IN THE MATTER OF

UNIVERSAL INTERCHANGE, INC., ET AL.

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

Docket 6938. Complaint, Nov. 8, 1957—Decision, Aug. 2, 1963

Order requiring eight corporations—with respective offices in Los Angeles, Chicago, Dallas, New York, Boston, Seattle and Denver—jointly engaged in selling advertising in the "U.S. Buyers Digest", published by the first named respondent, and other advertising media, and other services in connection with the sale and purchase of farm and business properties, to cease—in soliciting and collecting substantial sums of money as fees for, the listing of property for sale and advertisements therefor to be published in said bulletin—making false representations concerning clients' opportunities for sales and profits, services afforded, affiliates, success, refunds, terms, etc., as in the order below set out.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the corporations and individuals named in the caption hereof, 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. Universal Interchange, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 4477 Hollywood Boulevard, Los Angeles, California. Respondent Theodore M. Bernardi, whose address is 114 East 32nd Street, New York, New York, is president; respondent Maurice Salomon, whose address is 8556 Trumbull Street, Skokie, Illinois, is vice president, and respondent Paul M. Guyer, whose address is 2412 N. Commonwealth, Los Angeles, California, is secretary-treasurer of respondent corporation Universal Interchange, Inc.; respondent United Interchange, Inc., of Illinois is a corporation organized, existing and doing business under and by virtue of the laws of Illinois with its office and principal place of business located at 1 North LaSalle Street, Chicago, Illinois; respondent United Interchange, Inc., of Texas is a corporation, organized, existing and doing business under and by virtue of the laws of Texas, with its office and principal place of business located at 4232 Herschel Avenue,

Dallas, Texas. Respondents Maurice Salomon and Lillian Salomon are individuals and officers of said corporate respondents United Interchange, Inc., of Illinois and United Interchange, Inc., of Texas. Their address is 8556 Trumbull Street, Skokie, Illinois.

Respondent United Interchange, Inc., of New York is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its principal place of business located at 114 E. 32nd Street in the city of New York, New York.

Respondent United Interchange, Inc., of Massachusetts, is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts with its office and principal place of business located at 80 Boylston Street, Boston Massachusetts.

Respondents Theodore M. Bernardi and Pauline B. Bernardi are individuals and officers of said New York and Massachusetts corporations. Their address is 114 E. 32nd Street, New York, New York.

Respondent Union Interchange, Inc., of Washington is a corporation organized, existing and doing business under and by virtue of the State of Washington with its office and principal place of business located at 821 Securities Building in the city of Seattle, Washington.

Respondent Union Interchange, Inc., of California is a corporation organized, existing and doing business under and by virtue of the laws of the State of California with its office and principal place of business located at 4477 Hollywood Boulevard in the city of Los Angeles, California.

Respondent Union Interchange, Inc., of Colorado is a corporation organized, existing and doing business under and by virtue of the laws of the State of Colorado with its office and principal place of business located at Guaranty Bank Building in the city of Denver, Colorado.

Respondents Paul M. Guyer and Francelene A. Guyer are individuals and officers of the aforesaid Washington, California and Colorado corporations. Their address is 2412 North Commonwealth, Los Angeles 27, California.

The individuals named as officers of the aforesaid corporations formulate, direct and control the acts and practices of the corporations of which they are officers. All of the respondents have cooperated and acted together in the performance of the acts and practices hereinafter set forth.

PAR. 2. Respondents are now and for more than one year last past have jointly been engaged in the operation in commerce of business enterprises which offer advertising for sale in bulletins published by Universal Interchange, Inc., and other advertising media and other services and facilities in connection with the offering for sale, selling, buying and exchanging of farm and business properties. In connection therewith, the respondents have been and are now transmitting and receiving through the United States mail, and otherwise disseminating in commerce, advertising matter, pamphlets, circulars, letters, contracts, checks, money orders, and other printed or written instruments which are sent and received between respondents' places of business in the States of California, Colorado, Washington, Texas, Illinois, New York and Massachusetts, and sent to and received from persons, firms and corporations located in various States of the United States, thereby engaging in extensive commercial intercourse in commerce, as "commerce" is defined in the Federal Trade Commission Act.

The volume of the aforesaid business conducted by respondents has been and is substantial.

PAR. 3. Respondents' said business enterprise is conducted in the following manner: Universal Interchange, Inc., publishes and distributes, at intervals, a publication designated as "U.I. Buyers Digest," in which various properties are listed for sale. The other corporate respondents act as soliciting agents for Universal Interchange, Inc., and solicit the sale of advertising and the listing of property owned by others in said publication. They pay a portion of the cost of publishing and distributing said publication.

PAR. 4. In the course and conduct of their business, respondents, through post cards, circulars, contract forms and other written instrumentalities, and through oral representations made by their salesmen, solicitors, or representatives for the purpose of obtaining listings of property for sale and advertisements of such to be published in "U.I. Buyers Digest," and collecting substantial sums of money as fees for the listing and advertising of property, have represented, directly and by implication, to persons who had property for sale, that they have available prospective buyers who are interested in the purchase of their specific properties; that the property is underpriced and the price should be increased; that the listing will result in the sale of the property within 30 to 90 days or a short time, or else the fee will be refunded, or the customer will not be charged for the service; that the property will be nationally advertised in newspapers and periodicals; that they maintain a list of prospective buyers of such property; that others who have used

their listing sold their property within a short time as a result of said listing; that over 1,000 real estate brokers are affiliated with respondents; that State and other officials endorse respondents' activities and publication; and that if the listed property were sold through their listing, the payment of broker's commission would be avoided

PAR. 5. The aforesaid representations were and are false, misleading and deceptive. In truth and in fact, respondents do not and have not had prospective buyers interested in and available to purchase the specific properties listed. The purpose and effect of increasing the owner's asking price for the property was not that it was undervalued, but, on the contrary, to increase the fee to be collected by respondents. Respondents do not and have not refunded any fees collected from the property owners when the property is not sold within 30 to 90 days or at any other time; on the contrary, respondents attempt to collect any unpaid balance claimed from the property owners for their service whether or not the property is sold. Respondents do not and have not used national advertising to sell the specific listed property. Respondents do not maintain or circulate a list of prospective buyers of listed or other property. Purchasers of respondents' services have not generally or usually sold their property in a short time and the great majority of such purchasers have not been able to sell their property by purchasing respondents' advertising. Respondents are not affiliated with 1,000 or any other number of real estate brokers. Respondents' activities and publications are not and have not been endorsed by state or other officials. Purchasers of respondents' advertising or services do not avoid payment of real estate broker's commissions when the property is sold through a broker.

PAR. 6. The use by respondents of the aforesaid unfair and deceptive acts and practices in connection with the conduct of their aforesaid business, has had and now has the capacity and tendency to mislead and deceive a substantial portion of the public and to induce many owners of property, because of said false, deceptive and misleading representations, to enter into contracts respecting the sale of their properties, and to pay substantial sums of money to respondents.

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

Mr. John W. Brookfield, Jr., and *Mr. Berryman Davis* for the Commission.

Mr. Arthur Litz, of New York, N.Y., for respondents United Interchange, Inc., of New York, United Interchange, Inc., of Massachusetts, and Mr. Theodore M. Bernardi, individually, as an officer of said corporations, and as an officer of Universal Interchange, Inc., and Mrs. Pauline M. Bernardi, individually and as an officer of United Interchange, Inc., of New York, and United Interchange, Inc., of Massachusetts.

Mr. Alvin G. Greenwald of Los Angeles, Calif., for all other respondents.

Initial Decision by Robert L. Piper, Hearing Examiner

PRELIMINARY STATEMENT

On November 8, 1957, the Federal Trade Commission issued its complaint against Universal Interchange, Inc., a corporation (hereinafter called Universal), Theodore M. Bernardi, Maurice Salomon, and Paul M. Guyer, individually and as officers of Universal; United Interchange, Inc., of Illinois, a corporation, United Interchange, Inc., of Texas, a corporation, Maurice and Lillian Salomon, individually and as officers of said corporations; United Interchange, Inc., of New York, a corporation, United Interchange, Inc., of Massachusetts, a coporation, Theodore M. and Pauline B. Bernardi, individually and as officers of said corporations; Union Interchange, Inc., of Washington, a corporation, Union Interchange, Inc., of Colorado, a corporation, Union Interchange, Inc., of California, a corporation, and Paul M. and Francelene A. Guyer, individually and as officers of said corporations (all of said corporations except Universal being hereinafter collectively called the selling corporations; and all of said corporations and individuals being hereinafter collectively called respondents). The complaint charges respondents with false, misleading and deceptive representations constituting unfair and deceptive acts and practices in commerce in violation of § 5 of the Federal Trade Commission Act (hereinafter called the Act), 15 U.S.C. 41, *et seq.* Copies of said complaint together with a notice of hearing were duly served on respondents.

