.T.C.* (C.A. 2, 1949), 174 F. 2d 122. In 1953 respondent corporation received 949 responses from these magazine ads, which responses increased to 4,019 in 1954. Since these ads were not used until late 1953, but appeared more and more frequently in 1954 and 1955, the foregoing figures as to responses indicate increasing results to respondents from their increased advertising in this period. The volume of respondents' circulation of such matters during the years 1953 and 1954 was vast. Six exhibits which were advertisements produced in evidence by the witness Youngerman and which were disseminated by him on behalf of respondents were as follows: No. 114, 22,431,829; No. 115, 2,988,807; No. 116, 181,826; No. 117, 1,768; No. 118, 14,580; and No. 119, 1,452,614 (R. 459–469). Except for No. 116, which was mailed into Florida only, all of these exhibits were distributed throughout the United States in the total amount of 26,889,598 copies, added to which the said distribution of No. 116 into Florida makes a total of 27,071,424 total advertisements mailed directly by the witness Youngerman on behalf of respondents. He also, however, printed large numbers of other advertising pieces for respondents. Since the testimony of respondents fails to disclose that such pieces were not distributed, it is inferred that such a substantial investment in printed matter would not long remain in respondents' headquarters. The postal cards alone totaled some 16,156,196 pieces (R. 479–482). These must also be added to the previous figure. According to the witness Youngerman the printing cost from $2.50 to $3.00 per thousand for these post cards (R. 501–502). Their cost would exceed $40,000 at the lowest figure. The respondents, therefore, mailed, or caused to be mailed or otherwise circulated throughout the United States within this two-year period a total of at least 43,237,620 pieces of advertising matter. It is beyond cavil that this constitutes a very substantial distribution of advertising in commerce. There were, of course, agents' "pitch sheets" in addition to the foregoing types of direct mail advertising.

It was claimed by the witnesses that it was impossible to determine the precise amounts of such direct mail matter which were distributed into the several jurisdictions of the United States because neither the respondent corporation nor Youngerman maintained any adequate record with respect thereto. Youngerman either purchased or rented general mailing lists from brokers, placing such names on envelopes containing advertising brochures or on postal cards including a separable return card to respondent corporation. He mailed such matter to the addressees as prospective purchasers of respondents' health and accident insurance. The respondents had a complete indifference as

to where its advertising material was disseminated. Kutak testified with respect to this tremendous distribution of advertising matter that the company had maintained no records whatsoever with respect to it and that Youngerman only kept a total of letters mailed by him, since he charged respondent corporation by that method. Insofar as the company was concerned, Kutak testified that as to where such material was mailed, "we didn't care," and that where the replies came from, i.e., the States from which they originated, "It was never of interest to us." It was agreed upon the record, however, that distribution of advertising by mail into each of the several States was substantial. It is inferred from this lack of record keeping and the said statements and attitude of respondent Kutak, speaking for all respondents, that they were only interested in getting business any place they could find it. Since about one-half of the business of the company is still solicited and obtained by mail, it is clear that the respondents' business not only was founded upon direct mail order business but up to the time of hearing it was still being largely maintained and developed thereby.

The material ultimate issue in dispute in this case is whether the respondents' advertising matter had the capacity and tendency to mislead and deceive the public to which such matter was addressed. Unfair competition is not charged in the complaint. It would serve no useful purpose in this initial decision to cite and discuss the multitude of cases which enunciate the principles of interpretation of advertising as compared to the commodity which it advertises. The whole principle is well epitomized in a recent decision, *Goodman* v. *F.T.C.* (C.A. 9, 1957), 244 F. 2d 584, where, after an extended review of the precedents, the Court said: "In sum, *capacity to deceive and not actual deception* is the criterion by which practices are tested under the Federal Trade Commission Act." With this general principle in mind and having also in consideration the elements of the public to whom respondents' mail advertising was addressed, the advertising matter and the statements made therein considered in their respective full contexts will now be analyzed and compared with the policies offered.

Respondents' counsel have in great detail discussed the various types of policies and related advertising involved in this proceeding. The respondent corporation solicited its business both by direct mail and through its agency division. The advertising material consisted of a number of types of direct mail pieces, other advertising pieces, newspaper and magazine advertising. Some of its direct mail pieces were used by or on behalf of its licensed agents in the States wherein

it was licensed. The so-called agent's "pitch sheets" were usually used in person-to-person solicitation. Since all of this advertising was forwarded in interstate commerce throughout the country either from Chicago, Illinois, or from Hammond, Indiana, distinctions made by counsel between the types of advertising used are not material in view of the broad basis of jurisdiction held to by the Commission in *The American Hospital and Life Insurance Company*, Docket No. 6237, and subsequent cases that its jurisdiction extends to any false, misleading, and deceptive advertising which passes between the States in interstate commerce.

During the period in question, 1953–1954, the respondent corporation had some 48 different health and accident policy forms for sale. Some 47 of these are in evidence herein. Respondents contend that their policy form AS 9–48 is not in evidence, but such contention is erroneous. This form appears three times in the record, as Exhibits 55–B–E, 57–C–F, and 62–B–E. Some 10 of these exhibits are accident and health policies; 11 are hospital and surgical policies; 10 are income policies; 2, medical expense policies; 2, hospital policies; 5, special accident policies; 4, safety drivers' corporation policies; and 4, polio policies. There are some 9 riders also in evidence. All of these policies except a few were approved by the State of Indiana and issued in that State. Respondent Kutak testified that any policy form approved by the State of Indiana would be issued through the mail to any person in any State except in the few cases where they were sent into a licensing State which had not approved that particular Indiana form. In such case the form approved in such licensing State would be sold by mail. (R. 440–442).

Paragraphs 4, 5, and 6 of the complaint refer to the seven categories of alleged misstatements, paragraph 4 setting out certain of the alleged statements and representations in each category, paragraph 5 stating what it is alleged they represent directly or by implication, and paragraph 6 stating the Commission's conclusions as to why such representations are false, misleading, and deceptive. The first category relates to representations importing and meaning that the policy or policies will be in effect at insured's option to any age or a certain age so long as he makes premium payments as provided by his policy or policies. The second category relates to the representations that the indemnifications contained in such policies provide for cash benefits to insured for losses occasioned by any sickness or accident suffered by insured. The third category relates to representations that said policies provide indemnification for a maximum of 12 weeks for any disablement occurring to the policyholder while traveling in a train or

private automobile or as a pedestrian. The fourth category relates to representations that cash benefits are payable up to 12 months for loss of time due to a nonconfining disability. The fifth category relates to representations that cash benefits are provided by said policies up to $20,000 for all accidental loss of life, up to $2,500 for all accidental loss of limbs or sight and up to a maximum of $650 for surgical operations necessitated because of any one accident or sickness. The sixth category relates to representations that the policies provide for the monthly payment of specified cash benefits to insured for the duration of his life when he is totally disabled by any accident or confined by any sickness. The seventh category relates to representations that upon insured's payment of 25 cents respondents will issue an isurance policy to insured which will provide him with indemnification for losses occasioned by accident or sickness for one month from the date of such policy's issuance.

Respondents in their proposed findings and conclusions urge that the various forms of advertising applied to specific policies and not to each and all of the numerous types of policies issued by them. But the company does a mail order business. This business is done even in the States where it has licensed agents. As respondent Kutak testified any policy which is authorized to be issued by respondent corporation in its domiciliary State of Indiana can be and is sold by mail in all the non-licensing jurisdictions. It is, therefore, apparent that the technical claims of respondents endeavoring to tie each advertising piece to one or a few of its many types of health and accident policies neglects the broad picture presented by respondents offering and selling by mail any and all of the policies approved in Indiana at large throughout the land. This distribution includes direct mail sent into the thirteen States other than the domiciliary State of Indiana in which respondent corporation is actually licensed. It is from the "leads" obtained from this mail order business and after the policyholder has been "seasoned" for two or three months, according to Kutak, that the company's licensed agents in the several licensing States are given such names as "leads" and then turned loose to solicit other and additional business for respondents from such already insured persons by direct contact or otherwise. In substance, the mail order business is the very heart of respondent's entire operations, and it is quite evident from the figures hereinbefore quoted that the company's growth most probably would have been far less impressive and much slower had it confined its selling operations entirely to the orthodox agency methods of obtaining business only in licensing States, which methods are generally employed by companies which Kutak

in a published article hereinafter referred to called "more 'respectable' " than mail order insurance concerns. Therefore, in considering each of the several categories of alleged false, misleading, and deceptive advertising, there must be considered the direct mail circulars and their accompanying application forms, the magazine ads which are substantially identical therewith, and the direct mailing post cards used by respondents. These were the means upon which all the business obtained by respondents has been based, and they are of prime importance in determining the probable effect of any language used in agent's "pitch sheets."

Respondents' counsel have approached the problem created by each of the advertising pieces in evidence by a close, technical, analytical comparison of each with the policy or policies it is claimed the same specifically refers to. Perhaps the exaggerated and misleading statements contained in respondents' advertising would not deceive astute and experienced lawyers or persons well acquainted with the health and accident insurance business, but the law does not call for legalistic hairsplitting. Respondents' advertising must be considered from the standpoint of its capacity and tendency to deceive the less learned and experienced members of the public to whom such advertising may appeal, many millions of whom respondents have each year utilized the mails to reach and influence. The claim files in evidence herein, Exhibits 47 to 65, inclusive, well illustrate that the appeal of respondents' advertising is to people in the lower income brackets who are unable to buy more expensive insurance coverage and who are not well informed in regard to such matters. It is true that the allowance or disallowance of each of these particular claims in said files was strictly within the legal coverage and is not subject to criticism therefor. There is no specific evidence, of course, that any of these particular claimants were deceived by any particular piece of respondents' advertising. This, of course, is immaterial as actual deceit need not be shown, but in each of such claim files save one the policies which are involved were respondents' one dollar a month type of health, accident, and hospital insurance. This is the type with which the public has been beguiled by respondents' morbid "scare" advertising, such as Exhibits 1 and 114 through 118, inclusive. These ads pictorialize in many flashy contrasting colors the tragic occurrence of several kinds of horrible accidents or a drawn-faced bedridden patient suffering from illness. From all such impending injuries and ills, respondents solemnly assure succor, security, and salvation to the purchasers of their policies. Twenty-seven million pieces of this particular type of gruesome circular invaded American households through the mail in

1953 and 1954. Respondents do not claim that the continued flow of such matter into the mail has ever been stopped by them to this very day. Whatever technical objection might be made that the picturization on these advertising pieces clearly shows that the policy offered thereby is designated as "Form AS 9–48" is untenable. This language is in very obscure small print on the representation of such policy form as it appears in the ad. Public interest is not limited by such almost undecipherable print. These advertisements must be considered in the light of all the Indiana policies offered and sold by mail in interstate commerce which are induced by this advertising. While the States have enacted laws and adopted regulations prohibiting "small print" in insurance policies, they have not yet prevented the use of small print in advertising matter which seeks to limit the broad offers made therein.

To the experienced and knowing person, it might be evident that no policy selling at $1.00, $1.25, or $1.50 per month, or any other low premium mail order policy made "available to almost everyone," as respondents' magazine ads clearly state (Exhibit 24–E–F), could possibly be offered individually to all classes and ages and both sexes on a sound underwriting basis if its coverage were broader and less restricted than respondents' policies, but the ordinary unsuspecting member of the public would not know that. It is clear that the claimants did not. The occupations of these people were, respectively, housewives and a number of varied gainful pursuits, such as shipping foremen, auto mechanics, car blocker, post office foreman, rug sorter, mason tender and carpenter, hospital attendant and cottage court manager. Several claimants were aged and retired persons. They were persons of small income which ranged from $400 per month to $160 so far as the employed persons were concerned. The strict limitations and many exceptions contained in the respondents' very limited policies are well illustrated by some of the claim settlements shown by these files. In Exhibit A, the claimant incurred a total of $365 in doctor and hospital bills and received $8.66; in Exhibit 47, the claimant was paid $9.16 against his doctor bill of $75; in Exhibit 51, claimant's medical and x-ray bills for a broken wrist amounted to $94, and she received $26.33; in Exhibit 55, a housewife hospitalized for about a week for the extraction of a ureteral stone received $2.66; in Exhibit 57, claimant was struck in the eye by a subordinate employee in the course of their employment and was treated in the hospital on 14 different days therefor, but his claim was denied under an exclusion limiting liability where disability results from an intentional act; in Exhibit 59, claimant incurred surgical and hospital bills

in the amount of $330 for a cholecystectomy and lost considerable time from her work in a rug factory, but her claim was denied on the basis of her condition having been pre-existing; in Exhibit 60, claimant lost an eye due to a piece of wood striking it while sawing and received $115.71, rather than $500 for loss of the eye since this was not a travel accident; in Exhibit 61, the claimant who had been insured for ten years received $10 for a disability confinement due to a prostatic condition at the age of 71 since this was a nonspecified illness under his policy and was reduced 50 percent after age 60, claimant being advised as to his surgical expenses that he did not "have the reimbursable type" of insurance; in Exhibit 62, a housewife who incurred hospital and surgical bills in the amount of $634.57 for a gall bladder operation received $32; and in Exhibit 64, a 54-year-old female hospital attendant suffered from infectious hepatitis, spent four days in the hospital under a doctor's care, and received $10.66. Some of these claimants were advised that their policies were of the "limited" type at the time the claims were made.

Each of the seven general categories of alleged false, misleading, and deceptive statements and representations contained in respondents' advertising matter will now be considered separately. The language quoted in the complaint from respondents' advertising under each category is alleged to be "(t)ypical, but not all-inclusive," and the complaint also refers to "others of similar import and meaning not specifically set out herein." Under these allegations and the liberal rules of pleading which are applicable in administrative proceedings, the hearing examiner has, therefore, considered and made findings herein not only as to statements of respondents which are precisely quoted in the complaint but to all similar phraseology in any of the advertisements which are in evidence.