Respondents appeared by counsel and filed answers admitting the corporate and commerce allegations of the complaint, denying all of the representations alleged therein, and in some instances admitting, and in others denying, that such alleged representations were not true in fact. Pursuant to notice, hearings were thereafter held

at various times and places from March 3, 1958 to October 1, 1958, before Hearing Examiner Joseph Callaway, since deceased. On April 7, 1959, because of Mr. Callaway's physical incapacity and because additional extensive hearings had already been scheduled, the undersigned was designated by the Commission to succeed Mr. Callaway. Thereafter hearings were held at various times and places from April 21, 1959 to December 2, 1960, before the undersigned. In general, Mr. Callaway heard all of the witnesses called in support of the complaint against the Western respondents: Universal, the various Unions, and their respective officers and individuals, and the Eastern respondents: United of New York, United of Massachusetts and their respective officers and individuals. The undersigned heard all of the witnesses called in support of the complaint against the Midwestern respondents: United of Illinois, United of Texas and their respective officers and individuals, and all of the defense proffered by all of the respondents.[1] During the hearings before the undersigned, a minor amendment to the third sentence of paragraph 5 of the complaint was granted by the undersigned.

All parties were represented by counsel, participated in the hearings, and afforded full opportunity to be heard, to examine and cross-examine the witnesses, to introduce evidence pertinent to the issues, to argue orally upon the record, and to file proposed findings of fact, conclusions of law, and orders together with reasons in support thereof and replies thereto. All parties filed such proposed findings of fact, conclusions of law, and orders, together with reasons in support thereof and replies thereto. All such findings of fact and conclusions of law proposed by the parties respectively not hereinafter specifically found or concluded are herewith specifically rejected.[2] All motions to dismiss, not ruled upon on the record, are disposed of herein by the following findings of fact and conclusions of law.

Upon the entire record in the case and from his observation of the witnesses, the undersigned makes the following:

FINDINGS OF FACT

I. Corporate Organization

Universal is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 4477 Hollywood Boulevard, Los Angeles, California. Respondents Theodore M. Ber-

[1] The record herein consists of over 8,300 pages of testimony and 736 exhibits. Mr. Callaway heard the first 2,216 pages of testimony and the undersigned the remainder.

[2] 5 U.S.C. § 1007(b).

nardi, Maurice Salomon, and Paul M. Guyer are the sole stockholders and president, vice president and secretary-treasurer, respectively, of Universal. The aforesaid individuals, acting in cooperation with each other, formulate, direct and control the policies, acts and practices of Universal.

United of Illinois and United of Texas are corporations organized, existing and doing business under and by virtue of the laws of Illinois and Texas, respectively, with their offices and principal places of business located in Chicago, Illinois, and Dallas, Texas, respectively. Respondents Maurice Salomon and Lillian Salomon are officers, and Maurice Salomon, a director and stockholder, of said corporations. Respondent Maurice Salomon as an individual actively manages and formulates, directs and controls the policies, acts, and practices of United of Illinois and United of Texas.

United of New York and United of Massachusetts are corporations organized, existing, and doing business under and by virtue of the laws of New York and Massachusetts, respectively, with their offices and principal places of business located in New York City and Boston, Massachusetts, respectively. Respondents Theodore M. Bernardi and Pauline B. Bernardi are officers, and Theodore M. Bernardi, a director and stockholder, of said corporations. Respondent Theodore M. Bernardi as an individual actively manages and formulates, directs and controls the policies, acts and practices of United of New York and United of Massachusetts.

Union of California, Union of Washington, and Union of Colorado are corporations organized, existing and doing business under and by virtue of the laws of California, Washington, and Colorado, respectively, with their offices and principal places of business located in Los Angeles, California, Seattle, Washington, and Denver, Colorado, respectively. Respondents Paul M. Guyer and Francelene A. Guyer are officers, and Paul M. Guyer, a director and stockholder, of said corporations. Respondent Paul M. Guyer as an individual actively manages and formulates, directs and controls the policies, acts, and practices of Union of California, Union of Washington, and Union of Colorado.

Motions to dismiss Mrs. Salomon, Mrs. Bernardi and Mrs. Guyer as individuals were granted. The record established that they did not, as individuals, formulate, direct or control the policies, acts, and practices of the respective corporations of which they were officers. A motion to dismiss the allegations of the complaint that the selling corporations and their officers and individuals were jointly liable for the activities of each other was granted. There is no sub-

stantial proof in the record that any one selling corporation was liable or responsible for the activities of any other selling corporation. This does not apply to Universal.

II. Corporate Business

Universal is engaged in the publishing business and publishes and distributes, among other things, a monthly periodical or catalogue, known as the "U.I. Buyers Digest," and a "Brokers Bulletin." The Buyers Digest is comprised of approximately 30 percent editorial matter and 70 percent advertisements of real estate and business properties for sale, lease or exchange, not including non-income-producing real property such as homes and lots. The Buyers Digest is published in three editions, Eastern States, Central States, and Western States, and is distributed throughout the United States.

The Buyers Digest is a limited or controlled, rather than paid, circulation publication, in that it is distributed free to "qualified" applicants. Universal advertises the Digest nationally in newspapers, magazines and radio broadcasts, describing it and requesting persons interested in purchasing a business or property to write for the Digest. A person who does so, stating the kind of business or property and general location desired, is "qualified as a potential buyer" and is sent the appropriate current regional Digest. In addition to such applicants, the Digest is also sent, on a request basis only, to banks, libraries, and chambers of commerce. Necessarily such circulation, while national, is quite limited in number. The Brokers Bulletin is published six or more times a month, and is a pamphlet containing advance releases of the advertisements to be published in the Buyers Digest. The Brokers Bulletin is distributed free of charge to more than 1,000 real estate and business opportunity brokers throughout the United States, who have subscribed in writing therefor and agreed to present the advertised information to their prospective buyer clients.

Prior to 1955, Universal solicited all of the advertisements published in the Buyers Digest and the Brokers Bulletin. Since 1955, the other corporate respondents act as soliciting or selling agents for Universal, and are engaged in the business of selling such advertisements in said publications at fixed rates, dependent upon the amount of space in the Buyers Digest contracted for by the advertiser. The selling corporations pay to Universal the cost of the respective advertisements supplied by them and published by Universal. In general, Union of California, Union of Washington, and Union of Colorado engage in such business in the Western States,

United of Illinois and United of Texas in the Central States; and United of New York and United of Massachusetts in the Eastern States.

Leads to prospective purchasers of advertisements in the Digest are secured by the mailing of "lead" cards throughout the nation, by all of the selling corporations, inquiring of the recipient if he is interested in selling his business or property, advising him that the sender has many inquiries from prospective buyers, and requesting the return of an attached postage-prepaid card if interested. Salesmen of the respective selling corporations subsequently call upon all who mail in such cards. If a sale is made, a written contract is signed, subject to acceptance by the selling corporation. The salesmen work on straight commission. No advance fee or payment is collected. The contract specifies the amount of advertising space and its cost and an attachment recites the general advertising copy.

After receipt of the signed contracts, the selling corporations send the signer a letter of acceptance, accompanied by a return card which includes a form of request for copies of the published advertisements, if desired, as well as question boxes concerning the performance of the salesman. Universal then publishes the advertisement once in the next Brokers Bulletin and Buyers Digest. If the property remains unsold, it is again published in the Buyers Digest.

Under the contract, the amount specified is payable in 90 days or when the property is sold, whichever occurs first. A "guarantee" in the contract form further provides for an additional three months of publication in the Buyers Digest at no extra charge if the property remains unsold. The corporate respondents carried out the advertising requirements of all contracts. From time-to-time Universal sends its advertisers names and addresses of persons who write for the Digest and express an interest in property of the type and general location advertised by them. After the 90-day period, the selling corporations demand payment and if not forthcoming, institute local collection suits on the contracts.

Universal furnishes some leads, the contract and lead forms, and other advertising and promotional literature used by the selling corporations. All such material is subject to the approval and regulation of Universal and its officers. At times all of the selling corporations used the same promotional pieces. All of the advertisements secured by the salesmen of the selling corporations are edited and reviewed by Universal before publication. The advertising copy in the Brokers Bulletin is prepared by Universal.

III. Interstate Commerce

In the course and conduct of such businesses, the corporate respondents have been and are now transmitting and receiving through the United States mails, and otherwise disseminating in commerce, advertising matter, pamphlets, circulars, letters, contracts, checks, money orders, said publications, and other printed or written instruments which are sent and received between respondents' places of business in the States of California, Colorado, Washington, Texas, Illinois, New York and Massachusetts, and sent to and received from persons, firms, and corporations located in various States of the United States, thereby engaging in interstate commerce within the intent and meaning of the Act. The volume of business conducted by the corporate respondents has been and is substantial.

IV. The Unlawful Practices

A. *The Issues*

The complaint contains nine representations, alleged to have been made both orally through salesmen and by means of written instrumentalities, and further alleged to be false, misleading and deceptive. Respondents denied making any of the alleged representations, and as to some, if made, admitted they were not true, and as to others, if made, alleged that they were in fact true. In addition to these basic issues, an additional issue was raised by reason of the fact that a substantial number of the witnesses called in support of the complaint were heard by the prior hearing examiner. The undersigned heard the testimony proffered by the respondents, which in general denied and refuted the testimony of those witnesses heard by the prior hearing examiner. Both sides concede that as a result substantial issues of credibility are raised. The Court of Appeals and the Commission have passed upon this problem in other cases, which will be considered hereinafter in more detail.

B. *The False Representations*

The nine oral and written representations alleged to be false, misleading and deceptive are:

1. Respondents have available prospective buyers who are interested in the purchase of the advertiser's specific property;
2. The property is underpriced and the price should be increased;
3. The "listing" will result in the sale of the property within thirty to ninety days or a short time, or the fee will be refunded or the customer will not be charged for the service;

4. The property will be nationally advertised in newspapers and periodicals;

5. Respondents maintain a list of prospective buyers of such property;

6. Others who have used respondents' "listing" sold their property within a short time as a result of said "listing";

7. Over 1,000 real estate brokers are affiliated with respondents;

8. State and other officials endorse respondents' activities and publication; and

9. If the "listed" property were sold through respondents' "listing," the payment of a broker's commission would be avoided.

The evidence in support of the complaint consisted primarily of the testimony of numerous customers and prospects called upon by respondents' salesmen, and the various written instrumentalities used by respondents, including, *inter alia*, their lead pieces, contract forms, advertising circulars, the Buyers Digest and Brokers Bulletin, and various brochures. In the interest of clarity, the proof concerning the written representations is considered separately from that concerning the oral representations. There is no dispute with respect to the authenticity and authorship of the written instrumentalities, and hence there is no credibility problem with respect thereto because of the substitution of hearing examiners.

At the conclusion of the case-in-chief, motions by respondents to dismiss the complaint for want of proof were granted with respect to five of the alleged written representations, and denied as to the other four alleged written representations and as to all of the alleged oral representations. Specifically, such motions were granted with respect to written representations 2, 3, 5, 6, and 9 set forth above, because there was no proof in the record that respondents had made such alleged representations by means of any written instrumentalities. In addition, as will be developed more fully hereinafter, the record establishes that representations 6 and 9, even if made, were in fact true and correct.

All of the alleged representations are considered *seriatim:*

1. Respondents have available prospective buyers who are interested in the purchase of the advertiser's specific property.

a. Written Instrumentalities.

A number of written instrumentalities used by respondents in connection with the sale of their advertising to customers reveal that many such customers and prospects could have been led to believe that respondents were engaged in the business of selling property, rather than advertising, and had numerous prospective buyers in-

terested in the purchase of the customer's property. The lead pieces used by respondents in their initial contact with prospective customers referred only to a sale of property and the availability of many prospective buyers, and made no reference to the fact that respondents were engaged only in the business of advertising. It is, of course, well established that if the initial contact is secured by deception, such deception is not overcome by sebsequent truthful disclosures and the Commission may prevent it.

The lead pieces in general asked the recipient if he was interested in selling his property, advised him that the sender had available numerous persons interested in the purchase of such property, and requested the return of a postage prepaid reply card if the recipient was interested. To indicate the need for speed and urgency, such lead pieces were frequently printed on yellow paper in the general format of a telegram. In this manner, respondents secured the names of owners interested in selling their businesses. Respondents then dispatched their salesmen to call upon such persons. In addition to the obvious deceptiveness of such lead pieces, the record contains the testimony of many witnesses who answered such initial inquiries, that they were not interested in respondents' proposition after they ascertained that the service was advertising only, establishing beyond dispute that they were misled by the original inquiry.

In addition to the lead pieces, Commission's Exhibit 90, an advertising circular used by respondents, is composed in a manner indicating past sales rather than advertisements, is couched in terms of selling rather than advertising and, among other things, in the largest print used, asks the recipient: "What would you spend to put your place in the hands of a buyer?"

b. Orally.

The testimony of many customers and prospects called in support of the complaint, as well as witnesses called by respondents themselves, establishes that such a representation frequently was made by salesmen in their oral presentation to their prospects. As noted above, the undersigned heard such testimony with respect to the Illinois and Texas corporations. In addition, the undersigned also heard a portion of such testimony with respect to the Colorado corporation, and it is undisputed that Mr. Guyer operated the Colorado, Washington, and California selling corporations in the same manner. While the undersigned did not hear any of the testimony in support of the complaint with respect to the Eastern selling corporations, one of the Eastern salesmen, Pollard, who was heard by the undersigned, in effect admitted making such a repre-

sentation to his prospects. Accordingly, although most of the testimony with respect to the oral representations made by the salesmen of the Eastern and Western corporations was not heard by the undersigned, the foregoing, plus the above proof concerning the written representation, is sufficient to obviate the credibility problem.

In addition, Commission Exhibit 51, concerning which there is no creditibility problem, consists of a set of instructions to salesmen used by respondents. While this was not shown to prospects, it demonstrates the type of representations and statements respondents instructed their salesmen to make. They were instructed to emphasize to prospects that the company had "inquiries on hand now" for the purchase of such a business. This was the first subject the salesman was to take up after introducing himself. Respondents did not in fact have inquiries on hand for the purchase of any particular property, but only requests for the Digest. Coupled with the lead pieces, this approach definitely would lead prospects to believe respondents had persons available interested in the purchase of their businesses. Numerous witnesses testified that some salesmen actually told them that they had available one or more purchasers desirous of purchasing exactly the type of business involved. The salesmen also were instructed to advise the prospects that the company had contacts with about 1,000 brokers, many of whom had immediate prospects for their type of business, when in fact the company had no way of knowing whether this was true.

Respondents admitted that the aforesaid representation, if made, was not true in fact and that they did not have available prospective buyers interested in the purchase of the customer's property. In fact, all that respondents ever had was inquiries from the public for copies of the Buyers Digest, stating an interest in the purchase of a given type of property in a given locality. Such inquirers may or may not actually be interested in the purchase of anything. In addition, the circumstances and interest of all but the most current of such inquirers might change substantially with the passage of time, and as a result they could hardly be characterized as prospective buyers. It is concluded and found that respondents, by means of written instrumentalities and oral statements of salesmen, made the aforesaid representation, and that said representation was false, misleading, and deceptive.

Inasmuch as exactly the same order would be issued whether the representation were made orally or in writing, because such orders prohibit the proven false representation in any manner,

proof of such a misrepresentation in either form is sufficient. This, of course, applies to all of the other alleged misrepresentations as well. Nevertheless, the written and oral proof with respect to each alleged representation will be considered separately.

2. The property is underpriced and the price should be increased.

As noted above, this allegation with respect to written instrumentalities was dismissed for want of proof. However, the record establishes that such representations were made by the salesmen orally. Numerous prospects and customers called in support of the complaint testified before the undersigned that such a representation was made to them by salesmen of the Illinois and Texas selling corporations. In addition, several such witnesses testified before the undersigned with respect to the Colorado and Washington selling corporations.

The undersigned heard no such proof with respect to the Eastern corporations. Respondents called all of the salesmen concerned, with the exception of a few who were unavailable because of death or could not be located. In general, such salesmen uniformly denied making any such representation. Thus, with respect to the Eastern corporations, the credibility problem to be considered hereinafter is present. However, it makes little or no practical difference in this case because Universal is responsible for the activities of its agents, the selling corporations, and in turn for the activities of their salesmen, and the individuals who own and control all of the selling corporations are responsible for the activities of Universal, because they formulate, direct and control them. Hence any order to be issued will run against them in their individual capacities and thus prevent such misrepresentations by means of the selling corporations which they respectively control individually.

Respondents admitted that if such a representation was made it was not true in fact. Respondents conceded that their salesmen were not qualified as appraisers. The record contains considerable evidence pro and con concerning the purpose of such a representation, if made, which purpose is immaterial inasmuch as the representation was in fact false. It is concluded and found that all of the respondents, except United of New York and United of Massachusetts and their officers, made the aforesaid representation by means of oral statements of salesmen, and that said representation was false, misleading, and deceptive.

3. The "listing" will result in the sale of the property within 30 to 90 days or a short time, or else the fee will be refunded or the customer will not be charged for the service.

In their proposed findings counsel supporting the complaint eliminate the phrase "or the fee will be refunded" from the aforesaid representation. The record establishes that respondents did not charge or collect advance fees and hence nothing could be refunded. With respect to the terms "list" and "listing" used in the complaint, it was agreed at the hearings that the terms "advertising" and "advertisement" should be substituted, inasmuch as the terms "list" and "listing" connote a brokerage function and do not accurately describe the service sold by respondents, which was advertising. This resulted in expedition of the basic issues instead of begging the question and prolonging the hearings by litigation of a collateral issue. Thus, in effect the alleged representation is: "the advertisement will result in the sale of the property within a short time or the customer will not be charged for the service." Fundamentally, the representation was that the customer did not have to pay unless and until the property was sold, just as in the case of a brokerage arrangement.