As to the first category with respect to the duration of the coverage of their policies, respondents made a number of representations in their advertising during the period in question. In the complaint the first of these is alleged as "Age 10 to 79." Respondents have raised the technical issue on this that there is no statement in the advertising. This is technically true and is somewhat illustrative of the general position taken by respondents as to each questioned statement in their advertising. It would unduly extend this initial decision to consider each of respondents' technical objections seriatim. But in direct mail circular, Exhibit 22, the statement is made, "Men, Women and Children, ages 10 to 79, who are in good health and are insurable risks * * * whether employed or not * * * may have this policy issued to them * * * just fill out the simple application blank and en-

close 25¢ in the self-addressed postage paid envelope * * * that is all you do * * * then we will issue your hospital policy and send it to you with a receipt putting it in force for one *full* month from the date your remittance is received." The omission of the letter "s" in the word "ages" imposes no insurmountable obstacle to construing the advertising in the public interest herein. Furthermore, the respondents' advertising is saturated with similar phraseology, such as "Age limits 1 day to 80 years," "Age limits 18 to 70," "Age limits 18 to 65," "issued to men and women 18 to 65, children 3 mos. to 17 years," "Ages 18 to 79," and "for people up to age 80." See Exhibits 1–C, 2–B, 3–B, 4–B, 5–B, 6–A, 7–C, 8–C, 21–D, 23–D, 23–F, 23–H, 24–C, 24–F, 26–A, 114–C, 115–C, 116–C, 117–C, 118–C, 119–C, 121–A, 130–A, 131–A, 132–A, 133–A, 134–A, 135–A, 137–A, 138–A, 139–A, 140–A, 142–B, 143–B, 147–B, 148–A, 149–A, 150–A, 151–B, 152–B, 153–B, 154–B, 155–B.

Under the first category, the complaint further quotes the language, "No reduction in benefits or increase in premiums on account of age," which appears in Exhibits 4–B, 5–B, 22, and 26–A; "No termination age," which appears in Exhibits 4–B, 131–A, 132–A, 133–A, 134–A, 135–A, 137–A, 139–A, 140–A, 143–B, 147–B, 150–A, 151–B, 152–B, 153–B, 154–B, and 155–B; and "For people up to age 80" in Exhibits 3–B and 160.

Respondents made the foregoing representations in newspapers and magazines ads, as well as in numerous circulars, post cards, and agent's "pitch sheets." By these representations circulated throughout the United States, respondents have represented and still represent that their health and accident policies are maintainable in force at insured's option by his timely payment of renewal premiums. Such representations are false, misleading, and deceptive because a substantial number of respondents' policies cannot be continued at insured's option by timely payment of renewal premiums but, on the contrary, may be terminated by respondent company at the end of any period for which the premium has been paid for any reason or for no reason at all. The respondents have failed to reveal the fact in any of their advertising that they have the legal power to terminate any of their policies which do not expressly provide for noncancellability. For example, Exhibits 109 and 110 are policies which are renewable only at the company's option and are policies approved in Indiana which are sold by mail in all nonlicensing jurisdictions as well as in most of the licensed jurisdictions.

As to the second category whereby respondents advertise that their policies provide for the payment of cash benefits for losses occasioned

by any sickness or accident, respondents caused the following representations to be disseminated in the District of Columbia and in every State during 1953 and 1954, which dissemination has not yet ceased so far as this record shows: "24-hour-a-day protection on or off the job" (Exhibits 2–B, 4–B, 5–B, 26–A, 121–A, 128–A, 131–A, 132–A, 133–A, 134–A, 135–A, 136–A, 137–A, 139–A, 140–A, 143–B, 146–B, 147–B, 151–B, 152–B, 153–B, 154–B, 155–B, 160, 162, and 163); "$100 per month regular monthly income for every sickness and all accidents" (Exhibits 4–B, 5–B, 6–A, 26–A, 136–A, 143–B, 146–B, and 147–B); "* * * any accident, any confining sickness" (Exhibits 128–A, 157, 160, 162, and 163).

An examination of the policies reveals that these representations are false and misleading in that respondent company will not pay for losses under its policies for accidents unless the bodily injury sustained is through accidental means and independent of all other causes. Likewise, respondent company will not pay for loss resulting from sickness if the cause of such sickness is traceable to a condition existing prior to or within fifteen days of the effective date of the policy. Also, such policies provide that respondent company will not indemnify for loss resulting from an accident occurring or sickness contracted outside the United States or Canada, or a loss caused by venereal disease, syphilis, pregnancy, childbirth or complications therefrom; or insanity or mental infirmity; or losses caused by tuberculosis, heart trouble, and disease of the organs which are peculiar to women, such occurring within six months after the effective date of the policy; nor for losses resulting from sickness or disease excluded by specific provisions of certain of the policies. (For example, see Exhibits 14 A–D, 16 A–D, 91 A–D, 96 A–D, 97 A–D, and 99 A–D). Respondents likewise fail to reveal, in these advertising representations, the limitations in these respects in their policies of insurance.

As to the third category with respect to travel-accident disability benefits under the terms of their policies, respondents caused the following representation to be disseminated generally throughout the United States and the District of Columbia: "$100.00 a month if disabled by accident payable from the very first day of medical attention at the rate of $25.00 per week for a maximum of twelve weeks if caused by a great many specified accidents such as while traveling on trains, or in private automobiles, or as a pedestrian." (Exhibits 1–B, 7–B, 8–B, 24–E, 67–A, 116–C, 118–B and 119–B.)

By this representation the public is led to believe that respondent company provides indemnification in the form of cash benefits for a maximum of twelve weeks when the insured is disabled while travel-

ing on a train, in a private automobile, or as a pedestrian. This representation is false, misleading, and deceptive in that respondents' policies of insurance do not provide such protection, but on the contrary benefit will not be paid unless the injury occurs while riding in a private automobile of exclusive pleasure type and not being used for business purposes, and by reason of its being wrecked or disabled, or while riding as a fare-paying passenger on a train; or as a pedestrian, unless injury results from actual contact with a moving conveyance; also, such disability must require the regular treatment of a physician or surgeon and continuously and wholly prevent the insured from attending to any and every kind of business or labor. Without revealing these qualifications in connection with this representation, respondents' representations are false, misleading, and deceptive.

As to the fourth category with respect to nonconfining sickness benefits in their policies, respondents caused the following representation to be disseminated throughout the various States of the United States: "Non-confining sickness up to 12 months. You do not have to be House Confined to collect full benefits" (Exhibits 4–B, 121–A, and 128–A). This representation is false, misleading, and deceptive, in that an examination of respondents' insurance policies reveals that none of these policies provide for the payment of cash benefits up to six months for loss of time resulting from total disability if the insured is not continuously confined within doors. For example, Commission Exhibit 16 A–D provides such a payment up to three months and Commission Exhibit 14 A–D provides a payment up to one month.

As to the fifth category with respect to the amounts of coverage offered, respondents have caused to be disseminated in many States of the United States the following representations: "Guarantee Plan also pays your family $750.00 to $20,000 for any accidental death * * * regardless where or how the accident occurs" (Exhibits 122–A, 123–A, 126–A, 129–A, 130–A, 131–A, 132–A, 133–A, 134–A, 135–A, 137–A, 138–A, 139–A and 140–A); "In addition to the benefits paid your family for accidental death, this Guarantee policy also pays *you* cash benefits for specific losses, as result of accident, of certain members of your body—such as hands, feet, eyes, etc.,—in sums ranging up to $2,500.00." (Exhibit 157 A–D); "In case of accident or sickness * * * for surgical fees up to $650.00" (Exhibits 157 A–D, and similar language in Exhibits 122–A, 123–A, 126–A, 129–A, 130–A, 131–A, 132–A, 133–A, 134–A, 135–A, 137–A, 138–A, 139–A, and 140–A).

By these representations respondents have represented that their policies provide cash benefits up to $20,000 for all accidental loss of life and up to $2,500 for all accidental loss of limbs or sight, and to a

maximum of $650 for surgical operations necessitated because of any one accident or sickness. These representations are false, misleading, and deceptive, in that the policies sold by respondent company do not provide the benefits listed above. On the contrary, they provide that accidental loss of life must occur while the insured is a passenger on a common carrier for passenger service, and then only when such loss is caused by the disablement or wrecking of the car or steamship in which the insured is riding, and that the accidental loss shall not be within the insuring clause of respondents' policies unless death occurs within sixty days from the date of accident and that the insured has been wholly and continuously disabled since the date of such accident. None of respondents' policies provide a maximum of $20,000 for accidental loss of life. (See Exhibits 74–A–D, 77 A–D, 80 A–D, 103 A–D, 105 A–D, 109 A–D, 110 A–D, 111 A–D, 112 A–D, and 113 A–D.)

As to the sixth category with respect to total disability benefits paid under their policies, respondents caused to be disseminated generally throughout the United States and the District of Columbia the following representations: "What will it mean to you to have $100 a month for the rest of your life, if totally disabled by sickness or accident?" (Exhibits 2–B, 5–B, 6–A, 26–A, 120–A, 121–A, 128–A, 136–A, 146–B, 147–B, 151–B, 152–B, 153–B, 154–B, and 155–B); "Pays up to $100.00 per month income for the rest of your life * * * payable as long as you are disabled and cannot work because of any accident or any confining sickness" (Exhibits 3–B, 122–A, 123–A, 126–A, 129–A, 130–A, 131–A, 132–A, 133–A, 134–A, 135–A, 137–A, 138–A, 139–A, and 140–A).

By these representations respondents represented that their policies provide a monthly payment of cash benefits in a specific amount to an insured who is totally disabled by any accident, or confined by any sickness, for the duration of such total disability up to a lifetime. These representations are false and misleading because respondents' policies do not provide monthly indemnification in a specific amount to an insured who is totally disabled by any accident or confined by any sickness for the duration of such disability up to a lifetime. On the contrary, many disabling accidents and confining sicknesses are excluded from certain of respondents' policies, because such policies require that such disability must be because of an accident and must wholly and continuously prevent insured from performing the duties of any occupation, and further that professional care and regular attendance of a physician or surgeon is necessary. Also, certain of respondents' policies provide that if the insured receives one of the cash benefits for the loss of a limb or sight, no monthly indemnification will be paid. Also, if a loss results from sprain or lame back, the

insured will only receive the represented indemnification for thirty days. Also, many of respondents' policies provide that the specific amounts are reduced when the insured reaches a stated age (Exhibits 74 A–D, 77 A–D, 80 A–D, 103 A–D, 105 A–D, 109 A–D, 110 A–D, 111 A–D, 112 A–D, and 113 A–D).

As to the seventh category with respect to the representation that for the payment of 25¢ full coverage is offered for one month in their policies, respondents have caused to be disseminated generally throughout the United States the following representations: "Only 25¢ puts your policy in force for 1 full month" (Exhibits 1–A, 7–A, 8–A, 24–C, 25–A, 115–E, 116–A, 118–F, and 119–A); "For only 25¢—the full first month premium—you can put in force this new life time income sickness and accident policy that gives you cash insurance protection for all your life" (Exhibits 24–E, 24–F, 67–A and 67–B).

By these representations respondents represent that for 25¢ they will issue an insurance policy to a person which will provide indemnification for loss occasioned by accident or sickness from the date of its issuance over a one-month period. This representation is false and misleading in view of the fact that all of respondents' policies prevent the insured, by the very terms thereof, from receiving indemnification because of loss from sickness until the policy has been in force at least fifteen or thirty days, and exclude all losses from certain sicknesses until the policies have been in force at least six months and entirely exclude loss due to certain types of illness. (Also most of respondents' policies are cancellable at the company's option as already stated.)

From the evidence it is found that respondents are now, and for many years last past, have been engaged as insurers in the business of insurance in commerce as "commerce" is defined in the Federal Trade Commission Act and as the "business of insurance" is used in Public Law 15. The respondents have entered into numerous insurance contracts with various insureds in all of the jurisdictions of the United States other than the State of Indiana. In most of these States, respondents' business of insurance is not, and for constitutional reasons that part of the business which is interstate commerce cannot be regulated by State law. Respondents' insurance business constitutes a substantial course of trade in commerce between and among the several States of the United States and the District of Columbia. By direct mail order the respondent company has advertised its policies at large to the public, the public in turn has sent in applications and money for such policies by mail, and in return the company has mailed to them the policies they purchased. It subsequently carries

on by mail a series of notices and receipts to insureds relating to their renewal premium payments and accepts premiums mailed to it, this being done throughout the United States. The renewal of term insurance in this manner constitutes trade in commerce to the same extent as the original sale of such insurance, and, still further, establishes the substantiality of respondents' business. But such renewal business is not herein considered, however, with reference to the issues of alleged false, misleading, and deceptive advertising in this proceeding. Respondents also continue to bombard such policyholders by further mail advertisements, as well as to direct their agents to see such policyholders personally and to sell them further insurance in such States as respondent corporation is then currently licensed. The evidence already herein recited in considerable detail demonstrates beyond question that the respondents for many years have been and still continue to deluge the public throughout the Nation with such advertising.

It is impossible within the confines of this initial decision to portray all of the deceptive features of respondents' advertising. It is so arranged as to always emphasize the benefits and disguise the limitations, conditions, restrictions, reductions, and the like. For one example, Exhibit 1–A advises that full explanation of benefits is contained on the inside, pages 1–B and 1–C. When these are read, however, the emphasis still continues upon the benefits, which are portrayed and emphasized in large print while the limitations are not clearly set forth in the small print following each emphasized statement. In the far left-hand lower corner of Exhibit 1–B, reference is made in smaller print to additional limitations as follows: "There are of course exceptions enumerated in the policy including miners, employees of common carriers, news companies, or government mail service while on duty, insanity, violations of criminal law, and half benefits after age 60." Anyone reading this who was a farmer or a factory mechanic, for example, would be led to believe such limitations had no application to him. Each and every piece of respondents' advertising is pregnant with attractive but purposely misleading phraseology tending to deceive the ordinary member of the public by virtue of its particular arrangement and the emphasis placed upon its benefits. Furthermore, there are a number of misleading statements not specifically charged in the complaint and, therefore, not considered here. One illustration is Exhibit 163, a newspaper ad in the *Olney* (Ill.) *Daily Mail*, misleading the residents of Richland County into believing that they are to be the beneficiaries of a "special county-wide program" because respondents "are pledged

to interview all residents of Richland County." A similar ad appealing to the residents of Clay County appears in Exhibit 162, published in the *Flora* (Ill.) *Daily News Record.*

Throughout this entire proceeding, respondents have vigorously objected to the jurisdiction of the Federal Trade Commission over the subject matter. It was raised in the answer, argued extensively during the course of the hearings, and renewed in respondents' proposed findings and conclusions. Respondents contentions were set forth in considerable detail and held to be based on untenable propositions of law in the interlocutory order issued on March 31, 1955, which the Commission sustained in denying respondents' appeal from said order. In such order dated May 25, 1955, the Commission, however, ruled, as did the examiner, that the matter could not be decided at that stage of the proceeding but could be properly determined only after all evidence in the case had been submitted and an initial decision issued. In said interlocutory order of March 31, 1955, the examiner by reference made his lengthy interlocutory order of the same date issued in Docket No. 6247, *Life Insurance Company of America, et al.*, a part of said order. It is unnecessary to discuss the basis of the Commission's jurisdiction as the Commission itself, since the entry of the interlocutory order in the proceeding at bar has clearly pointed out the basis of its jurisdiction in several mail order insurance cases. See *Travelers Health Association*, Docket No. 6252, Opinion of the Commission and Opinion of Chairman Gwynne concurring in the result, December 20, 1956.[2] See also, *American Life and Accident Insurance Company*, Docket No. 6238, Opinion of the Commission and Concurring Opinion of Chairman Gwynne and Commissioner Tait, April 19, 1957; and *Automobile Owners Safety Insurance Company*, Docket No. 6239, Opinion of the Commission and Concurring Opinion of Commissioner Tait, April 26, 1957. In this last case, Chairman Gwynne dissented but wrote no opinion, apparently disagreeing upon the facts in the case. The Commission has also held repeatedly that it has jurisdiction over the false, misleading, and deceptive matter transmitted in interstate commerce between States in which respondent companies are fully licensed and have agents doing business for them in such states. See *American Hospital and Life Insurance Company*, Docket No. 6237; *National Casualty Company*, Docket No. 6311; *Craftsman Insurance Company*, Docket No. 6394; and *North American Accident Insurance Company*,

[2] For a very complete presentation of the basis of the Commission's jurisdiction, see the recently filed Brief of Respondent in the U.S. Court of Appeals for the Eighth Circuit in *Travelers Health Association* v. *FTC*, No. 15,743.