This allegation with respect to written instrumentalities was dismissed for want of proof. However, the record establishes through numerous witnesses that such a representation was made orally by some of the salesmen. Again the undersigned heard none of such proof with respect to the Eastern corporations and only a small portion with respect to the Colorado corporation, and on the contrary heard the denials thereof by the salesmen of all of the selling corporations. However, as was the case with respect to the first representation considered above, Commission's Exhibit 51 (the set of instructions to salesmen concerning which there is no credibility problem) reveals that respondents instructed their salesmen to make representations to such general effect. The salesmen were instructed to emphasize the brokerage coverage provided by respondents, which would necessarily lead many people to believe that they would not have to pay the fee unless the property was sold, a standard practice with respect to brokers. The salesmen were also instructed, when a prospect said that he did not want to pay unless his business was sold, to meet this objection by firstly, referring to the "six months close," which had reference to the additional three months of advertising provided without charge in the event the property was not sold after the first three months, secondly, emphasizing the assurance of coverage, and thirdly, changing the subject by digression and then using any of the "closes." It will be noted that none of these recommendations include advising the prospect that he would have to pay after ninety days whether or not his business was sold.

Again, in addition to the self-evident deceptiveness of such representations and statements, the record contains the testimony of numerous customers that they were of the belief that they were contracting for a selling service and not advertising, and hence would not have to pay unless the property was sold.

Respondents admitted that the aforesaid representation, if made, was not true in fact. Respondents conceded that they always charged the fee or price set forth in the contract whether or not the property was sold. This clearly was provided by the terms of the contract itself. It is concluded and found that respondents made the aforesaid representation by means of oral statements of their salesmen, and that said representation was false, misleading, and deceptive.

4. The property will be nationally advertised in newspapers and periodicals.

a. Written Instrumentalities.

As hereinabove found, respondents' method of operation was to advertise the Digest nationally in newspapers, magazines, and radio broadcasts, but the advertisements purchased by customers were published in the Digest and were not nationally advertised in newspapers and periodicals. Several of the written instrumentalities employed by respondents might well lead a prospective customer to believe that his property was going to be advertised nationally in such manner. The form of contract used by respondents consisted of four pages, of which the first or front page actually was the contract executed by the customer, the two inside pages contained representations and explanations of the service offered as well as a form of guarantee, and the fourth or back page was used to list data concerning the business for sale which would result in the advertising copy. The inside pages contained in bold print four boxes, one of which was headed "National Advertising." Only a careful reading of the smaller print would indicate that the national advertising was of the Digest and not the property for sale.

More significantly, Commission's Exhibit 26, an advertising brochure employed by respondents, entitled: "The Most Complete Advertising Coverage of its Kind," contained a list of the newspapers, magazines, and radio stations used by respondents throughout the United States and Canada. A legend on its cover stated that it contained the names of newspapers, magazines and radio stations used to advertise the Buyers Digest to prospective buyers. Inside in large print it contained the legend: "Advertising from coast to coast reaching an audience of 90 million potential buyers everywhere seeking all types of businesses." It is clear that this

pamphlet, unless very carefully analyzed, might well lead a prospect to believe thas his business was going to be advertised nationally in newspapers and periodicals.

In addition, Commission's Exhibit 63, a letter of acceptance used by all respondents to notify the customer that his contract was accepted, easily could lead the customer to believe that his property was going to be nationally advertised in media other than the Buyers Digest. The second paragraph thereof reads as follows:

> Our entire facilities are now at your command. The processing and distribution of your sales information has already begun. It is being sent to hundreds of brokers and will also be made available to the thousands of potential buyers reached through *nationwide advertising campaigns*. Your copy has been prepared for publication in both the "U.I. Brokers Bulletin" and the "U.I. Buyers Digest." (Emphasis supplied.)

Commission's Exhibit 90, a sales brochure used by respondents, previously referred to, also advised prospects as follows: "We'd like you to see for yourself how you can reach hundreds of qualified potential buyers through a unique but tested network of newspapers, radio, and magazines."

b. Orally.

In addition to the aforesaid written instrumentalities, the testimony of many customers and prospects called in support of the complaint, as well as witnesses called by respondents, established that such a representation frequently was made by salesmen in their oral presentation. Such testimony was heard by the undersigned with respect to the Illinois, Texas, Colorado, California, and Washington selling corporations, but none with respect to the Eastern corporations. Inasmuch as this representation also has been established by means of written instrumentalities, concerning which there is, of course, no creditibility problem, the failure to hear any of the Eastern witnesses would in no event alter or obviate an appropriate order.

Respondents admitted that the aforesaid representation, if made, was not true in fact. It is undisputed that respondents did not nationally advertise the customer's property in newspapers and periodicals. It is concluded and found that respondents, by means of written instrumentalities and oral statements of salesmen, made the aforesaid representation and that said representation was false, misleading and deceptive.

5. Respondents maintain a list of prospective buyers of such property.

As noted above, this allegation with respect to written instrumentalities was dismissed for want of proof. However, the record

establishes that such representation was made orally by the salesmen. Numerous prospects and customers called in support of the complaint testified that such a representation was made to them by salesmen. Such testimony was heard by the undersigned with respect to the Illinois, Texas and Colorado selling corporations but none with respect to the Eastern corporations.

Respondents admitted that the aforesaid representation, if made, was not true in fact, because they do not maintain any lists of prospective buyers of such property. It is concluded and found that all respondents, except United of New York, United of Massachusetts, and their officers, made the aforesaid representation by means of oral statements of salesmen, and that said representation was false, misleading, and deceptive.

6. Others who have used respondents' "listing" sold their property within a short time as a result of said "listing."

As noted above, the term "advertisement" was substituted for the term "listing" to obviate collateral litigation, and this allegation with respect to written instrumentalities was dismissed for want of proof. The record establishes that such a representation was made orally by respondents' salesmen, but it also establishes that it was in fact true. There is substantial, reliable and probative evidence in the record, unrefuted, that some persons who used respondents' advertising did in fact sell their property within a "short" time as a result thereof. Accordingly, it is concluded and found that such representation was not false, misleading, or deceptive.

7. Over 1,000 real estate brokers are affiliated with respondents.

a. Written Instrumentalities.

Several different written instrumentalities used by respondents and their salesmen clearly reveal that many prospects and customers could have been led to believe that over 1,000 or a large number of real estate brokers were affiliated with respondents and would handle and attempt to sell the customer's business. In nearly all, if not all, instances the salesman used a copy of the Buyers Digest in conjunction with his sales presentation. Commission's Exhibit 1 is such a Buyers Digest. On pages 49 to 58 thereof, after preceding editorial matter, appears a long list of brokers entitled "Brokers Roster," with the following subcaption appearing on each page: "The following nation-wide Brokers Roster contains licensed brokerage firms who may be of service in selecting the types of businesses and property in which you are interested." Each Digest contained such a roster. This list, coupled with the oral presentation here-

inafter considered, could well have led a prospect to believe that such brokers were actually affiliated with respondents and would handle the sale of the property. Of course, as noted above, such a representation would enhance the prospect's belief that he would not have to pay any charge unless his business was sold. In fact however, as found above, such brokers merely subscribed in writing to receive the Brokers Bulletin free of charge, and agreed to present the advertised information to any clients who might be interested. It will be noted that throughout the Brokers Roster no reference is made to the fact that they are merely subscribers to the Brokers Bulletin.

The contract forms and letters of acceptance further enhanced this representation. Commission's Exhibit 5, a typical form of contract, contains a large block on the inside pages captioned "Brokerage Coverage Throughout America." The legend thereafter contains no indication that such brokers are not affiliated with respondents. All letters of acceptance, of which Commission's Exhibit 63 is typical, contain the following: "The processing and distribution of your sales information has already begun. *It is being sent to hundreds of brokers* and will also be made available to the thousands of potential buyers reached in nationwide advertising campaigns." (Emphasis added.) Commission's Exhibit 88, a form of lead piece used by respondents, states: "Hundreds of independent brokers who are themselves in touch with a great number of prospective buyers can have the information on your business *placed in their hands.*" (Emphasis added.)

b. Orally.

In addition to the foregoing, numerous prospects and customers testified that the salesmen made such a representation orally. The undersigned heard such testimony with respect to the Illinois, Texas, Colorado and Massachusetts selling corporations. In addition, Commission's Exhibit 51, the respondents' instructions to salesmen, advises them to tell prospects that "something" (whether or not it is the business or the advertisement is not designated) will be: "placed in [the] hands of nearly 1,000 brokers throughout the nation," and further: "No exclusives." Such statements clearly carry a connotation of handling by brokers, since there is no element of exclusivity about an advertisement. The same instructions advise the salesmen to meet prospects' objections by telling them: "Advantage of U. I., Inc.: 1,000 brokers. Many with prospects right now for businesses of your type," and also: "Ads alone won't sell your business."

Because of Commission's Exhibit 51 and the making of this representation by means of written instrumentalities, as found above, there is no credibility problem with respect to this representation. Respondents admitted that no real estate brokers were "affiliated" with them and hence that if such a representation was made it was not true. In addition, the Commission's decisions in *Trans-Continental* and *Nichols & Associates*[3] establish that such subscribing brokers are not "affiliated or associated" brokers.

It is concluded and found that respondents, by means of written instrumentalities and oral statements of salesmen, made the aforesaid representation and that said representation was false, misleading, and deceptive.