Docket No. 6456. These decisions adhered to by a majority of the Commission are all premised on its very broad jurisdictional doctrine first enunciated in *American Hospital and Life Insurance Company.* While the United States Courts of Appeals in each of two circuits have held that the Commission has no jurisdiction over such matters because the several States involved have enacted applicable legislation regulating such business, see *American Hospital and Life Insurance Company* v. *F.T.C.* (5 C.A., April 9, 1957), 243 F. 2d 719, and *National Casualty Company* v. *F.T.C.* (6 C.A., June 6, 1957), 245 F. 2d 883, they are not final decisions. These two decisions are currently pending in the United States Supreme Court on petitions for writ of certiorari filed September 6, 1957. In such status the decisions of the Commission are still the law which bind the parties to the instant proceeding and to which the hearing examiner must adhere. Several of the other foregoing cases are pending in various circuits on review proceedings and have not yet been decided by the respective courts.

Prior to the present proceeding, the respondents had acquiesced in the Federal Trade Commission's jurisdiction over its interstate advertising practices. Respondent Kutak, who speaks in this proceeding for the other individual respondents who did not appear, is quoted by the hearing examiner in the interlocutory order of March 31, 1955, as follows:

> Jerome F. Kutak, one of the individual respondents herein, who has been the vice-president of the respondent corporation herein for some years, wrote a very candid and prophetic brochure in 1948 entitled "Legal and Economic Aspects of Mail Order Insurance." In reviewing this document, the Insurance Law Journal for August 1949 at page 593, insofar as material here, quotes him and says as follows:
>
> "Mr. Kutak is vice-president of the Guarantee Reserve Life Insurance Company of Hammond, Indiana. In this booklet he reviews and analyzes mail order insurance * * *. At the end of the book he presents certain conclusions. "The trend in the field of insurance regulation is unmistakable. For years, the job lay with the State Insurance Commissioners, who on the whole performed a fairly satisfactory job, and were protected by what seemed insurmountable obstacles to federal regulation. There were constant and strong pressures to take that power away, or at least to concentrate it in one way or another in Washington * * *. The pressure was localized in the Post Office, which was empowered to act notwithstanding the seeming constitutional limitations of Congress. The Post Office probably exceeded its proper sphere of activity, although within its legal authority, and undertook to police an industry by fraud order, and finally by indictments. When constitutional limitations were hurdled, the F.T.C. was prepared to carry on in its customary fashion (and) to supervise and regulate the insurance industry along with all other types of business. The mail order industry anticipated this type of federal supervision, and stole a march on its more "respectable" brethren, by initiating codes of fair practice, and

cooperating with F.T.C. in the regulation of its business, which started repercussions likely to involve the entire industry. It now appears that this trend is not likely to stop."

During the progress of these proceedings, respondent Kutak, testifying vice Ben Jaffe, the company's president, stated several times that he, Kutak, was "the chief administrative officer" and "the senior executive officer of the home office" of respondent corporation. In view of his authority as spokesman for all respondents, the hearing examiner cannot reconcile the respondents' present position with respondent Kutak's said former frank admission as to the power of the Federal Trade Commission over all mail order insurers.

The positive need for Federal regulation of the interstate advertising practices of mail order insurance companies under Public Law 15 is most definitely and precisely illustrated and pointed up in this proceeding. Respondent Kutak testified (R. 292–3) that the company was licensed in the District of Columbia in 1953, but that it withdrew from the District "the following year, or at the end of that year," because of conferences held with the insurance commissioner (Superintendent) of the District of Columbia, "following which we decided as a matter of policy to withdraw." He testified that the Superintendent of Insurance of the District demanded that they cease their mail order business in the District, which demand the respondents decided not to comply with, and they did continue to do a mail order business in the District after the corporation no longer had a license therein. Kutak further testified that said Superintendent of Insurance had taken issue among other matters with certain statements made in the advertisements which were being sent into the District by mail, and that following the conference between the Commissioner and the Insurance Department attorneys on the one hand and respondents and their counsel on the other, "there were a number of reasons . . . which induced us [respondents] to withdraw." The Superintendent of the District of Columbia quite evidently possessed qualities of judgment and strength which prompted him to quickly eliminate improper practices in his jurisdiction. But thereafter the respondents continued to send direct mail order advertising of their health and accident insurance policies into the District of Columbia. This illustrates the utter impotency of any state jurisdiction other than the domiciliary one to prevent the flow of false, misleading and deceptive advertising into its territory. Only the intervention of the Federal Trade Commission can stop such practices where the domiciliary authorities neglect or fail to act vigorously against them. State statutes and regulations prohibiting such prac-

tices, however broad and far-reaching they may be, are worthless unless they are enforced.

Under the foregoing principles, the Federal Trade Commission has jurisdiction over the subject matter of this proceeding. While the regulatory laws of the State of Indiana are quite ample to permit the Department of Insurance of that State to regulate and control respondents' advertising, such statutes precisely limit their own force and effect to the confines of the State of Indiana. The "Unfair Competition and Practices Act" of Indiana, Acts 1947 ch. 12, now codified as §39–5301, to 39–5318, Burns Indiana Statutes Annotated, 1952 replacement, is Indiana's adoption of the "Model Code" or "Model Act" and recommended by the National Association of Insurance Commissioners in 1947. This Act was enacted by the Indiana Legislature in 1947 and repeatedly limits its own force and effect under basic constitutional principles to the State of Indiana by the phrase "in this State." (See §39-5301, 39–5305, 39–5308, 39–5311 and 39–5318.) It was the legislative intent "to regulate the trade practices in the business of insurance, in accordance with the intent of Congress as expressed" in Public Law 15 (Sec. 39–5301). In Section 39–5315 it is specifically provided:

> For the purpose of maintaining the affirmative, active and definite administration of this Act, the commissioner with the approval of the governor may appoint [as many numerous additional employees with various particular skills] as may be found necessary to carry out the provisions of this Act.

As hereinbefore stated, there is nothing in the record to show that the Insurance Department of the State of Indiana has done anything to regulate and prevent the respondents from engaging in unfair and deceptive trade practices with relation to the dissemination of false, misleading, and deceptive advertising matter outside of the State of Indiana. What Indiana does within its boundaries is its business, but the Congressional debates, as well as the language of Public Law 15, indicate most clearly that it was never the intent of Congress to permit a vacuum to occur in the regulation of such matters merely because the State of origin of interstate practices has not regulated and prevented the same from passing into the stream of commerce. It is also clear that in the proceeding at bar the public interest is involved. Without again reciting the facts hereinbefore specifically found, even the respondents' own computations show that the amount of its direct mail business was very substantial in 1953 and 1954 and that the amounts of such business in each of the jurisdictions where respondent corporation was not licensed were substantial (R. 517–520). Exhibits 158 and 159 reveal that its total premiums from mail

order business were $2,274,416.74 and $2,311,386.22, respectively, in the two years, although, of course, not all of this was new business. The tremendous amount of advertising done by respondents, which has hereinbefore been found to be false, misleading, and deceptive, establishes that it is to the public interest for this Commission to require respondents to cease and desist from the future dissemination thereof in interstate commerce.

The individual respondents have admittedly directed, dominated, and controlled the acts and practices of respondent corporation at all times specifically mentioned in the complaint. (See Complaint, par. 2; Answer; par. 2). The respondent Ben Jaffe during this period was president of the corporation; the respondent Jerome F. Kutak was vice president and general counsel; and the respondent Eugene Jaffe was secretary. Respondents Ben Jaffe and Eugene Jaffe are not at all strangers to Federal Trade Commission proceedings. Official notice is taken of prior decisions of this Commission and of the courts involving each of these two respondents. In *Chicago Silk Company*, 22 F.T.C. 547 (April 27, 1936), the said respondent corporation and its officers, including its president Benjamin Jaffe, were ordered to cease and desist from offering for sale and selling in interstate commerce hosiery and lingerie through the use of punch cards or push cards which were mailed, shipped, or transported in interstate commerce as a means of selling and distributing such merchandise. On review proceedings in the U.S. Circuit Court of Appeals for the Seventh Circuit, *Chicago Silk Co.* v. *FTC*, 90 F. 2d 689, 690 (June 24, 1937, rehearing denied July 27, 1937), certiorari denied (1937), 302 U.S. 753, the Commission's order was affirmed by the court which unanimously found and held, *inter alia:*

> That the plan involves a game of chance or the sale of a chance to procure petitioner's merchandise is clearly shown, and that the operation of the plan is contrary to established public policy of the United States and the varied States and contrary to the criminal statutes of many of the States is conceded. Petitioner's sales were increased from $25,000 in 1932, the year it started in business, to $150,000 in 1934, and even more in 1935. The Commission found, among other things, that petitioner is engaged in offering for sale and selling its products in interstate commerce in competition with other persons likewise engaged; that the punch-card system of obtaining the business is a species of gambling which many of its competitors do not use for the reason that the method is unethical, unfair, and in violation of law; and that said method injuriously affects the business of petitioner's competitors by diverting business from them. * * *

Again, in *Benjamin Jaffe, Individually and Trading As National Premium Company and King Sales Company*, 31 F.T.C. 835 (Sept.

5, 1940), the Commission found that the said respondent had used push or pull cards, and material instructing as to their use in selling pen and pencil sets, billfolds, silverware, blankets, and many other kinds of merchandise in interstate commerce, and issued another cease and desist order against respondent prohibiting the sale of merchandise by any means constituting a game of chance, gift enterprise or lottery scheme. And again, the Court of Appeals for the Seventh Circuit on review unanimously sustained the Commission's cease and desist order in *Benjamin Jaffe* v. *F.T.C.*, 123 F. 2d 814 (Nov. 14, 1941). The Court held:

> Respondent asserts that every issue presented in the instant case was decided by this court in Chicago Silk Co. v. Federal Trade Comm., 7 Cir., 90 F. 2d 689. Petitioner argues that this case is not res adjudicata of the case now before us. That, however, is not the question. The fact is that in the Chicago Silk Company case the order was directed against a corporation of which the petitioner in the instant case was president. Petitioner fails to point out any distinction between this case and that one except to argue that there must be a difference, or there would have been no occasion for respondent initiating the instant proceeding. What purpose respondent had in instituting the present action, when it had an order in the other case directed against the corporation and its officers, including the instant petitioner as president, is of no concern.
>
> We are satisfied that every question raised by the petitioner in the instant case essential to the validity of the Commission's order was decided in the former case. Under such circumstances, a discussion of the points argued by petitioner would serve no useful purpose. The Commission's order in the instant case is affirmed, not because the former case is res adjudicata, but because the reasoning employed and conclusions reached are applicable and controlling here.

In *Eugene Russell Jaffe (alias E. J. Russell), trading as Sterling Sales Company and Craftsman Sales Company*, 35 F.T.C. 702 (Nov. 13, 1942), the Commission found that said respondent was engaged in competitive interstate sale of numerous articles of merchandise such as cameras, radios, comforters, bedspreads, etc., similar to those involved in the case of *Benjamin Jaffe, etc., supra*, which were also promoted and sold to the public by means of a game of chance, gift enterprise or lottery through the use of push cards and circulars explaining their use in the sale of such merchandise. On review proceedings in the Court of Appeals for the Seventh Circuit, in *Jaffe* v. *FTC*, 139 F. 2d 112 (Nov. 11, 1943), the petition of "Eugene Russell Jaffe, alias E. J. Russell, an individual doing business as Sterling Sales Company, and another," was denied and the order of the Commission affirmed. Certiorari was also denied in this case, 321 U.S. 791 (1944). The court in upholding the Commission's findings and order stated and held, *inter alia:*

> The evidence does disclose that in the year 1941 more than five and one-half million push cards were distributed by petitioner throughout the United States

in the manner described, that is, through the mail. They went from Chicago, petitioner's home, to every state in the Union. The conclusion is inescapable that sales followed—otherwise petitioner's business would not have continued to thrive. Since the owner of the petitioner company testified that over fifty per cent of the company's sales of merchandise had been in connection with the push card business, the deduction is unavoidable that the merchandise was sold through and because of the lottery practices. In this connection, Mr. Jaffe, as a witness, admitted, "We built our entire business on this sales plan. We used these sales cards to sell our merchandise. The cards are so designed."

* * * * * * *

We held in the Koolish case, Koolish v. Federal Trade Comm., 7 Cir., 129 F. 2d 64, and reiterate the ruling here, that supplying the means of conducting lotteries in the sale of merchandise is a practice contrary to the established public policy of the United States. It constitutes unfair competition in business and violates Sec. 5(a) of the Act in question. * * *

It is to be inferred that since each of these two said respondents Jaffe had been denied the right to use gambling devices in selling merchandise in interstate commerce, appeals from which were denied by the United States Supreme Court, they were looking for some exempt line of business in which they could safely engage and employ their capital and talents in the mail order business, one where the Federal Trade Commission would be precluded by law from interfering with their methods of promoting whatever commodities they might sell. At any rate they both got into the business of insurance. This was certainly an ideal place of refuge for them as long as the doctrine of *Paul* v. *Virginia*, 8 Wall. 168 (1868), and subsequent cases holding insurance not to be commerce were in effect and until insurance was held to be interstate commerce in *U.S.* v. *Southeastern Underwriters Association*, 322 U.S. 943 (1944). The passage of Public Law 15 by Congress in 1945, of course, prolonged their security for some years pending official execution and interpretation of that Law. Kutak, it is true, paid lip service for all respondents in 1948 by proclaiming the authority of the Federal Trade Commission over mail order insurance concerns by his said published article hereinbefore quoted from. But the insincerity of their 1948 position is thoroughly demonstrated by their continuous objection to the Commission's jurisdiction once the chips were down.

Their prior involvements with this Commission undoubtedly explains why neither of the Jaffes graced the hearings in this proceeding with their personal presence and why Kutak was the alter ego of each. Ben Jaffe's picture, however, together with that of Kutak, appears in Exhibits 29–B and –C. Kutak has been very closely and intimately associated with the Jaffes for some years in the insurance business now under consideration. Kutak is clearly not answerable for the legal

proceedings above recited involving only the Jaffes. Neither can an order be issued against him my name merely on the popular basis of "birds of a feather flock together," a doctrine now more elegantly enunciated in legal circles as "guilt by association." But the record is replete with evidence that Kutak, himself, has been a very enthusiastically active and largely profiting participant in the preparation and promulgation of the very advertising matter herein found unlawful. Kutak, testified, in substance, that all advertising matter was originated by the respondent officials and its precise forms prepared in conjunction with their advertising agents, that all such matters was always finally approved by such officials before it was published and disseminated in commerce (R. 188 and 199). This was corroborated by the evidence of the two advertising agents, Schwartz (R. 395) and Youngerman (R. 459–460). As already recited herein, Kutak also testified that he was "the chief administrative officer" and "the senior executive officer of the home office" (R. 298, 324).

All three of the respondents are, therefore, directly involved as actors in the origin, drafting, final approval, dissemination, and use of all of the false, misleading, and deceptive advertising involved in this case. The situation here is wholly unlike that in *Life Insurance Company of America*, Docket No. 6247, wherein the case was decided entirely upon two stipulations of facts, which recited no active, direct, personal participation by the officers in the advertising practices of that company. It was also pointed out in that decision that an insurance corporation, being subject to regulation by the insurance departments of the several States concerned, was somewhat different from the ordinary closely held corporation which was subject to no specific regulatory State authority. That general principle would be applicable here if the respondents Jaffe had not been repeatedly found guilty by the Commission and the courts of violating the Federal Trade Commission Act, and if it were not necessarily to be inferred from the record herein that the three dominating and controlling officers named individually in this proceeding would be free to capitalize and organize other insurance corporations in Indiana or elsewhere and to operate them just as they have operated the present respondent corporation. The history of this company indicates that the authority of the State of Indiana over the business of insurance is far from being adequately effective. While the orders of the Federal Trade Commission against corporations also run against their officers and agents and employees, that general type of order would not appear to be fully protective of the public interest here. It would bind the respondents only in their official capacities and connections with this

particular corporate respondent. These individual respondents are currently seeking to spread their agency business into other States than the 14 in which they are presently licensed.

There is no claim by respondents of any abandonment or cessation of the advertising practices herein involved. It must be inferred that they are persisting everywhere in the same unfair and deceptive advertising practices in interstate commerce as they did in 1953 and 1954 as herein found. Therefore, to make a fully effectual order herein, each of the three individual respondents has been specifically included by name as they were named in the complaint. Of course, the Federal Trade Commission has no present legal authority over the selection of the persons who may organize, control, and manage insurance companies. If States desire to commit any such great trusteeship to persons such as respondents that is a matter for such States to pass upon. The licensing States, insofar as the present authority of this Commission is concerned, may even authorize these respondents to sell insurance through push cards or other gambling devices if such acts are committed entirely intrastate. But this Commission has been clearly directed by Congress to prevent all unfair and deceptive practices of insurance companies in interstate commerce and of those who own, manage, or conduct them when the public interest so requires. That is what is basically involved in the proceeding at bar.

The importance of complete and effective regulation of the advertising used by insurance companies who sell health and accident insurance cannot be overstated. There is vast public interest involved in the health and accident insurance business and the respondents' share of such business in interstate commerce is sufficiently substantial to warrant a finding that the regulation thereof by this Commission is to the public interest. Significant facts and figures have been very recently stated by Honorable Edward T. Tait, one of the Federal Trade Commissioners, in an article entitled, "Integrity in Advertising," which has just appeared in *Best's Insurance News*, Fire & Casualty Edition, Volume 58, No. 5, September, 1957, pages 16 and 17. Among other things pertinent to this issue, he stated:

> Health and accident insurance * * * limitations are not fully understood. The idea of securing protection against loss resulting from accident or sickness is relatively new. Some twenty years ago, the public spent less than $150 million for this type of protection. This year, it will spend more than $4 billion. * * *
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> * * * (T)here are various underwriting problems involved in a contract reaching a variety of sickness or accident risks; the contract must be more complex. The public is not fully educated concerning the contractual differences between health and accident coverage and other forms of insurance. Certainly

advertising must not misinform the reader as to the true nature of this protection. It must not exaggerate the scope of coverage nor hide limitations of the policies.

There being jurisdiction of the person of each of the respondents, upon the findings of fact hereinbefore made, the hearing examiner hereby makes the following conclusions of law:

1. The acts and practices of the respondents Guarantee Reserve Life Insurance Company of Hammond, a corporation, and Ben Jaffe, Jerome F. Kutak, and Eugene Jaffe, individually and as officers and controlling stockholders of said corporation, hereinabove found to be false, misleading, and deceptive are all to the prejudice and injury of the public and constitute unfair and deceptive acts or practices in commerce within the intent and meaning of the Federal Trade Commission Act.

2. The Federal Trade Commission has jurisdiction over all of the said respondents' acts and practices which have been hereinabove found to be false, misleading and deceptive.

3. The public interest in the proceeding as to each and all of the respondents is clear, specific and substantial.

Upon the foregoing findings of fact and conclusions of law, the following order is hereby entered:

ORDER

It is ordered, That the respondents Guarantee Reserve Life Insurance Company of Hammond, a corporation, and its officers, agents, representatives, and employees, and the respondents Ben Jaffe, Jerome F. Kutak, and Eugene Jaffe, individually and as officers, directors or controlling stockholders of said corporation, directly or through any corporate or other device in connection with the offering for sale, sale and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of any accident, health, hospital, medical, surgical, or income protection insurance policy issued individually and not in the form of group insurance as defined by law, do forthwith cease and desist from representing directly or by implication:

1. That any such policy may be continued in effect by the insured as to him or as to him and any or all members of his family upon payment of stipulated premiums, indefinitely to the age of 80 years or to any other age, or for any stated period of time, unless full disclosure of any other provision or condition of termination as to the insured or any member of his family contained in the policy is made conspicuously, prominently, and in sufficiently close conjunction with the representation as will fully relieve it of all capacity to deceive;

2. That benefits payable under any such policy are payable in any and all cases of accident or sickness unless such is the fact;

3. That any such policy provides specified cash benefits for a maximum of 12 weeks or for any other period of time when insured is disabled as a result of an accident occurring to him while traveling in a train, by private automobile, or as a pedestrian unless such is the fact;

4. That any such policy provides cash benefits up to 12 months or for any other period of time for loss of time due to total disability for nonconfining sickness unless such is the fact;

5. That any such policy will pay in full or in any specified amount or up to any specified amount for any accidental loss of life, or for any accidental loss of limbs or sight, or for surgical, or other service incurred in connection with any such accidental loss unless such is the fact;

6. That any such policy provides monthly or other periodic indemnification in or up to any specific amount to insured when he is totally disabled by any accident or by any confining sickness for the duration of his life, for the duration of such total disability, or for any other length of time unless such is the fact; and

7. That for the payment of 25 cents the respondents will issue to the insured a policy which will provide him with lifetime protection for losses occasioned by any accident or sickness occurring within a month from the date of issuance of such policy unless such is the fact.

Order Dismissing the Complaint

This matter having come before the Commission upon respondents' appeal from the hearing examiner's initial decision, and the Commission having suspended action thereon pending final judicial disposition of a related matter; and

The Commission now having reviewed the record in this matter and having determined that the evidence relates to practices too remote in point of time to support the order contained in the initial decision and that for this reason the complaint herein should be dismissed:

It is ordered, That respondents' appeal be, and it hereby is, granted.

It it further ordered, That the complaint in this proceeding be, and it hereby is, dismissed without prejudice, however, to the right of the Commission to issue a new complaint or to take such further or other action against the respondents at any time in the future as may be warranted by the then existing circumstances.

Commissioners Dixon and MacIntyre not participating.

IN THE MATTER OF

MINNESOTA COMMERCIAL MEN'S ASSOCIATION

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

Docket 6453. Complaint, Nov. 18, 1955—Decision, July 23, 1962

Order dismissing without prejudice—the evidence relating to practices too remote in point of time to support the recommended order—complaint charging a Minneapolis, Minn., insurance company with false advertising.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as that Act is applicable to the business of insurance under the provisions of Public Law 15, 79th Congress (U.S.C. Title 15, Secs. 1011 to 1015, inclusive) and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Minnesota Commercial Men's Association, 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, Minnesota Commercial Men's Association, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Minnesota, with its office and principal place of business located at 2550 Pillsbury Avenue, Minneapolis 4, Minn.

PAR. 2. Respondent is now, and for more than three years last past has been, engaged as an insurer in the business of insurance in commerce, as "commerce" is defined in the Federal Trade Commission Act, by entering into insurance contracts with insureds located in various States of the United States other than the State of Minnesota, in which States the business of insurance is not regulated by State law to the extent of regulating the practices of respondent alleged in this complaint to be illegal. Respondent maintains, and at all times mentioned herein has maintained, a substantial course of trade in said insurance policies in commerce between and among the several States of the United States.

Respondent during the three years last past has issued a variety of policies providing indemnification for various losses resulting from accident and sickness, including those designated by it as the Ideal

Health Policy (Forms H–25, HH–25, H–52, HH–52, H–12 and HH–12), the Ideal Accident Policy (Forms A–52, A–104 and AX–104), the Ideal Surgery Policy (Forms S–75, S–100 and S–125), and the Ideal Hospital Policy (Form R–4812).

Respondent is licensed, as provided by the law of the State of Minnesota, to engage in the business of insurance in the State of Minnesota. Respondent is not now, nor has it been during the three years last past, licensed to engage in the business of insurance in any State of the United States other than the State of Minnesota.

Respondent solicits business by mail in the various States of the United States in addition to the State of Minnesota. As a result thereof, it has entered into insurance contracts with insureds located in many States in which it is not licensed to do business. Respondent's business practices are not regulated by any of these States and it is not subject to the jurisdiction of such States.

PAR. 3. In the course and conduct of its said business, and for the purpose of inducing members of the public to become insured by the respondent under the terms and provisions of the policies advertised, respondent has made and is now making numerous statements and representations concerning the benefits provided in its said policies of insurance by means of magazine advertisements, circulars and form letters, and other advertising material disseminated throughout the various States of the United States. Typical, but not all inclusive of said statements and representations, are the following:

1. With respect to the duration of coverage:

ADULTS: Coverage Continued to Age 70.
Coverage Ages—18 to 60 For Health Insurance 18 to 70 For Accident Insurance.
COVERAGE—AGES 18 to 70.

2. With respect to health status of prospective policyholders:

No medical examination is required * * *

3. With respect to the accidents and sickness covered:

Our contracts provide protection against all types of accidents and sickness.

Do you know that our Health Insurance Policies * * * will pay you an income of up to $216.00 per month for one year during periods when you are unable to be at work because of any sickness? And after the policy has been in effect 30 days, your income starts with the first day you are laid up.

The policies described in this folder are not the so-called Limited type, but give you full protection against all types of accidents and sickness. You are protected everywhere, whether at work, at home, in recreation or in travel.

4. With respect to requirements for disability:

ACCIDENTS happen * * * BUT membership in the MINNESOTA COMMERCIAL MEN'S ASSOCIATION pays you $50.00 per week while you are totally

disabled from performing the regular duties of your job. These payments start with the first day of disability and may continue for as long as 104 weeks * * * two years.

5. With respect to the amount of indemnity:

Pays you for surgery for a single operation up to—$125.00.

The surgery policy which will pay you a maximum of $125.00 for any one operation costs $6.00 a year.

6. With respect to beginning point of coverage:

Likewise, the benefits start with the *first day* of disability.

HEALTH POLICY

Pays for time loss *from the first day* of confining sickness at the rate of $10.00 per week for the first week and $25.00 a week thereafter for up to 12 weeks.

PAR. 4. Through the use of such statements, and others of similar import and meaning not specifically set out herein, respondent represents and has represented, directly or by implication:

1. That respondent's said policies providing indemnification for losses caused by accident or sickness can and will be continued until the age of sixty or seventy so long as the insured makes premium payments within the time and in the amounts provided by the policy.

2. That in determining whether or not cash benefits are payable for losses resulting from sickness or disease, respondent does not take into consideration the condition of health of the assured existing prior to or at the time of the effective date of the policy.

3. That respondent's said policies provide that full benefits are payable for loss resulting from any and all sicknesses and accidents.

4. That cash benefits for total loss of time will be paid as the result of an accident in the event the insured is totally disabled from performing the regular duties of his job up to a maximum of 104 weeks.

5. That said policies provide that surgical benefits up to $125.00 are payable for any one operation.

6. That cash benefits are payable from the first day for loss due to sickness or accident.

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

1. Respondent's said insurance policies providing indemnification against losses caused by sickness or accident cannot be continued at the option of the insured to age 60 or 70, or any other age, so long as the insured makes premium payments within the time and in the amounts provided by the policy. On the contrary, respondent's insurance policies provide that respondent may cancel the said policies at any time by written notice delivered to the insured together with the

return of any unearned portion of the premium paid by the insured.

2. In determining whether or not cash benefits are payable for losses resulting from sickness or diseases, respondent does consider the condition of health of the insured existing prior to or at the time of the effective date of the policy. Under the terms of respondent's said policies, no benefits are payable for a loss resulting from any sickness the cause of which is traceable to a condition that existed prior to or within 30 days from the effective date of the policy.