8. State and other officials endorse respondents' activities and publication.

a. Written Instrumentalities.

There is no reliable, probative and substantial evidence in the record that respondents made any such representation by means of written instrumentalities. In the forepart of the editorial section of each Buyers Digest appears a special feature concerning the advantages, desirabilities, etc., of a particular State, accompanied by a letter of endorsement of the article by the Governor of the State. There is no dispute concerning the authenticity and accurateness of such material. In addition, the record contains evidence of letters of commendation and awards presented to Universal or the Buyers Digest by governors of other States. In the manner published, it would appear and is found that State officials have endorsed such activities and publications of respondents.

b. Orally.

Counsel supporting the complaint cite no testimony that such a representation was made orally by the salesmen. However, to some extent it appears that a few of the salesmen occasionally made reference to such articles and reproduced letters in the Buyers Digest. As found above, such a limited representation or use, if made, was in fact true. It is concluded and found that such representation was not false, misleading or deceptive.

9. If the "listed" property were sold through respondents' "listing," the payment of a broker's commission would be avoided.

As noted above, "advertised" and "advertisement" were substituted for the terms "listed" and "listing," and this representation was dismissed for want of proof with respect to written instrumentali-

[3] Trans-Continental Clearing House, Inc., et al., 56 F.T.C. 390 (1959); and Nichols & Associates, Inc., et al., 56 F.T.C. 426 (1959).

ties. There is no dispute that such a representation was made by some of respondents' salesmen and that it was in fact true. As clearly set forth in respondents' contracts, and as is evident from the nature of the arrangement and the testimony in the record, if a customer's property was sold as a result of the advertising, the payment of a broker's commission was avoided. The advertising fee set forth in the contract was the only fee charged any customer. It is concluded and found that while such representation was made by respondents, it was in fact true and was not false, misleading or deceptive.

C. *The Credibility Problem*

As previously indicated, the prior hearing examiner, since deceased, heard substantially all of the case-in-chief against the Eastern and Western selling corporations, while the undersigned heard the case-in-chief against the Midwestern respondents, a small part of the case against the Western respondents, and all of the defense. The parties concede that substantial issues of credibility are involved because the alleged oral representations of salesmen were refuted and denied by them before the undersigned. Section 5 (c) of the Administrative Procedure Act provides as follows:

> Separation of Functions.—The same officers who preside at the reception of evidence pursuant to section 7 shall make the recommended decision or initial decision required by section 8 except where such officers become unavailable to the agency * * * .

Because of the circumstances present herein, this Section would appear clearly applicable.

However, the Court of Appeals and the Commission have held that where credibility is involved, due process requires that the same hearing examiner see and hear the conflicting witnesses in order to properly evaluate their credibility. In the *Gamble-Skogmo* case,[4] where the Commission substituted another hearing examiner for one who had been retired compulsorily, and the substituted hearing examiner did not see or hear the witnesses, the Court of Appeals held that the Commission's order could not stand where a credibility evaluation was necessary unless the substitute examiner had been given the opportunity of seeing and hearing the conflicting witnesses testify. The Court described the presence of such a credibility conflict in the following manner:

> If, in arriving at some material fact or facts, either as a matter of direct determination or predicated inference, it is necessary to choose, or a choice is

[4] *Gamble-Skogmo* v. *FTC*, 211 F.2d 106 (8th Cir. 1954) [5 S. & D. 603].

undertaken to be made, on a personal basis, between things, which some witnesses assert and other witnesses deny, neither of which is inherently incredible, and such a choice is acceptingly or rejectingly capable of affecting the result, proper credibility evaluation is inescapably involved as a salient processive factor.

As indicated, exactly this situation is present herein, to the extent that it has not been obviated with respect to certain of the representations, as found above.

Substantially the same views were expressed by the Commission in three subsequently decided cases: *McKibben*, *Browning King* and *Art National Manufacturers Distributing Co.*[5] The Commission held that when credibility evaluation is a material factor the substitute hearing examiner must have seen and heard such witnessess testify. In conformity with these holdings, no finding has been made herein based upon the testimony of witnesses not seen and heard by the undersigned, which testimony was refuted and contradicted by witnesses heard by the undersigned. However, as noted above, it makes little if any practical difference in the outcome because of the responsibility of Universal for the activities of all of its agents, including the selling corporations and their salesmen, the concomitant responsibility of respondents Guyer, Bernardi and Salomon because of their individual formulation, direction and control of the policies, acts and practices of Universal, and the fact that each of them operates and controls his respective selling corporations.

D. *Respondents' Other Contentions*

Respondents' contention that as a matter of law their subscribing brokers might be considered as "affiliated" has previously been considered and found to be without merit. Respondents also contend that Universal is not liable for any misrepresentations of the salesmen of the selling corporations. It is undisputed that the selling corporations were the sales agents of Universal and hence this contention is without merit. Respondents raise the question of responsibility of the selling corporations for the misrepresentations of their salesmen, because it is undisputed that their written contracts prohibited any misrepresentation and provided penalties therefor. It is well settled that even under such circumstances the employing corporation is responsible for such misrepresentations.[6]

[5] *George McKibben & Son*, 56 F.T.C. 1645 (1959); *Browning King & Company, Inc.*, 59 F.T.C. 155, Docket No. 7060 (August 2, 1961); and *Art National Manufacturers Distributing Co., Inc.*, 58 F.T.C. 719, Docket No. 7286 (May 10, 1961).

[6] *International Art Co.* v. *FTC*, 109 F.2d 393 (7th Cir. 1940) [3 S. & D. 188]; *Standard Distributors, Inc.* v. *FTC*, 211 F.2d 7 (2nd Cir. 1954) [5 S. & D. 619]; and *National Trade Publications Service, Inc.* v. *FTC*, 300 F.2d 790 (8th Cir., March 29, 1962), [7 S. & D. 455].

As was stated by the Court of Appeals for the Second Circuit in the *Standard Distributors* case:

> Thus there is presented a situation where the salesmen did include sales, to the extent and effect as found, by misrepresentations which were made in violation of their instructions and despite honest efforts by the petitioners which were well calculated to prevent that.
>
> They were nevertheless the authorized agents of the corporate petitioner, though not of petitioner Bimstein, to sell the books. The misrepresentations they made were at least within the apparent scope of their authority and part of the inducement by which were made sales that inured to the benefit of the corporate petitioner. Unsuccessful efforts by the principal to prevent such misrepresentations by agents will not put the principal beyond the reach of the Federal Trade Commission Act * * *. (Citations omitted.)

Respondents also question the responsibility of the individual respondents for the activities of the corporate respondents and their salesmen, but where such individuals actively control, formulate, manage and direct the policies, acts, and practices of such corporations, the contrary is too well established to require extended discussion.[7]

E. *The Effect of the Unlawful Practices*

The acts and practices of respondents, as hereinabove found, have had and now have the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to such representations and thereby induce the purchase in commerce of a substantial quantity of respondents' services.

CONCLUSIONS OF LAW

1. Respondents are engaged in commerce and engaged in the above-found acts and practices in the course and conduct of their business in commerce, as "commerce" is defined in the Act.
2. The acts and practices of respondents hereinabove found 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 Act.
3. This proceeding is in the public interest and an order to cease and desist the above-found unlawful practices should issue against respondents.

ORDER

It is ordered, That respondents Universal Interchange, Inc., a corporation, its officers, Theodore M. Bernardi, Maurice Salomon,

[7] *FTC v. Standard Education Society*, 302 U.S. 112 (1937) [2 S. & D. 429]; *Standard Distributors, Inc. v. FTC*, 211 F.2d 7 (2nd Cir. 1954) [5 S. & D. 619]; and *Trans-Continental Clearing House, Inc.*, 56 F.T.C. 390 (1959); and cases cited therein.

and Paul M. Guyer, individually and as officers of said corporation; United Interchange, Inc., of Illinois and United Interchange, Inc., of Texas, corporations, their officers, Maurice Salomon, individually and as an officer of said corporations, and Lillian Salomon as an officer of said corporations; United Interchange, Inc., of New York and United Interchange, Inc., of Massachusetts, corporations, their officers, Theodore M. Bernardi, individually and as an officer of said corporations, and Pauline B. Bernardi as an officer of said corporations; Union Interchange, Inc., of Washington, Union Interchange, Inc., of Colorado, and Union Interchange, Inc., of California, corporations, their officers, Paul M. Guyer, individually and as an officer of said corporations, and Francelene A. Guyer as an officer of said corporations, and their agents, representatives, and employees, directly or through any corporate or other device, in connection with the solicitation, offering for sale or sale of the advertising of business or other properties, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that:

1. Respondents have available prospective buyers who are interested in the purchase of specific properties;
2. The customer will not be charged for the service unless the advertising results in the sale of the property;
3. Property sought to be advertised will be nationally advertised in newspapers, radio broadcasts, or periodicals or publications other than respondents' own; and
4. Over 1,000 or any other number of real estate brokers are affiliated with respondents.

It is further ordered, That respondents Universal Interchange, Inc., a corporation, its officers, Theodore M. Bernardi, Maurice Salomon, and Paul M. Guyer, individually and as officers of said corporation; United Interchange, Inc., of Illinois and United Interchange, Inc., of Texas, corporations, their officers, Maurice Salomon, individually and as an officer of said corporations, and Lillian Salomon as an officer of said corporations; Union Interchange, Inc., of Washington, Union Interchange, Inc., of Colorado, and Union Interchange, Inc., of California, corporations, their officers, Paul M. Guyer, individually and as an officer of said corporations, and Francelene A. Guyer as an officer of said corporations, and their agents, representatives, and employees, directly or through any corporate or other device, in connection with the solicitation, offer-

ing for sale, or sale of the advertising of business or other properties, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that:

1. Property sought to be advertised is underpriced and the asking price should be increased; and

2. Respondents maintain a list of prospective buyers of such property.

It is further ordered, That the allegations of the complaint with respect to representations 6, 8, and 9 set forth hereinabove be and hereby are dismissed.

Decision of the Commission and Order to File Report of Compliance

This matter having been heard by the Commission upon respondents' appeal from the initial decision and upon briefs in support thereof and in opposition thereto; and

The Commission having determined that the hearing examiner's findings and conclusions are fully substantiated on the record and that the order contained in the initial decision is appropriate in all respects to dispose of this matter:

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

It is further ordered, That the hearing examiner's initial decision filed July 31, 1962, be, and it hereby is, adopted as the decision of the Commission.

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

In the Matter of

SAMUEL A. MANNIS TRADING AS SAMUEL A. MANNIS AND CO., ETC.

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

Docket 8264. Complaint, Dec. 30, 1960—Decision, Aug. 2, 1963

Order requiring one of the largest exclusive retail fur dealers in the Los Angeles metropolitan area to cease violating the Fur Products Labeling Act by advertisements in newspapers which set forth earlier or comparative prices

without stating the time they were in effect and failed to set forth required information, and failing to keep adequate records as a basis for pricing claims.

COMPLAINT

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

PARAGRAPH 1. Samuel A. Mannis is an individual trading as Samuel A. Mannis and Co. and Furs by Mannis, with his office and principal place of business located at 6340 Hollywood Boulevard, Hollywood, California.

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

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

PAR. 4. Certain of said fur products were falsely and deceptively advertised in violation of the Fur Products Labeling Act in that respondent caused the dissemination in commerce, as "commerce", is defined in said Act, of certain newspaper advertisements, con-

cerning said products, which were not in accordance with the provisions of Section 5(a) of the said Act and the Rules and Regulations promulgated thereunder; and which advertisements were intended to aid, promote and assist, directly or indirectly, in the sale and offering for sale of said fur products.

PAR. 5. Among and included in the advertisements as aforesaid, but not limited thereto, were advertisements of respondent which appeared in issues of the Los Angeles Times, a newspaper published in the city of Los Angeles, State of California, and having a wide circulation in said State and various other States of the United States.

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

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

(b) Setting forth earlier or former comparative prices without stating the time of the earlier or former comparative prices in violation of Rule 44(b) of said Rules and Regulations.

(c) Represents directly or by implication through such statements as "Federal Trade Commission law states 'no fur nor fur product shall be labeled, invoiced or advertised in any manner which is false, misleading or deceptive in any respect'" that the Federal Trade Commission has approved the labeling, invoicing or advertising of respondent when such is not the fact, in violation of Section 5(a)(5) of the Fur Products Labeling Act.

(d) Contained information required under Section 5(a) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder which was not set forth in type of equal size and conspicuousness and in close proximity with each other, in violation of Rule 38(a) of said Rules and Regulations.

PAR. 6. In advertising fur products for sale as aforesaid respondent used comparative prices, percentage savings claims and claims that prices were reduced from regular or usual prices. Respondent in making such claims and representations failed to maintain full and adequate records disclosing the facts upon which such

claims and representations were based in violation of Rule 44(e) of said Rules and Regulations.

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

Mr. John J. McNally, for the Commission.

Mr. Jerome Weber and *Mr. Jerome M. Bame*, Los Angeles, Calif. for respondent.

INITIAL DECISION by LOREN H. LAUGHLIN, HEARING EXAMINER

October 31, 1962

Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act, the Federal Trade Commission, on December 30, 1960, issued and subsequently served its complaint in this proceeding upon respondent, charging him with certain violations of the Fur Products Labeling Act and certain of the Rules and Regulations promulgated thereunder. Respondent answered said complaint on February 10, 1961, in substance denying all material allegations of the complaint except those pertaining to his name, trade names, business address, and his engagement in "commerce" in the "fur" and "fur products" business, as the same are defined and covered by the Fur Products Labeling Act.

The complaint charged three basic classes of violations, comprising in all six separate, distinct and particular types of alleged violations by respondent of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder. All of such charges have been vigorously contested in this proceeding. In substance they are:

1. Misbranding by affixing to garments labels containing fictitious prices and misrepresenting the same as regular prices of the fur products so labeled:

2. False and deceptive advertising:

(a) by stating reductions in prices from fictitious regular and usual prices;

(b) by setting forth earlier or comparative prices without stating the time the same were in effect;

(c) by representing that the Federal Trade Commission had approved respondent's labeling, invoicing or advertising practices; and

(d) by setting forth required items of related information in type not of equal size and conspicuousness, and not in close proximity to each other; and

3. Failing to maintain full and adequate records showing the basis for stated comparative and reduced prices, and savings claims.

In this initial decision it is found and determined that respondent has violated the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder, in each of the said six particulars charged in the complaint.

Hearings were held in Los Angeles, California, June 12 to 16, inclusive, and June 19, 1961. At the end of such hearings both parties rested and the case was closed for the taking of evidence, subject to the right of each of the parties to file motions thereafter to strike and reinstate certain evidence. Opposing contentions on various matters were presented by counsel from time-to-time as they arose during the hearings; hence, there was no request for oral argument. Within the times fixed therefor, counsel supporting the complaint filed his motion to strike on September 15, 1961, and respondent filed his motions to strike and to reinstate evidence on September 20, 1961. Answers to the said motions were filed by each of the parties, respectively, on September 29 and October 13, 1961. The hearing examiner, on October 23, 1961, by order, confirmed all rulings relating to evidence theretofore made on the record, and denied the several said motions of the parties without prejudice to their future presentation in connection with counsel's proposed findings.

Numerous proposed findings of fact, conclusions of law, and a proposed order were duly submitted by each of the parties, on February 1, 1962. Counsel have extensively analyzed the evidence, but only counsel supporting the complaint has cited and discussed various Commission and judicial decisions pertinent to the evidence. All proposed findings which are not herein adopted, either expressly or in substance and effect, are hereby rejected; all rulings heretofore made in this proceeding are hereby confirmed; and any pending motions or objections not heretofore expressly granted, denied, or overruled are hereby denied or overruled.

The hearing examiner has carefully and fully reviewed the whole record, taking into consideration his observation of the appearance, conduct, and demeanor of the witnesses. All arguments, proposals and briefs of counsel have been thoroughly examined and duly considered in the light of the entire record. Upon the whole record, the hearing examiner finds generally that counsel supporting the

complaint has fully sustained the burden of proof incumbent upon him, and has established by reliable, probative and substantial evidence and the fair and reasonable inferences drawn therefrom, all of the material allegations of the complaint upon each of the several charges therein set forth. Upon the whole record, the hearing examiner therefore makes the following:

FINDINGS OF FACT

In General

None of the facts found herein are in substantial dispute. Counsel are in fundamental disagreement, however, as to whether the established facts constitute proof of any of the charges of the complaint, since counsel differ basically as to the inferences to be drawn from undisputed facts, and also as to the meaning of the law to be applied to such facts.

The evidence consists of the testimony of five witnesses, and 39 exhibits, as well as certain stipulated facts. While six witnesses testified, one of them gave no evidence of any value. This witness, Edgar Gevirtz, a friendly competitor of respondent, knew nothing of the facts involved herein. He attended the hearing under subpoena duces tecum issued at the request of counsel supporting the complaint, and was definitely an unwilling witness. When it clearly appeared that he had been called only to give expert opinion testimony on wholesale fur markets and prices, the witness was informed by the hearing examiner of his privilege of election to testify or not to testify as an expert witness and his right to receive adequate agreed compensation therefor, he respectfully declined to testify and was excused. All other witnesses were permitted to be extensively examined and cross-examined.

Approximately three-fourths of the testimony consists of that given by two witnesses, namely, the respondent, both as an adverse witness called by the Commission and later on his own behalf, and Kerper G. Propert for the Commission. Propert was an experienced investigator in what was the Commission's Division of Wool, Furs and Flammable Fabrics, since redesignated as its Bureau of Textiles and Furs. He conducted the investigation out of which this proceeding has arisen. This investigation was extensive, and consumed about a 4-week period from about August 23 through September 19, 1960. Propert was an exceedingly fair witness. On his long cross-examination over strong objections he was permitted, albeit reluctantly, to give a number of opinions. He was the expert

called by the Commission, and respondent was entitled to full and fair cross-examination. Propert, however, was admittedly not an attorney at law (R. 432), and many of his answers were, either based, at least partially, upon legal conclusions, or upon limited hypotheses of facts. Insofar as his answers are inconsistent with findings made and conclusions drawn herein, they are rejected.