3. Respondent's said policies of insurance do not provide indemnification against all types of accident and sickness. On the contrary, respondent's Ideal Accident Policies provide for the payment of cash benefits for losses of life, limbs, sight or time if such losses are caused by accidental bodily injury and independent of all other causes result in the loss of life, limbs or sight. Further, no cash benefits are payable for such losses unless such losses occur within 90 days of the date of the accident causing such losses and the insured shall have been wholly and continuously disabled from the time of receiving said injury until the said loss. Further, in no event are cash benefits payable for more than one loss of limb or sight resulting from the same accident. Further, such cash benefits as are payable commence from the time that the insured is first treated by a physician. In no event will the cash benefit payable for bodily injuries resulting in hernia exceed $50 if during the 90 day period loss of time or life occurs. Respondent's said accident policies further provide that no benefits are payable for losses caused wholly or in part by sickness or disease resulting from accident or from bodily or mental infirmity or medical or surgical treatment therefor, or for any loss resulting from the use of intoxicating liquor or narcotics by the insured.

Respondent's said accident insurance policies do not provide cash benefits for losses caused by accidental injury resulting in loss of time unless such loss is caused by accidental bodily injury independent of all other causes and immediately, wholly and continuously disabled the insured from doing work of any kind or transacting any business.

Respondent's said insurance policies do not provide indemnification for loss resulting from any and all sicknesses. Respondent's Policies H–25, HH–25, H–52, HH–52, H–12 and HH–12 providing indemnification for loss caused by sickness and resulting in loss of time limit by their provisions such cash benefits as are payable. For example, no benefits are payable under the provisions of those policies for loss of time caused by mental disorders, attempts to commit suicide, drunkenness, drugs, or accidental bodily injuries. Further, no cash benefits are payable for any loss caused by sickness the cause

of which is traceable to a condition existing prior to or within 30 days after the effective date of such policies. Loss of time cash benefits for losses caused by sickness are payable only if such sickness results in total disability causing a complete inability to perform any occupational duties and any other work for which the insured is reasonably fitted and, further, providing that during the time such benefits are payable the insured is continuously confined within a house or hospital and is regularly treated by a physician.

Respondent's Ideal Hospital Policy (Form R–4812) does not provide benefits for hospital expenses for all losses resulting from sickness. Such policy provides in effect that no hospitalization benefits are payable for any sickness the cause of which is traceable to a condition existing prior to or within 30 days after the effective date of the policy. Further, no benefits are payable for hospital expenses resulting from a loss caused by sickness if such loss resulted from insanity or any mental disorder; rest cure or diagnostic work which could have been performed by the attending physician outside a hospital; any loss caused by use of liquor or narcotics; or any loss arising out of conditions of maternity, pregnancy or miscarriage, unless otherwise covered by rider. Such rider limits the payment of such cash benefits for losses resulting from pregnancy, childbirth or miscarriage to a sum not to exceed $50, even though such loss might result in loss of life, limb, sight or time.

4. Respondent's said Ideal Accident Policies do not provide for the payment of cash benefits for total loss of time as a result of an accident in the event the insured is totally disabled from performing the regular duties of his job up to a maximum of 104 weeks. On the contrary, respondent's said Ideal Accident Policy under which cash benefits are payable up to 104 weeks for loss of time when totally disabled provides that in no event are benefits payable for loss of time unless such loss resulting from accidental bodily injury and independent of all other causes immediately, wholly and continuously disabled the insured from doing work of any kind or transacting any business. Such cash benefits as are payable commence only with the first treatment by a physician and continue only during such time as the insured during such period of disability is regularly treated by a physician. No cash benefits are payable up to 104 weeks in cases of hernia caused by accidental bodily injury. Respondent's said policies provide that for hernia the maximum benefit payable shall not exceed $50.

5. Respondent's Ideal Surgery Policies do not provide for the payment of cash benefits up to $125 for a single operation. Only one of respondent's policies—S–125—provides for a maximum payment of

$125 for a surgical operation. All of such policies provide that no cash benefits are payable if surgery results from any injury or disease the cause of which is traceable to a condition existing prior to the effective date of the policy. Further, no cash benefits are payable for surgery on account of pregnancy, childbirth, miscarriage, or the results of any of such conditions. Respondent's said policy S–125, providing for the payment of a benefit of $125, limits such payment to 10 named operations listed in a schedule made a part of such policy. The maximum benefits payable for surgery for the 77 other operations itemized range in amounts from $10 to $100. Further, it is provided in all of respondent's surgery policies that in the event two or more operations are performed as a result of any one accident or sickness only one benefit is payable, whichever is the greater.

6. Cash benefits are not payable under the terms of respondent's said policies from the first day for loss due to sickness or accident. Such cash benefits as are not otherwise excluded by the terms of the respondent's said policies are payable only from the first day that the insured is treated by a physician.

PAR. 6. The use by the respondent of the aforesaid false and misleading statements and representations, with respect to the terms and conditions of its said policies, and its failure to reveal the limitations of said coverage found in said policies have had and now have a tendency and capacity to mislead and deceive and have misled and deceived a substantial portion of the purchasing public into the erroneous and mistaken belief that the statements and representations were and are true, and to induce such portions of the purchasing public to purchase a substantial number of said insurance policies by reason of said erroneous and mistaken belief.

PAR. 7. The aforesaid acts and practices of the respondent, as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

Mr. William A. Somers for the Commission.

Mr. Maurice H. Rieke, of Minneapolis, Minn., for respondent.

INITIAL DECISION BY FRANK HIER, HEARING EXAMINER

Complaint in this case issued November 18, 1955, charging respondent with the use of false, deceptive, and misleading representations in the sale of its accident and health insurance policies in violation of Section 5 of the Federal Trade Commission Act (Title 15 U.S.C.A. 45). Respondent's answer filed December 21, 1955, denied jurisdic-

tion of the Federal Trade Commission over the proceeding or over the person of respondent, admitted the description of the character and nature of its business, corporate existence, and address, alleged that the excerpts quoted as being misrepresentations were unfairly lifted out of context, alleged that the latter were true and were not misrepresentative, alleged respondent had complied with the February 3, 1950, Trade Practice Rules Relating to Advertising and Sales Promotion of Mail-Order Insurance and further alleged that an investigator of the Commission had examined all of respondent's advertising and policies and found nothing objectionable therein. Two hearings were held for the receipt of evidence tending to establish the allegation, and evidence submitted on behalf of respondent was stipulated. Motion to dismiss at the close of the Government's case on various grounds was denied. The record consists of 82 pages of transcript plus some 50 exhibits. Proposed findings and conclusions were then submitted by all counsel, on consideration of which, together with the record herein, the examiner finds the public interest in this proceeding clear and substantial and makes the following:

FINDINGS OF FACT

1. Respondent, Minnesota Commercial Men's Association, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Minnesota, with its principal office and place of business located at 2550 Pillsbury Avenue, Minneapolis 4, Minnesota. Under the laws of that state respondent is licensed to engage in the business of insurance in the State of Minnesota but is not licensed in any other state. It solicits the public to become members of respondent's association entirely by mail, having no agents for this purpose. For many years it has, therefore, been engaged in selling insurance contracts providing indemnification for sickness and accident to insureds located in the various states of the United States and in the District of Columbia in a constant stream of commerce, as "commerce" is defined in the Federal Trade Commission Act. Respondent is not a fraternal or ritualistic association, but is a mutual assessment insurance association, and to secure insurance a member of the public must become a member of the association. As of December 31, 1955, it had 11,229 members insured, of which 313 were new additions in the year 1953, and 371 in the year 1954. When a prospect receives advertising matter from the respondent association there is enclosed an application and, if he is interested, he fills it out and mails it to the respondent with the initial premium, or, as respondent calls it, membership fee, whereupon respondent assesses the application

and, if the risk is deemed desirable, issues it and mails it to the newly insured direct. All premium notices are sent to respondent's insureds by mail from Minneapolis and returned there by the insureds with payment. During 1953, 1954, and 1955 respondent's income from its insured members was approximately $340,000 in each year. Respondent writes health, accident, and medical and surgical insurance and is also authorized to write life insurance, although it has not done so, except for an insignificant number of policies.

2. In the solicitation of its business above described, respondent has disseminated by mail in interstate commerce in substantial amount, various advertisements containing statements and representations relative to the coverage, duration, and benefits provided in its policies of insurance for the purpose of inducing, and which will likely induce, the purchase of said insurance policies by means of United States mails by the public throughout the various states of the United States.

3. With respect to the duration of coverage offered, respondent represents:

Adults: coverage continued to age 70.
Ideal Coverage—Ages 18–70.
Ideal Coverage—Ages 18–60.

The above excerpts of the entire advertisement in which they appear reasonably represent that respondent's policies can and may be continued until age 60 or 70 so long as insured makes the required premium payments within the time and in the amounts provided by said policy, whereas the policy itself contains a provision that it may be cancelled by respondent at any time, and for any reason, by written notice delivered to the insured, together with the return of any unearned portion of the premium paid by the insured. These representations are substantially the same as those heretofore ruled to be false, deceptive, and misleading by the Commission in National Casualty Company, Docket 6311, and pursuant to that ruling respondent's herewith are likewise so found.

4. With respect to the health of the prospective insured respondent has represented:

No medical examination required and a small application fee pays all costs of your insurance for 4 to 5 months.
No agents will call and no physical examination required.

A reading of the entire mail piece in which these excerpts appear, reasonably gives the impression that the health of the prospective insured at the time of application for issuance is not considered by the respondent. The materiality of this as an inducement to prospective

insureds of middle age or older is obvious. Respondent's policy, however, provides that no benefits are payable for loss resulting from any sickness, the cause of which is traceable to any condition existing prior to or 30 days from effective date of policy. These representations have heretofore been found false, deceptive, and misleading by the Commission in American Hospital & Life Insurance Company, Docket 6237, and National Casualty Company, Docket 6311. Consonant therewith the finding here, therefore, is the same.

5. As to the coverage of its accident and sickness policies, respondent has advertised:

> Our contracts provide protection against all types of accident and sickness. The Health and Accident Protection described in this folder is not the so-called limited type, but gives you full protection against all types of sickness and accidents, whether at work, at home, in recreation or in travel.
>
> Accidents Happen * * * but membership in the Minnesota Commercial Men's Association pays you $50.00 per week while you are totally disabled from performing the regular duties of your job. These payments start with the first day of disability and may continue for 104 weeks—two whole years.

thereby reasonably giving the impression that respondent's policies provide for indemnification for losses resulting from any and all sicknesses and accidents, and that cash benefits for total loss of time will be paid as a result of an accident in the event the insured is totally disabled from performing the regular duties of his job, up to a maximum of 104 weeks. In fact, however, respondent's policies are replete with exceptions, limitations, exclusions and restrictions, which cut the indemnity to far less than "any and all." Thus, respondent's health policies exclude any benefit for sickness caused by mental disorders, suicide attempts, drunkenness, drug use, or accidental bodily injury, or caused by any condition existing prior to, or within 30 days of the effective date of the policies. Furthermore, the sickness must result in such total disability as precludes the performance of any occupational duty or any other work; and such sickness must be such as to confine the insured continually to home or hospital, and be regularly treated by a physician. Similar exclusions and limitations appear in respondent's hospital policy, with additional exclusions for hospitalization by reason of pregnancy, maternity or miscarriage. Respondent's accident policies likewise do not indemnify against all accidents. The loss must result solely from accident, independent of all other causes, before it is indemnified; it must occur within 90 days of the accident, and meanwhile the insured must have been totally and continuously disabled. Only one loss of limb or sight from the same accident is indemnified, and no benefits are payable for losses caused wholly or in part by sickness or disease resulting from acci-

dent, or from bodily or mental infirmity, or medical or surgical treatment therefor, or for any loss resulting from the use of intoxicating liquor or narcotics. The contrast between breadth of promise "any and all" and the narrowness of actual coverage is deceptive and misleading.

6. To sell its surgical benefit policies, respondent has represented the indemnity amount as:

> Pays you for surgery for a single operation up to $125.00.
>
> The surgery policy which will pay you a maximum of $125.00 for any one operation costs you $6.00 a year.

The policies to which these representations applied, limit the $125 benefit to ten listed operations and exclude more than one operation resulting from the same sickness or accident. Excluded also is surgery for pregnancy, childbirth or their effects, or for a condition existing prior to the effective date of the policy. This type of representation with these policy exclusions and limitations, and in particular, the use of "up to" and "maximum" in the representation have been expressly found to be false, misleading, and deceptive by the Commission in reversing a contrary finding by this examiner in National Casualty Company, Docket 6311. The examiner is, of course, bound thereby and finds herewith in accordance therewith.

7. Respondent's advertising has also said:

> Likewise, the benefits start with the first day of disability, so our service to you represents a real value in quality.
>
> There are many forms of Health Insurance. Some policies pay you starting after you have been sick for a week or month; others exempt many sicknesses from benefits. This association offers the broad form coverage with all benefits COMMENCING WITH THE FIRST DAY of disability.

This is much too broad as respondent's policies provide for cash benefits only from the first day that the insured is treated by a physician. In addition, there are a number of exclusions and limitations as set out above in immediately preceding paragraphs. The finding is that these representations are deceptive and misleading.

8. The respondent contends that the above-quoted excerpts are unfairly lifted from full context. The examiner has read the entire descriptive piece from which each has been taken, and finds no unfair excerpting but, on the contrary, finds nothing in the entire context which dispels or dilutes the impression created by such excerpt.

9. In its defense, respondent produced by stipulation with counsel supporting the complaint, statements of what its general manager and the attorney for the insurance department of Minnesota would, if called, testify to, which statements are incorporated in the record as

testimony. The former reiterated therein, the denials made in respondent's answer, that any of its advertising was false, misleading or deceptive, gave a history of the respondent and its operations, and testified he had never received any complaint with reference to its advertising from anyone. The attorney for the insurance department of the State of Minnesota likewise so testified and, in addition, testified that from his examination of respondent's advertising, none of it was, in his personal and official opinion, false, misleading, and deceptive. The Federal Trade Commission, of course, is in no way bound by the opinions or actions of other regulatory bodies or officials—it is autonomous, and bound by statute to reach its own conclusions.

10. There is a sharp conflict in the testimony of respondent's general manager and that of the Commission investigator who visited respondent's office and examined its advertising and insurance policies, the former testifying that such investigator, after such investigation, stated he could find nothing objectionable in respondent's advertising, the latter contending that he made no such statement. Credibility is unnecessary to assess, however, since the Commission is not, and cannot be, bound or estopped by any opinion expressed by its staff, on the ultimate issues which it alone can, and by statute, must, solely decide.

11. Respondent also vigorously contends that it is fully and adequately regulated as to its practices by Minnesota state law within the intent and meaning of Public Law 15 (the McCarran Act) (Title 15 U.S.C. 1011–5) and, therefore, the Federal Trade Commission has no jurisdiction over this proceeding. The construction of the McCarran Act on this jurisdictional point has heretofore been fully discussed by this and other examiners and by the Commission (American Hospital & Life Insurance Company, Docket 6237, National Casualty Company, Docket 6311, both of which cases are now on appeal in two Circuit Courts of Appeal) and while this examiner is of a contrary opinion, he is bound to follow the majority opinion of the Commission and therefore rules that it has full and complete jurisdiction over this proceeding.

12. Respondent also contends that the Federal Trade Commission has no jurisdiction over it, because such jurisdiction is limited by its basic act to a corporation or association (as applicable here) which is "organized to carry on business for its own profit or that of its members" (15 U.S.C. 44) and that respondent is a mutual assessment association, makes no profit, is not organized or operated to do so, and has never made any. Factually, respondent has never paid a dividend, but over the 50 years of its existence respondent has accu-

mulated a surplus of income over outgo of $611,000, $377,000 of which is invested in government, municipal and state bonds, $41,000 in selected stocks, $102,000 in other securities, debentures and savings accounts, $13,000 in real estate, and $75,000 in cash. There is no evidence that "reserves" in this or any other amount are required to be kept by law. Profit to this examiner means excess of income over all expenses regardless of what technical accounting designation is applied. This contention of respondent was one of the grounds on which it moved for dismissal at the close of proponent's case and in denying that motion, the examiner discussed the point, both factually and legally, at some length, and incorporates herein his reasons given then, by reference, without exhaustively repeating them here. No factual change or addition has occurred in the record since then which would affect the point. This defense is accordingly rejected.

13. Lastly, respondent defends on the ground that it not only signed but fully complied with "Trade Practice Rules Relating to Advertising and Sales Promotion of Mail-Order Insurance" promulgated by the Commission on February 3, 1950. Regardless of whether or not respondent has so complied, such rules are advisory and persuasive on their signatories only, they do not have the force and effect of law, have, indeed, no statutory basis, and are neither binding nor enforceable. Noncompliance does not necessarily constitute law violation, compliance constitutes per se, no defense to law violation.

14. The use by respondent of the false, deceptive or misleading representations as found in Paragraphs 3 to 7 above, with respect to the terms, conditions, and benefits of its insurance policies, and specifically as to duration of coverage, physical condition at time of issuance, extent of coverage, amount of indemnity and inception of coverage, have the tendency and capacity to mislead and deceive a substantial part of the purchasing public into the mistaken belief in their truth and to induce such purchasing public to buy such insurance policies from respondent because of such mistaken belief.

CONCLUSIONS OF LAW

1. The Federal Trade Commission has full jurisdiction of this proceeding and of respondent.

2. The public interest in this proceeding is clear and substantial.

3. Compliance with trade practice rules is no defense to charges of law violation.

4. The representations made by respondent, hereinabove found to be false, deceptive or misleading are to the prejudice and injury of the public and constitute unfair and deceptive acts and practices within the meaning of the Federal Trade Commission Act.

728-122—65——18

ORDER

It is ordered, That Minnesota Commercial Men's Association, a corporation, and its officers, agents and representatives, and employees, directly or through any corporate or other device, in connection with the offer for sale, sale or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of any accident, health, hospital or surgical insurance policy, do forthwith cease and desist from representing directly or by implication:

1. That any such policy may be continued in effect by the insured upon payments of stipulated premiums, indefinitely or for any stated time, unless full disclosure of any other provision or condition of termination, contained in the policy is made conspicuously, prominently and in sufficiently close conjunction with the representation as will fully relieve it of all capacity to deceive.

2. That no medical examination is required unless the respondent actually insures the policyholder without regard to his physical condition before, at, or after issuance of the policy; or otherwise representing that the insured's health will not be considered by the respondent in determining its liability thereunder, or that the respondent will not, as a claims practice, require proof of good health of insured at the time of issuance of the policy.

3. That any such policy provides for indemnification to insureds in cases of sickness and accidents generally or in any and all cases of sickness or accident when such is not a fact.

4. That any such policy provides a weekly, or other cash benefit, to insureds, when disabled by sickness or accident, for a longer period of time or in a larger amount than is in fact provided.

5. That any such policy will pay in full or in any specified amount or will pay up to any specified amount for any surgical operation when the policy does not so provide.

6. That any such policy provides for the payment of benefits from the first day for loss due to sickness or accident when such is not a fact.

7. The extent or duration of either coverage or benefits payable under the terms of any policy, unless a statement of all the conditions, exceptions, restrictions and limitations affecting the indemnification actually provided is set forth conspicuously, prominently, and in sufficiently close conjunction with the representation as will fully relieve it of all capacity to deceive.

ORDER DISMISSING THE COMPLAINT

This matter having come before the Commission upon respondent's appeal from the hearing examiner's initial decision, and the Commission having suspended action thereon pending final judicial disposition of a related matter; and

The Commission now having reviewed the record in this matter and having determined that the evidence relates to practices too remote in point of time to support the order contained in the initial decision and that for this reason the complaint herein should be dismissed:

It is ordered, That respondent's appeal be, and it hereby is, granted.

It is further ordered, That the complaint in this proceeding be, and it hereby is, dismissed without prejudice, however, to the right of the Commission to issue a new complaint or to take such further or other action against the respondent at any time in the future as may be warranted by the then existing circumstances.

Commissioner MacIntyre not participating.

IN THE MATTER OF

TOM C. LANGE FORMERLY DOING BUSINESS AS TOM LANGE COMPANY AND NOW PRESIDENT OF TOM LANGE COMPANY, INC.

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

Docket C-189. Complaint, July 23, 1962—Decision, July 23, 1962

Consent order requiring a St. Louis broker of citrus fruit and produce to cease accepting illegal brokerage on substantial purchases of said food products for his own account for resale, such as a discount usually at the rate of 10 cents per 1⅗ bushel box of citrus fruit from Florida packers.

COMPLAINT

The Federal Trade Commission, having reason to believe that Tom C. Lange, an individual, who formerly did business as Tom Lange Company and who is now the president and majority stockholder of Tom Lange Company, Inc., a corporation, successor and assign of the business formerly operated by Tom C. Lange, an individual, has violated the provisions of subsection (c) of Section 2 of the Clayton Act, as amended, (U.S.C. Title 15, Sec. 13), hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent Tom C. Lange is an individual who formerly did business as Tom Lange Company under and by virtue of the laws of the State of Missouri, with his office and principal place of business located in St. Louis, Missouri, with mailing address as 1 Produce Row, St. Louis 6, Mo.

PAR. 2. Respondent Tom C. Lange has been engaged primarily in the brokerage business, representing a number of packer-principals located in various sections of the United States, in connection with the sale and distribution of citrus fruit and produce, hereinafter sometimes referred to as food products. In particular, respondent has represented a number of citrus fruit packers located in the States of Florida and California in the sale and distribution of citrus fruit, for which respondent has been paid for his services in connection therewith a brokerage or commission, usually at the rate of 10 cents per 1⅗ bushel box, or equivalent. A substantial part of respondent's business has been in acting in the capacity of a buying broker, purchasing citrus fruit and produce for his own account for resale.

PAR. 3. As of December 31, 1961, said respondent Tom C. Lange ceased doing business as an individual and on January 2, 1962, a corporation, Tom Lange Company, Inc., was formed under the laws of the State of Missouri with said Tom C. Lange as president and majority stockholder. Said corporation, Tom Lange Company, Inc., is the successor and assign of the business formerly operated by Tom C. Lange, an individual, and its office and principal place of business is located in St. Louis, Missouri, and its mailing address is 1 Produce Row, St. Louis 6, Missouri. Said respondent Tom C. Lange formulates, directs and controls the acts and practices of said Tom Lange Company, Inc.

PAR. 4. In the course and conduct of his business for the past several years, in representing packer-principals, as well as when purchasing for his own account, respondent has, directly or indirectly, caused such citrus fruit or food products, when sold or purchased, to be shipped and transported from various packers' packing plants or places of business located in the States of Florida and California, to respondent's customers located in many states other than the States of Florida and California. Thus, for the past several years, respondent has been engaged in a continuous course of trade in commerce, as "commerce" is defined in the aforesaid Clayton Act, as amended.

PAR. 5. In the course and conduct of his business in commerce, as aforesaid, during the past several years, but more particularly since April 1, 1960, respondent has made numerous and substantial purchases of food products for his own account for resale from various

packers or sellers on which purchases he has received and accepted, directly or indirectly, something of value as a commission, brokerage, or other compensation, or an allowance or discount in lieu thereof, in connection therewith. For example, respondent has made substantial purchases of citrus fruit for his own account from a number of packers located in the States of Florida and California, which fruit was shipped and transported to customers located outside the States of Florida and California, and on said purchases respondent has received from the packer a brokerage or commission, or a discount in lieu thereof, usually at the rate of 10 cents per 1⅗ bushel box, or equivalent. In other instances respondent received a lower price from the packer, which reflected said brokerage or commission.

PAR. 6. The acts and practices of respondent in receiving and accepting a brokerage or commission, or an allowance or discount in lieu thereof, on his own purchases, as herein alleged and described, have been in violation of subsection (c) of Section 2 of the Clayton Act, as amended (U.S.C. Title 15, Sec. 13).

DECISION AND ORDER

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

The respondent and counsel for the Commission having thereafter executed an agrement 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 Tom C. Lange was an individual doing business as Tom Lange Company under and by virtue of the laws of the State of Missouri, with his office and principal place of business located in St. Louis, Mo., with mailing address as 1 Produce Row, St. Louis 6, Mo. Respondent now is President and majority stockholder of Tom Lange Company, Inc., doing business under and by virtue of the

laws of the State of Missouri, with his principal place of business located in St. Louis, Mo., with mailing address as 1 Produce Row, St. Louis 6, Mo.

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

ORDER

It is ordered, That respondent Tom C. Lange, and respondent's agents, representatives, employees, successors and assigns, directly or through any corporate or other device, in connection with the purchase of citrus fruit or produce in commerce, as "commerce" is defined in the Clayton Act, as amended, do forthwith cease and desist from:

Receiving or accepting, directly or indirectly, from any seller, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, upon or in connection with any purchase of citrus fruit or produce for respondent's own account, or where respondent is the agent, representative, or other intermediary acting for or in behalf, or is subject to the direct or indirect control, of any buyer.

It is further ordered, That respondent Tom C. Lange, and his successor and assign, Tom Lange Company, Inc., shall, within sixty (60) days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with said order.

IN THE MATTER OF

JAKE FELDMAN ET AL. TRADING AS DIXIE ARMY SURPLUS STORE

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

Docket C-190. Complaint, July 23, 1962—Decision, July 23, 1962

Consent order requiring retail sellers in Chattanooga, Tenn., to cease violating the Wool Products Labeling Act by failing to label wool products as required, and by removing the identifying labels from wool products prior to ultimate sale.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act and by virtue of the authority vested in it by said Acts, the Federal Trade Commission having reason

to believe that Jake Feldman and Rose Feldman, individually and as coowners trading as Dixie Army Surplus Store, hereinafter referred to as respondents, have violated the provisions of the said Acts and the Rules and Regulations promulgated under the Wool Products Labeling Act of 1939, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondents Jake Feldman and Rose Feldman are individuals and coowners trading as Dixie Army Surplus Store, with their principal offices and place of business located at 433 Market Street, Chattanooga, Tenn. Respondents are engaged in the retail sale of wool products.

PAR. 2. Subsequent to the effective date of the Wool Products Labeling Act of 1939, respondents have introduced into commerce, sold, transported, distributed, delivered for shipment, and offered for sale in commerce, as "commerce" is defined in the said Act, wool products as "wool product" is defined therein.

PAR. 3. Certain of said wool products were misbranded by the respondents in that they were not stamped, tagged, labeled or otherwise identified with the information required under Section 4(a)(2) of the Wool Products Labeling Act of 1939 and in the manner and form as required by the Rules and Regulations promulgated under said Act.

PAR. 4. Respondents with the intent of violating the provisions of the Wool Products Labeling Act of 1939 have removed or caused or participated in the removal of the stamp, tag, label or other identification required by the Wool Products Labeling Act of 1939 to be affixed to wool products subject to the provisions of such Act, prior to the time such wool products were sold and delivered to the ultimate consumer, in violation of Section 5 of said Act.

PAR. 5. The acts and practices of the respondents as set forth above in paragraphs 2, 3 and 4 were, and are, in violation of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, and constituted and now constitute, unfair and deceptive acts and practices and unfair methods of competition in commerce, within the meaning of the Federal Trade Commission Act.

DECISION AND ORDER

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

ucts 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 Jake Feldman and Rose Feldman, are individuals and coowners trading as Dixie Army Surplus Store, with their office and principal place of business located at 433 Market Street, in the city of Chattanooga, State of Tennessee.

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 Jake Feldman and Rose Feldman, individually and as coowners trading as Dixie Army Surplus Store, 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 offering for sale, sale, transportation or delivery for shipment, in commerce, of any wool product, as "wool product" and "commerce" are defined in the Wool Products Labeling Act of 1939, do forthwith cease and desist from failing to securely affix to or place on each such product, a stamp, tag, label or other means of identification showing in a clear and conspicuous manner each element of information required to be disclosed by Section 4(a)(2) of the Wool Products Labeling Act of 1939.

It is further ordered, That respondents Jake Feldman and Rose Feldman, individually and as coowners trading as Dixie Army Surplus Store or under any other trade name, and respondents' agents, representatives and employees, directly or through any corporate or other device, do forthwith cease and desist from removing, or causing or participating in the removal of any stamp, tag, label or other means

of identification affixed to any wool product subject to the provisions of the Wool Products Labeling Act of 1939 with the intent to violate the provisions of the said Act.

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

IN THE MATTER OF

LOUIS MARX & CO., INC.

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

Docket C-191. Complaint, July 23, 1962—Decision, July 23, 1962

Consent order requiring a New York City toy distributor to cease misrepresenting the toys it sold by such practices as making statements and pictorial presentations on television commercials which represented falsely that its "Giant Blue & Grey Battle Set" included numerous trees and other scenery, components that produced smoke, and toy cannons that fired projectiles which exploded.

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

PARAGRAPH 1. Respondent Louis Marx & Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 200 Fifth Avenue, in the city of New York, State of New York.

PAR. 2. Respondent Louis Marx & Co., Inc., is now, and for some time last past has been engaged in the advertising, offering for sale, sale and distribution of toys and related products, including a toy designated "Giant Blue & Grey Battle Set", 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 said toys and related

products, including its said "Giant Blue & Grey Battle Set", when sold, to be shipped from its place of business in the State of New York to purchasers thereof located in various other states of the United States and in the District of Columbia, and 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 conduct of its business, at all times mentioned herein, respondent has been in substantial competition, in commerce, with other corporations, firms and individuals in the sale of toys and related products.