The Commission also presented the testimony of Harold Shepard, connected with A. I. Lipsey, Incorporated, a wholesale fur concern, which was one of respondent's suppliers, who produced records of his firm relating to his wholesale price offers to respondent and various other retailers; and Alfred A. Weiss, the general manager of respondent's fur store, who testified very briefly respecting the use by employees of coded prices on garment tags. Respondent called Abraham Shafran, of Malvin & Shafran, Inc., another wholesale furrier and supplier of respondent, who testified concerning fur sales made to respondent. Counsel supporting the complaint was not permitted to impeach or contradict this witness, or cross-examine by inquiring concerning a consent order against his firm and himself and other officers, Docket 7307, *Malvin & Shafran, Inc., et. al.* (1959), 55 F.T.C. 1785, because respondents in such matters admit no violation of law (R. 513-515).

Of the 39 exhibits, 31 were those of the Commission, and eight were those of respondent. Numerous exhibits identified by counsel supporting the complaint either were not subsequently offered in evidence, or, if received, were later withdrawn because all of these various exhibits were stipulated either to be duplicates of or substantially exemplified by other exhibits already in evidence. The Commission's exhibits consist of a number of respondent's newspaper advertisements; certain of his invoices; various fur garment labels of respondent, or true copies thereof; and a number of tabulations made from, or based upon, data found in respondent's labels and stockbook, by the Commission's representative Propert, assisted to some extent by Edwin H. Anderson, also an experienced investigator. Respondent's exhibits consist of numerous invoices and related tabulations, and copies of certain sheets from the stock record book of said Malvin & Shafran, Inc.

No complaining retail customer of respondent testified during this proceeding to having been deceived or misled by any of respondent's advertisements or labels. The quality, genus, or origin of respondent's furs are not in question herein. Several of the charges of the complaint depend upon the fair inferences to be drawn from the tabulations and averages made by Propert from his in-

spection of respondent's labels and stock record book. Many of the respondent's garments advertised by their respective stock numbers had been sold and their labels were gone before the investigation commenced, and respondent had utterly failed to keep any record of his actual pre-sale prices. For these as well as for other reasons, no direct and precise comparison of respondent's advertised prices with the prices at which he actually labeled or sold such garments could be made. These matters are hereinafter more fully set forth in connection with the particular charges to which they relate.

The following undisputed facts pertain to the general background upon which the several specific charges are based:

Samuel A. Mannis is an individual trading as Samuel A. Mannis and Co. and Furs By Mannis, with his office and principal place of business located at 6340 Hollywood Boulevard, Hollywood, in Los Angeles, California. He is an experienced retailer of furs, dealing directly with the consuming public, and is one of the largest, if not the largest, of the exclusive retail fur dealers in the Los Angeles metropolitan area. He most frequently advertises himself as operating "America's Largest, Most Beautiful Fur Salon!"

Subsequent to the effective date of the Fur Products Labeling Act on August 9, 1952, respondent, in the course of his said business, has been for some years past, and is now, engaged in the introduction into commerce and in the sale, advertising and distribution in commerce, of fur products; and has sold, advertised, offered for sale, transported and distributed fur products which have been made in whole or in part of fur which had been shipped and received in commerce, as the terms "commerce", "fur," and "fur product" are defined in the Fur Products Labeling Act.

Respondent, in the course of his said business, has also caused the dissemination in commerce, as "commerce" is defined in said Act, of a substantial number of newspaper advertisements concerning his fur products. Such advertisements were intended to, and did, aid, promote and assist, directly or indirectly, in the sale and offering for sale of said fur products. The advertisements in evidence or referred to herein appeared for some nine months, during the months of February through early December, 1960, in various and numerous issues of the Los Angeles Times, the Los Angeles Examiner and the Los Angeles Herald-Express, all such newspapers being published in the city of Los Angeles, State of California, and each having a large and wide circulation in said State and various other States of the United States. The respondent also ran some special sale advertisements during March, 1960, in

two newspapers published in Las Vegas, Nevada, which were disseminated in commerce. From these many advertisements and respondent's own testimony, it is established that he engages several times each week in various types of special bargain fur sales. Respondent claims, however, that much of his business comes from regular established trade, independent of sales advertisements, and that he advertises primarily to be competitive and to keep his name before the public.

In the operation of his business Mannis, as sole owner, actively exercises general executive control, particularly over the buying of fur products and the fixing of prices. He employs, as his general manager, the aforementioned Alfred Weiss, and his assistant, but no relation to him, Gilbert Weiss, who is respondent's son-in-law; Sidney Stevens, as his sales manager and assistant buyer; and a number of retail sales clerks.

Before passing to the evidence relating to the six particular charges of the complaint, certain basic and well-settled legal principles applicable to the case in general must be stated. In view of the widespread abuse of public confidence long existing in the fur business, the purpose of Congress in enacting the Fur Products Labeling Act was to make its provisions specific for the protection of the retail customer, the ultimate consumer. *F.T.C.* v. *Mandel Brothers, Inc.* (1959), 359 U.S. 388–389 [6 S.&D. 557, 561]. The Act must be interpreted hospitably with that end in view (id. 389). This decision is followed in a prior case against respondent here, *Mannis* v. *F.T.C.* (C.A. 9, 1961) 293 F. 2d 774, 777 [7 S.&D. 214, 217], where it was also held that the Act "places an affirmative burden on a fur seller to state the truth respecting his furs offered for sale" (id. 777). The detailed Rules promulgated by the Commission pursuant to the Act have been validly adopted (*Housing Corporation* v. *F.T.C.* (C.A. 2, 1961) 290 F. 2d 803, 807) [7 S.&D. 106, 110]. Congress did not provide the Federal Trade Commission with the flexibility and latitude it has in the enforcement of § 5 of the Federal Trade Commission Act (*Gimbel Brothers, etc.*, F.T.C. Docket 7888 (February 23, 1962) [60 F.T.C. 359], page 10 of mimeographed copy of opinion). This case holds that a single advertisement was sufficient to sustain a cease-and-desist order when respondent had theretofore broken faith with the Commission (pages 8–10). The Commission had held in *Samuel A. Mannis, etc.* (1960), 56 F.T.C. 833, at page 855, that even technical violations of the Act and Rules should be prohibited, and its order was sustained in *Mannis* v. *F.T.C.*, supra, 293 F. 2d at pages 776–777 [7 S.&D. 216–217]. Claims made by respondents in other

cases that violations of the Act and Rules, as found by the Commission, were technical and trivial, also have been repeatedly rejected by the Courts. See *Mandel Brothers, Inc.* v. *F.T.C.* (C.A. 7 1958) 254 F. 2d 18, 21 [6 S. & D. 388, 391]; and *Hoving Corporation, etc.* v. *F.T.C., supra*, 290 F. 2d at pages 805–806 [7 S.&D. 108–109].

Of the six separate charges of the complaint hereinafter enumerated, each of two stands independently upon inspection of the advertisements on which it is based: namely, charge 2(c), that of representing that the Commission has approved respondent's various practices, and charge 2(d), that or failing to set forth required items of related information in type of equal size and conspicuosness and in close proximity to each other. Charge 3, that respondent failed to maintain full and adequate records, is in substantial measure the basis for each of the remaining three charges, charge 1, misbranding by affixing labels containing fictitious prices, charge 2(a), the advertising of fictitious prices; and charge 2(b), the failure to set forth the time when earlier or comparative prices were in effect. The charges will be determined in the foregoing order.

Findings and Conclusions as to Charge 2(c) That Respondent's Advertising Represents Commission Approval of His Practices

It is charged in paragraph 5(c) of the complaint that respondent has falsely and deceptively represented in his advertising, directly or by implication, that his labeling, invoicing, or advertising has been approved by the Federal Trade Commission. It is contended that this violates 5(a)(5) of the Fur Products Labeling Act. In the midst of a mass of various sales propaganda with reference to his standing in the fur business and to the prices and quality of his fur products, respondent has inserted an emphasized block, or "F.T.C. box," as respondent refers to it (R. 13), in each of numerous separate newspaper advertisements (Examples: CX 7–A, Los Angeles Times, April 2, 1960, CX 8-A, Los Angeles Times, June 20, 1960; and CX 11–A, Los Angeles Times, July 5, 1960). Following the words "Read The Facts" in large, boldface type, the "box" appears in such ads:

FEDERAL TRADE COMMISSION LAW STATES "NO FURS NOR FUR PRODUCTS SHALL BE LABELED, INVOICED OR ADVERTISED IN ANY MANNER WHICH IS FALSE, MISLEADING OR DECEPTIVE IN ANY RESPECT"

That other identified advertisements of respondent contained this statement was stipulated on the record, and such exhibits withdrawn or not offered (page 13).