PAR. 5. In the course and conduct of its business and for the purpose of inducing the purchase in commerce of the said "Giant Blue & Grey Battle Set" respondent made certain statements, representations and pictorial presentations with respect thereto by means of commercials transmitted by television stations located in various states of the United States and in the District of Columbia having sufficient power to carry such broadcasts across state lines.

PAR. 6. Through the use of the aforesaid advertisements, and others containing statements and representations of the same import not specifically set forth herein, respondent has represented, directly and by implication, that the said "Giant Blue & Grey Battle Set" includes numerous miniature trees and other pieces of scenery, components that smoke or produce smoke, and toy cannon that fire projectiles which explode.

PAR. 7. Enlargements of individual frames extracted from said television commercials, illustrating typical representations with respect to the component parts of the said "Giant Blue & Grey Battle Set" and of the manner in which the said toy purports to perform as alleged in paragraph 6 above, are attached hereto, marked exhibits "A", "B", "C" and "D" and incorporated herein by reference.

PAR. 8. The said statements, representations and depictions are false, misleading and deceptive. In truth and in fact, only three miniature trees are included with the said toy and numerous other pieces of scenery illustrated are not supplied with it, there are no components in the toy that smoke or produce smoke, and the said toy cannon do not fire projectiles that explode.

PAR. 9. Respondent's toys, including the "Giant Blue & Grey Battle Set," are designed primarily for children, and are bought either by or for the benefit of children. Respondent's false, misleading and deceptive advertising claims thus unfairly exploit a consumer group unqualified by age or experience to anticipate or appreciate the

possibility that the representations may be exaggerated or untrue. Further, respondent unfairly plays upon the affection of adults, especially parents and other close relatives, for children, by inducing the purchase of toys and related products through false, misleading and deceptive claims of their performance, which claims appeal both to adults and to children who bring the toys to the attention of adults. As a consequence of respondents' exaggerated and untrue representations, toys are purchased in the expectation that they will have characteristics or perform acts not substantiated by the facts. Consumers are thus misled to their disappointment and competing advertisers who do not engage in false, misleading or deceptive advertising are unfairly prejudiced.

PAR. 10. The use by respondent of the aforesaid false, misleading and deceptive representations has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that the said representations were, and are, true and into the purchase of substantial quantities of the products of respondent by reason of said erroneous and mistaken belief.

PAR. 11. 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 of the Federal Trade Commission Act.

DECISION AND ORDER

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

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

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

1. Respondent, Louis Marx & Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 200 Fifth 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 respondent Louis Marx & Co., Inc., a corporation, and its officers, and respondent's agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of toys or related products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, by use of any illustration, depiction or demonstration, alone or accompanied by oral or written statements, purporting to illustrate, depict or demonstrate any toy or related product, or the performance thereof, or representing in any other manner, directly or by implication, that any toy or related product contains a component or performs in any manner not in accordance with fact.

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

WESTERN FLAVOR SEAL COMPANY ET AL.

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

Docket C-192. Complaint, July 24, 1962—Decision, July 24, 1962

Consent order requiring Omaha sellers of stainless steel cooking utensils to the public, chiefly through demonstrations by salesmen before groups of prospects, to cease representing falsely through statements by such sales persons

and in pamphlets and brochures that cooking foods in their stainless steel utensils was more conducive to health, would retain more vitamins, minerals, and other nutrients than cooking in utensils of other materials, and would prevent disease; that cooking in utensils of other materials was injurious to health; and that soap and water was all that was required to keep their stainless steel ware sterile.

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 Western Flavor Seal Company, a corporation, and Robert T. Caldwell and Jeannette Caldwell, 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 Western Flavor Seal Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Nebraska, with its principal office and place of business located at 2002 Burt Street, Omaha, Nebr.

Respondents Robert T. Caldwell and Jeannette Caldwell 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 stainless steel cooking utensils 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 located in the State of Nebraska to purchasers thereof located in various other states of the United States, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business, and for the purpose of inducing the sale of their stainless steel cooking utensils, respondents have made certain statements in pamphlets and brochures, of which the following are typical but not all inclusive:

Thus, stainless steel assured better, purer, more palatable foods * * * that retain their original color, flavor, and vitamin content * * *.

* * * It presents a smooth, lustrous surface with no joints, seams, or "pores" in which bacteria might lodge; soap and water is all that is required to keep it sterile.

Medical and nutritional authorities are convinced that faulty nutritional practices are the most common cause of constipation.

He who has the benefit of a well balanced, nutritional diet, complete with those vitamins and minerals, so important to good health, has eliminated one of the principal causes of low body resistance to infection and disease.

Prior to buying this set I was constantly troubled with acid indigestion, had very little appetite, and could only eat certain foods. After cooking with Flavor Seal I look forward to each meal with great pleasure, my indigestion is gone, and I can eat any foods I desire.

* * * and Flavor Seal to anyone interested in their health and in learning the modern healthful way to prepare food.

Thus, stainless steel assured better, purer, more palatable foods * * * that retain their original color, flavor and vitamin content * * *.

Easy to keep clean and sanitary * * * soap and water is all that is required to keep it sterile.

PAR. 5. Through the use of said statements and representations, and others similar thereto but not specifically set out herein, respondents have represented, and are now representing, directly or by implication, that:

1. The use of respondents' stainless steel cooking utensils is more conducive to health than the use of cooking utensils manufactured from materials other than stainless steel.

2. The use of cooking utensils manufactured from materials other than stainless steel is injurious to health.

3. Food cooked in respondents' stainless steel cooking utensils retains more vitamins, minerals or other nutrients than food cooked by the same method in cooking utensils manufactured from materials other than stainless steel.

4. The use of respondents' stainless steel cooking utensils will prevent disease.

5. Respondents' stainless steel cooking utensils can be rendered sterile merely by the application of soap and water.

PAR. 6. In truth and in fact:

1. The use of stainless steel cooking utensils is not more conducive to health than the use of utensils manufactured from other materials.

2. The use of cooking utensils manufactured from materials other than stainless steel is not injurious to health.

3. Food cooked in respondents' stainless steel utensils does not retain more vitamins, minerals or other nutrients than food cooked by the same method in utensils manufactured from materials other than stainless steel. The amount of water used and not the nature of the utensil used is determinative of the vitamin, mineral or nutrient loss.

4. The use of stainless steel utensils will not prevent disease.

5. The utensils cannot be rendered sterile merely by the application of soap and water.

Therefore, the statements and representations referred to in paragraphs 4 and 5 are false, misleading and deceptive.

PAR. 7. The advertising and sale of respondents' stainless steel cooking utensils are conducted through the medium of salesmen by personal solicitation and contact with the general public. The method chiefly employed by said salesmen is the giving of demonstrations of the respondents' products before groups of prospective purchasers, at which time the advertising media described in paragraph 4, which have been supplied by respondents, are exhibited or distributed, accompanied by sales talks. Said sales talks and demonstrations have to do with the alleged characteristics and effectiveness of respondents' products in the preparation of food and the alleged disadvantages of the products of respondents' competitors, particularly such products made of aluminum and enamelware. The statements made by such salesmen have the express or implied approval of the respondents, and the sales made in the course of and as a result of said demonstrations and sales talks inure to the benefit of respondents.

PAR. 8. At the demonstrations hereinabove referred to, respondents, through said salesmen, have made disparaging statements and representations with respect to utensils sold and distributed in commerce by their competitors for the purpose of inducing the purchase of respondents' stainless steel cooking utensils in commerce.

Such disparaging statements and representations and the impressions created by them were, and are, to the effect that the preparation of, and the cooking or keeping of food in aluminum utensils cause the formation of serious and dangerous poisons; that food prepared, cooked or kept in aluminum utensils is detrimental to the health of the user because of a loss of vitamins, minerals or other nutrients; that potatoes cooked in respondents' stainless steel cooking utensils are nonfattening; and that eating food cooked in aluminum may result in intestinal disturbances and infections.

PAR. 9. Cooking utensils made of aluminum have been manufactured for many years and during that period of time have been found to be highly satisfactory for cooking use. No poisons are formed from the preparation of, or the cooking or keeping of food in aluminum utensils; foods prepared, cooked or kept in aluminum utensils are not detrimental or hazardous to the health of the user; persons eating food prepared, cooked or kept in aluminum utensils do not, because of that fact, run the risk of intestinal diseases or infection; and pota-

toes or any other food cooked in stainless steel utensils is not less fattening than potatoes or any other food cooked in utensils manufactured from other materials.

PAR. 10. The use by respondents and their salesmen of the above mentioned false, misleading, deceptive and disparaging statements, disseminated as aforesaid, has had, and now has, the tendency and capacity to mislead and deceive a substantial number of the purchasing public into the erroneous and mistaken belief that all of said statements and representations are true, and to induce a substantial number of the purchasing public, because of such erroneous and mistaken belief, to purchase substantial quantities of respondents' stainless steel cooking utensils. By respondents' indulgence in these practices, substantial injury has been, and is being, done to respondents' competitors, in commerce between and among the various states of the United States.

PAR. 11. The acts and practices of respondents, as herein alleged, are all to the injury of the public and of respondent's competitors, and constitute unfair and deceptive acts and practices and unfair methods of competition 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, Western Flavor Seal Company, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Nebraska, with its office and principal place of

business located at 2002 Burt Street in the city of Omaha, State of Nebraska.

Respondents Robert T. Caldwell and Jeannette Caldwell 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 Western Flavor Seal Company, a corporation, and its officers, and Robert T. Caldwell and Jeannette Caldwell, 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 in commerce, as "commerce" is defined in the Federal Trade Commission Act, of cooking utensils made of stainless steel or of any other product of substantially similar composition, design, construction or purpose, do forthwith cease and desist from representing, directly or by implication, that:

1. The use of respondents' stainless steel cooking utensils is more conducive to health than the use of cooking utensils manufactured from materials other than stainless steel.

2. The use of cooking utensils manufactured from materials other than stainless steel is injurious to health.

3. Food cooked in respondents' stainless steel cooking utensils retains more vitamins, minerals or other nutrients than food cooked by the same method in cooking utensils manufactured from materials other than stainless steel.

4. The use of respondents' stainless steel cooking utensils will prevent disease or illness.

5. Respondents' stainless steel cooking ware can be rendered sterile merely by the application of soap and water.

6. Potatoes or any other foods cooked in respondents' stainless steel utensils are less fattening than potatoes or any other foods cooked in utensils manufactured from materials other than stainless steel.

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

GREATER PREMIUM FOOD CO., INC., ET AL.

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

Docket C-193. Complaint, July 24, 1962—Decision, July 24, 1962

Consent order requiring Philadelphia sellers of freezers, food, and freezer food plans to cease making a variety of misrepresentations to sell their products, in newspaper advertising, circulars, etc., as in the order below specified.

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 Greater Premium Food Co., Inc., a corporation, and Irving Canter and Abraham E. Ludwig, 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 Greater Premium Food Co., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of Pennsylvania with its principal office and place of business located at 4563 Torresdale Avenue, Philadelphia, Pa.

Respondents Irving Canter and Abraham E. Ludwig are officers of the corporate respondent. They formulate, direct and control the acts and practices of 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 freezers, food and freezer food plans under the aforesaid corporate name and under the following fictitious names:

Home Super Market Grocery Company
Blue Ribbon Food Service, Inc.
Nation Wide Food Services

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, freezers and food, when sold, to be shipped from their place of business in the State of Pennsylvania 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 freezers and food in commerce, as "commerce" is defined in the Federal Trade Commission Act.

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

PAR. 5. In the course and conduct of their business, respondents have disseminated, and caused the dissemination of, certain advertisements by the United States mails and by various means in commerce, including but not limited to advertisements inserted in newspapers, brochures and circulars, as "commerce" is defined in the Federal Trade Commission Act, for the purpose of inducing, and which were likely to induce, directly or indirectly, the purchase of food, as the term "food" is defined in the Federal Trade Commission Act, and have disseminated, and caused the dissemination of, advertisements by various means including those aforesaid, for the purpose of inducing, and which were likely to induce, directly or indirectly, the purchase of food and freezers in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 6. By means of the advertisements disseminated, as aforesaid and by oral statements of sales representatives, respondents have represented, directly or by implication:

1. That "Home Economists" will assist purchasers of the aforesaid freezer food plan in planning their food orders.

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

3. That purchasers of respondents' freezer food plan will save enough money on the purchase of their food to pay for the freezer.

4. That respondents will permit purchasers of a food plan to have the free use of a freezer.

5. That respondents will erect metal shelves for the storage of food.

6. That the freezer and the food are fully and unconditionally guaranteed or insured under the contract.

7. That the initial food order supplied by the respondents will last the purchasers for four months.

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

9. That certain blank instruments signed by purchasers are applications for credit.

10. That respondents process their own food.

11. That toiletries, paper products and drug items are included in the food budget.

12. That any money paid by purchasers for freezers or freezer food plan will be refunded if they are not satisfied.

13. That all brands of products are available under respondents' freezer food plan.

PAR. 7. In truth and in fact:

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

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

3. Purchasers of respondents' freezer food plan do not save enough money on the purchase of their food to pay for the freezer.

4. Purchasers of a freezer food plan from respondents do not have the free use of a freezer, but are in fact required to purchase said freezer.

5. Respondents have not in many cases erected metal shelves for the storage of food, but have merely supplied the shelves for erection by the purchasers of the aforesaid freezer food plan.

6. The freezer and the food are not fully or unconditionally guaranteed or insured under the contract.

7. The initial food order supplied by respondents is not sufficient to last purchasers four months.

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

9. In some instances purchasers sign promissory notes upon the representation that they are signing applications for credit.

10. Respondents do not process their own food.

11. Toiletries, paper products and drug items are not supplied within the food budget, but in fact have to be purchased separate from the food budget.

12. Purchasers of a freezer or freezer food plan do not receive a refund of their money if they are not satisfied but in fact have to pay the amount specified in the contract.

13. Not all brands of products are available under the food plan.

14. Purchasers of respondents' freezer food plan are not able to buy their food from respondents through this plan at wholesale prices.

Therefore, the advertisements referred to in paragraph 5 were, and are, misleading in material respects and constituted, and now constitute, "false advertisements" as that term is defined in the Federal Trade Commission Act, and the statements and representations referred to in paragraph 6 were, and now are, false, misleading and deceptive.

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 freezers, food and freezer food plans from the respondents by reason of said erroneous and mistaken belief.

PAR. 9. The aforesaid acts and practices of respondents, as herein alleged, including the dissemination by respondents of false advertisements as aforesaid, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices, in commerce, within the intent and meaning of the Federal Trade Commission Act, and in violation of Sections 5 and 12 of said Act.

DECISION AND ORDER

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

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by 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 Greater Premium Food Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its office and principal place of business located at 4563 Torresdale Avenue, in the city of Philadelphia, State of Pennsylvania.

Respondents Irving Canter and Abraham E. Ludwig are officers of said corporation. They formulate, direct and control the policies, acts and practices of said corporation, and their address is the same as that of said corporation.

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

ORDER

PART I

It is ordered, That respondent Greater Premium Food Co., Inc., a corporation, and its officers and Irving Canter and Abraham E. Ludwig 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 freezers, food or a freezer food plan in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing directly or by implication that:

a. "Home Economists" or other formally trained individuals will assist purchasers of the aforesaid freezer food plan in planning their food orders;

b. Purchasers of a freezer food plan will receive the same amount of food and a freezer for the same or less money than they have been paying for the food alone;

c. Purchasers of the freezer food plan can save enough money on the purchase of their food to pay for the freezer;

d. Purchasers will have the free use of a freezer if they subscribe to a food plan;

e. Respondents will erect shelves or other facilities for the storage of food;

f. The freezer or any part thereof or the food are guaranteed or insured in any manner unless the nature and extent

of the guarantee or insurance and the manner in which the guarantor or insurer will perform thereunder are clearly and conspicuously disclosed in writing in immediate conjunction with any such representations.

g. Food ordered by the purchaser will be sufficient to last such purchaser any stated or specified period of time.

h. Respondents process their own foods.

i. Toiletries, paper products, drug items or any other items not included in the food budget are included in the food budget.

j. Money paid by purchasers for a freezer or a freezer food plan will be refunded if they are not satisfied.

2. Representing that products or brands of products are available which respondents do not supply.

3. Misrepresenting in any manner the savings realized by purchasers of a freezer food plan.

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

5. Representing that purchasers of their freezer food plan can buy their food from respondents at wholesale prices.

6. Inducing purchasers of a freezer food plan or purchasers of food or freezers to sign any promissory note or instrument of like nature unless said instrument contains all the terms and conditions of the promise and unless purchasers are fully apprised of the nature and contents of the instrument.

PART II

It is further ordered, That respondents Greater Premium Food Co., Inc., a corporation, and its officers and Irving Canter and Abraham E. Ludwig 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 any food or any purchasing plan involving food, do forthwith cease and desist from:

1. Disseminating or causing to be disseminated any advertisement by means of the United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement contains any of the representations or misrepresentations prohibited in paragraphs 1 through 5 of Part I of this Order.

2. Disseminating or causing the dissemination of any advertisement by any means for the purpose of inducing or which is likely to induce, directly or indirectly the purchase of any food, or any purchasing plan involving food in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement contains any of the representations or misrepresentations prohibited in paragraphs 1 through 5 of Part I of this Order.

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

IN THE MATTER OF

ARTEL TEXTILE CO., INC., ET AL.

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

Docket C-194. Complaint, July 24, 1962—Decision, July 24, 1962

Consent order requiring two affiliated New York City distributors of textile fiber products to cease violating the Textile Fiber Products Identification Act by such practices as labeling draperies which contained no glass fibers as "Fibreglaze", failing to disclose the true generic names of fibers present in draperies and the percentage thereof, failing to identify the manufacturer, etc., failing to maintain proper records showing the fiber content of their products, furnishing false guaranties that their products were not misbranded, 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 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 Artel Textile Co., Inc., a corporation, and Armar Mfg. Co., Inc., a corporation, and Arthur Abrams, individually and as an officer of said corporations, hereinafter referred to as respondents, have violated the provisions of such Acts and the Rules and Regulations under the Textile Fiber Products Identification Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondents Artel Textile Co., Inc., and Armar Mfg. Co., Inc., are corporations organized, existing and doing business under and by virtue of the laws of the State of New York. Individual respondent Arthur Abrams is the President, of each of the corporate respondents. Said individual respondent formulates, directs and controls the acts, policies and practices of the said corporate respondents, including the acts and practices hereinafter referred to. All respondents have their office and principal place of business at 254 Fifth Avenue, New York, N.Y.

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

PAR. 3. Certain of said textile fiber products were misbranded by respondents within the intent and meaning of Section 4(a) of the Textile Fiber Products Identification Act and the Rules and Regulations promulgated thereunder, in that they were falsely and deceptively stamped, tagged, labeled, invoiced, advertised or otherwise identified as to the name or amount of the constituent fibers contained therein.

Among such textile fiber products, but not limited thereto, were draperies labeled by respondents as "Fibreglaze", which together with other information on the label represented, either directly or by implication, that the said draperies were composed of glass fibers whereas in truth and in fact such fabric did not contain glass fibers.

PAR. 4. Certain of said textile fiber products were further misbranded by respondents 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 prescribed by the Rules and Regulations promulgated thereunder.

Among such misbranded textile fiber products, but not limited thereto, were textile fiber products namely, draperies, with labels which:

(a) Failed to disclose the true generic names of the fibers present.

(b) Failed to disclose the percentage of such fibers.

(c) Failed to set forth the name, or other identification issued and registered by the Commission, of the manufacturer of the product or one or more persons subject to Section 3 of the Textile Fiber Products Identification Act with respect to such product.

PAR. 5. Certain of said textile fiber products were misbranded in violation of the Textile Fiber Products Identification Act in that they were not labeled in accordance with the Rules and Regulations promulgated thereunder in the following respects:

(a) The label required to be on or affixed to the textile fiber product was not conspicuously affixed to the product, in violation of Rule 15 of the aforesaid Rules and Regulations.

(b) All parts of the required information was not set forth conspicuously and separately on the same side of the label in such a manner as to be clearly legible and readily accessible to the prospective purchaser, in violation of Rule 16(b) of the said Rules and Regulations.

(c) Non-required information and representations on labels interfered with, minimized, detracted from, and conflicted with the required information on such labels, in violations of Rule 16(c) of the said Rules and Regulations.

(d) Non-required information was used on labels in such a way as to be false, deceptive and misleading as to fiber content, in violation of Rule 16(c) of the said Rules and Regulations.

Among such non-required information but not limited thereto, was the word "Fibreglaze" a trademark which represented, either directly or by implication, that the said product was composed of glass fibers when such was not the fact.

(e) Words, symbols or depictions constituting or implying the name or designation of a fiber which was not present in the product appeared on the label, in violation of Rule 18 of the said Rules and Regulations.

PAR. 6. Respondents 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 Rules and Regulations promulgated thereunder.

PAR. 7. The respondents have furnished false guaranties that their textile fiber products were not misbranded, in violation of Section 10 of the Textile Fiber Products Identification Act.

PAR. 8. The acts and practices of respondents, as set forth above, 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 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 Textile Fiber Products Identification Act, and the respondents having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

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

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

1. Respondents Artel Textile Co., Inc., and Armar Mfg. Co., Inc., are corporations organized, existing and doing business under and by virtue of the laws of the State of New York, with their offices and principal place of business located at 254 Fifth Avenue, in the city of New York, State of New York.

Respondent Arthur Abrams is an officer of said corporations, and his address is the same as that of said corporations.

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

ORDER

It is ordered, That respondents, Artel Textile Co., Inc., a corporation and its officers, Armar Mfg. Co., Inc., a corporation, and its officers, and Arthur Abrams, 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, ad-

vertising or offering for sale, in commerce, or the transportation or causing to be transported in commerce, or the importation into the United States of any textile fiber product; or in connection with the sale, offering for sale, advertising, delivery, transportation or causing to be transported, of any textile fiber product which has 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 any textile fiber product, whether in its original state or contained in other textile fiber products, as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act, do forthwith cease and desist from:

1. Misbranding textile fiber products by:

A. Falsely or deceptively stamping, tagging, labeling, invoicing, advertising or otherwise identifying such products:

(1) As to the name or amount of the constituent fibers contained therein.

(2) By using the term "fibreglaze" or any other term of similar import or meaning or otherwise representing in any manner, directly or by implication, that the said textile fiber products are composed of glass fibers, when such is not the case.

B. Failing to affix labels to such textile fiber products:

(1) Showing each element of information required to be disclosed by Section 4(b) of the Textile Fiber Products Identification Act.

(2) Which are conspicuous and appropriate to the nature and type of product.

(3) Setting forth information required in Section 4 (b) of the Textile Fiber Products Identification Act conspicuously and separately on the same side of the label in such a manner as to be clearly legible and readily accessible to the prospective purchaser.

C. Setting forth on labels non-required information which interferes with, minimizes, detracts from, or conflicts with information required by Section 4(b) of the Textile Fiber Products Identification Act.

D. Using the term "fibreglaze" or any other non-required information on labels in such a way as to be false, deceptive and misleading as to fiber content.

E. Setting forth on labels words, symbols, or depictions which constitute or imply the name or designation of a fiber which is not present in the product.

F. Using the term "fibreglaze" or any other words, symbols or depictions of similar import on labels affixed to textile fiber products where glass fibers are not present in the product.

2. Failing to maintain and preserve for at least 3 years proper records showing the 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 promulgated thereunder.

3. Furnishing false guaranties that textile fiber products are not misbranded or otherwise misrepresented under the provisions of the Textile Fiber Products Identification Act.

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

IN THE MATTER OF

COLT FASHIONS, 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-195. Complaint, July 24, 1962—Decision, July 24, 1962

Consent order requiring manufacturing furriers in New York City to cease violating the Fur Products Labeling Act by failing to show on labels and invoices the true animal name of furs and when fur was artificially colored, failing to use the term "natural" where required and to comply with other requirements of the Act, and furnishing false guaranties with respect to certain fur products.

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 its by said Acts, the Federal Trade Commission having reason to believe that Colt Fashions, Inc., a New York corporation, and Isadore Greenberg and Myron Greenberg, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Fur Products Labeling Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Colt Fashions, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York.

Respondents Isadore Greenberg and Myron Greenberg are officers of the said corporate respondent and control, direct and formulate the acts, practices and policies of the said corporate respondent.

Respondents are manufacturers of fur products, including fur trimmed coats and jackets, and have their office and principal place of business at 260 West 39th Street, New York, N.Y.

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

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

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

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

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

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

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

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

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

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

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

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

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

PAR. 6. Certain of said fur products were falsely and deceptively invoiced 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 which were not pointed, bleached, dyed, tip-dyed or otherwise artificially colored, in violation of Rule 19(g) of said Rules and Regulations.

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

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

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

DECISION AND ORDER

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

The respondents and counsel for the Commission having there-

after 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, Colt Fashions, 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 260 West 39th Street, in the city of New York, State of New York.

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

1. Misbranding fur products by:

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

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

C. Failing to set forth information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder in the sequence required by Rule 30 of the aforesaid Rules and Regulations.

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

2. Falsely or deceptively invoicing fur products by:

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

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

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

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

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

IN THE MATTER OF

ALUMINUM ENTERPRISES, INC., ET AL., DOING BUSINESS AS CUSTOM BUILDERS

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

Docket C-196. Complaint, July 24, 1962—Decision, July 24, 1962

Consent order requiring Colmar Manor, Md., sellers of aluminum windows and doors and other home improvements, to cease using bait advertisements in newspapers, which were not bona fide offers to sell at the advertised prices but were made to obtain leads to prospects.

728-122—65——20

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 Aluminum Enterprises, Inc., a corporation, doing business as Custom Builders, and Abraham Gomberg, 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 Aluminum Enterprises, Inc., doing business as Custom Builders, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland, with its principal office and place of business located at 3907 Bladensburg Road, in the city of Colmar Manor, State of Maryland.

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

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of aluminum storm windows and doors and other home improvements, including recreation rooms, jalousie rooms, aluminum siding, jalousies, patio awnings and swimming pools, which are advertised and offered for sale as a unit, including installation, for a flat sum.

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

PAR. 4. In the course and conduct of their business as aforesaid, and for the purpose of inducing the purchase of their aluminum storm windows and doors and other home improvements, and services in connection therewith, respondents have made various statements in advertisements in newspapers of general circulation. Among and typical, but not all inclusive, of such statements are the following:

NEW 1962 MODEL
10 [or 9] GENUINE ALUMINUM TRIPLE INSERT STORM WINDOWS

plus/
1 ALL ALUMINUM STORM DOOR
ALL FOR ONLY

$89 [or $79]
INSTALLED

FREE HOME DEMONSTRATION
CUSTOM BUILDERS
3907 BLADENSBURG ROAD

REC. ROOM
ANNIVERSARY SALE!

[Illustration of recreation room]

SHARE OUR
ANNIVERSARY
& EXPANSION
SALE WITH US!
FREE
5 Ft. BAR
$489

LABOR AND MATERIALS
INSTALLED

Includes All This:
- STANDARD 12' x 16'!
- CUSHION TONE CEILING!
- DELUXE TRIM!
- CLOSET OPENING UNDER STAIRS!
- WROUGHT IRON HARDWARE!
- KNOTTY PINE DOOR!
- KNOTTY PINE WALLS!
- DECORATIVE STAIR RAILS!
- TILE FLOOR OPTIONAL!
- RECESSED LIGHT!

3907 Bladensburg Rd., N.E.
AP 7-6404

CUSTOM BUILDERS

PAR 5. By and through the use of said statements contained in said advertisements, and others of similar import but not specifically set out herein, respondents represented directly or by implication that they were making a bona fide offer to sell the aluminum storm windows and door, and the recreation room improvement, at the prices specified in the advertising.

PAR. 6. In truth and in fact respondents' offers were not bona fide offers to sell the aluminum storm windows and door and the recreation room improvement at the advertised prices, but were made for the purpose of obtaining leads and information as to persons interested in the

purchase of aluminum storm windows and doors and recreation room improvements for their homes. After obtaining leads through response to said advertisements respondents' salesmen called upon such persons but made no effort to sell the storm windows and door or the recreation room improvement at the advertised prices. Instead, they exhibited samples of the advertised windows which were manifestly unsuitable for the purpose intended and disparaged said windows in such a manner as to discourage their purchase, and attempted to, and frequently did, sell much higher priced storm windows. Or, in the case of the recreation room improvement, respondents' salesmen made estimates which were greatly in excess of the advertised price, stating that the disparity in price, among other reasons, was due to "extras", or more expensive materials which were not included in the advertised specifications, and attempted to, and frequently did, succeed in selling the recreation room improvement at a higher estimated price. Therefore, the statements and representations as set forth in paragraphs 4 and 5 hereof were false, misleading and deceptive.

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 in the sale of aluminum storm windows and doors and home improvements, products and services of the same general kind and nature as those sold by respondents.

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