Counsel supporting the complaint contends that basically the advertisements speak for themselves; and further contends that their impropriety should be adjudged particularly because respondent already had been prohibited by the Commission from misbranding his fur products and from falsely and deceptively invoicing and advertising such products in Docket 7062, *Samuel A. Mannis, etc.*, in which matter the Commission had then only recently issued its final order to cease and desist on February 9, 1960 [56 F.T.C. 833]. This proceeding was, at the respective times of the publication of said advertisements, in process of appeal to the Court of Appeals of the Ninth Circuit, which Court later, on August 28, 1961 [7 S.&D. 214], denied the appeal and affirmed the Commission's order in all respects (*Mannis* v. *F.T.C., supra*).

Upon reading the said advertisements in full context, it must be concluded therefrom that the inclusion of this broad, although legally correct, statement of law in the context of respondent's advertising implies full and general sanction, endorsement and approval by the Commission of respondent's labeling, invoicing and pricing practices, including any and all such matters which are set forth or referred to in the advertisements themselves. Such use of statutory language falls within the ambit of an exceedingly audacious, unfair, misleading and highly improper practice. While the statement by itself, as to the law, is correct, its inclusion in the midst of respondent's advertising matter could have no other purpose than to mislead the buying public into believing that respondent's advertising claims and other practices had been approved by the Federal Trade Commission because they were in full compliance with the law; and therefore such inclusion would be unfair competition. This statement in that context certainly has the capacity so to mislead the public and to be unfair to competitors.

An analogous situation involving unwarranted and improper use of judicial orders in promotional statements an endorsements or vindications of challenged activities of a respondent met with strong condemnation by this Commission in Docket 6962, *Mytinger & Casseberry, Inc., et al.* (Sept. 28, 1960) [57 F.T.C. 717] mimeographed copy of opinion, pages 4–8. See also Docket 7844, *Pioneers, Inc.* (1960) [57 F.T.C. 552], prohibiting any statements to the effect that the Commission had approved that respondent's battery product by dismissing its earlier complaint against respondent in Docket 6190, 52 F.T.C. 1351 (1956). While not referring to it in his proposed findings, during the trial counsel supporting the complaint also cited the Commission's Rule 46, and contended it was

the basic controlling authority on this point. This Rule provides as follows:

> No representation nor suggestion that a fur or fur product is guaranteed under the Act by the Government, or any branch thereof, shall be made in the labeling, invoicing or advertising in connection therewith.

Since this charge is not based upon an alleged violation of said Rule, a conclusion premised thereon would be prejudically erroneous, and therefore such contention is disregarded herein.

Respondent's counsel jested about this charge during the hearings, to the effect that respondent should be commended by the Commission for advising the general public, entirely at respondent's expense, that "the Federal Government * * * is actually interested in their welfare" (R. 26). Evidently realizing the real effect of such representation, however, such counsel, apparently more seriously, contends that § 5(a)(5) of the Fur Products Labeling Act must be narrowly construed as prohibiting false and deceptive statements about the fur product itself, and hence the language here under attack establishes no violation of such Act. The said statutory provision, however, clearly states (insofar as material to this point):

> For the purposes of this Act, a fur product or fur shall be considered to be falsely or deceptively advertised if any advertisement * * * contains any form of misrepresentation or deception, directly or by implication, with respect to such fur product or fur.

This provision has been repeatedly held to cover false advertising of prices or "any form of misrepresentation", as the statute so plainly says. See *De Gorter* v. *F.T.C.* (C.A. 9, 1957), 244 F. 2d 270, 276–279 [6 S.&D. 310, 317–321]; and *Mandel Brothers, Inc.* v. *F.T.C.* (C.A. 77, 1958), 254 F. 2d 18, 20–21 [6 S.&D. 388, 390–391].

Respondent's counsel further urges that no independent witnesses have been called to interpret the advertising statement in question to convey the meaning that counsel supporting the complaint contends it does. For nearly twenty years it has been uniformly held in numerous decisions that the Commission need not sample public opinion to interpret advertising, but may determine from its own experience the meaning and probable effect of advertising statements upon the public mind. See *Niresk Industries, Inc.* v. *F.T.C.* (C.A. 7, 1960), 278 F. 2d 337, 341–342 (and cases cited) [6 S.&D. 727, 732–734], *cert. den.* (1960) 364 U.S. 883 Respondent's own similar contention to like effect in *Mannis* v. *F.T.C.*, *supra*, 293 F. 2d 777, was rejected.

It is urged, in essence, by counsel supporting the complaint that since the Commission's order in the prior case against respondent had just been issued and the appeal to the Ninth Circuit was

then pending, when these advertisements were published, this increases the impropriety and culpability of respondent as to this charge. While no encomium for good taste or respect for the law is due respondent for his use of this language in his said advertising, his motive and intent are immaterial in this type of proceeding, and no penalty is assessable therefor.

While respondent's counsel claims that this type of advertising is no longer being used (R. 135), there is neither any admission that such practice is unlawful, nor any evidence nor assurance that respondent has definitely and permanently abandoned this type of representation in his advertising. It is therefore determined and concluded that in the context of these said advertisements, the use of the above-quoted language is false, misleading, and deceitful, and violative of § 5(a)(5) of the Fur Products Labeling Act.

Findings and Conclusions As To Charge 2(d) That Respondent Has Failed in His Advertising Properly to Print and Associate Related Required Items of Information

It is charged in paragraph 5(d) of the complaint that certain types of required information contained in respondent's advertisements were not set forth in type of equal size and conspicuousness and in close proximity with each other, in violation of Rule 38(a) of the Rules and Regulations promulgated under § 5(a) of the Fur Products Labeling Act.

Rule 38(a), insofar as material to this charge, provides:

> In advertising furs or fur products, all parts of the required information shall be stated in close proximity with each other and, if printed, in legible and conspicuous type of equal size.
>
> * * * Nor shall * * * [nonrequired] information or representations be set forth or used in such manner as to interfere with the required information.

The evidence pertaining to this charge consists of statements made in several of respondent's advertisements, Commission's Exhibits 4, 9 and 25, appearing in several Los Angeles newspapers of large national circulation. These were stipulated to exemplify numerous other like advertisements (R. 9, 14). In Commission's Exhibit 4 there appears a page-length, 3-column ad published in the Herald-Express on February 17, 1960. It sets forth near its beginning a list of furs only generally described in eight classes as follows:

*Studio Rentals!
*Window Display Furs! *Sample Furs! *Trade-Ins!
*Also Fashion Show Furs! *Unclaimed Layaways!
*Unclaimed Storage! *Repossessions!

This list appears in boldface type of approximately 48-point size, and is followed by six inches of other matter, including much of nonrequired character. Then appears "*Used Second Hand Furs" in boldface type of approximately 12-point size. The type-size ratio of the fur description to that of the widely separated and purportedly related footnote is about 4-to-1, and is *per se* violative of Rule 38(a).

Commission's Exhibits 9 and 25 are substantially identical ads appearing respectively in the Times of July 8, 1960, and the Examiner of July 11, 1960. They are two-column ads, one column full-page length and the other about one-half page length. The ad at the top states in large, varying size, boldface capital letters: "ANNUAL CLEARANCE OF STUDIO RENTAL FURS." Following some seven inches of other matter, on the lower third of such ads appears: "This Is A Partial Listing! See Them All!," followed by a list of 19 specific furs and their prices, an asterisk following each price. This list is printed in standard 12-point type, the prices in boldface type of the same size. Then comes three linear inches of nonrequired information in various large boldface types, and at the extreme bottom of the ad, in miniscule type, appears, "Used Second Hand Fur." What may have been intended to be an asterisk apparently printed only as a dot, due to the very small type used. The type-size ratio of the listed furs and their prices to that of the separated and purportedly related footnote is definitely violative of Rule 38(a), particularly as the said footnote is not in conspicuous type. A footnote or marginal note, by its very nature, can seldom be in close proximity to the textual matter to which it relates; is confusing and deceptive to the unskilled reader; and under Rule 38(a), should never be used in the advertising of furs and fur products.

That fur products are used or second hand is information that is required to be stated in advertising, both by § 5(a)(2) of the Fur Products Labeling Act and by Rules 21 and 23 thereunder. It is contended and testified to, in substance, however, by respondent (R. 101, 102 and 105) that while some of the above-described furs would certainly be second hand, others, such as "unclaimed layaways," "window display furs" and "sample furs," would be new, and that fashion-show furs might be considered as either new or used. Since all these classes of furs listed, referred to in the foregoing advertisements, were designated as used or second-hand furs by respondent himself, the only question involved here is his failure so to indicate, in type the same in size and conspicuousness, and in

close proximity to the furs named or listed, in accordance with Rule 38(a). It is immaterial whether such failure would deceive the general public, since the Rule is so specific as to permit no variance.

It is obvious from even a casual examination of the ads here in question that they do not conform to Rule 38(a). The footnote language in all of these ads, stating that the furs for sale are used or second hand, is definitely not in the same size type, nor equally conspicuous as, nor in close proximity to, the description of the furs advertised. Each ad speaks for itself, and needs only analysis in the light of the Rule. Hence it is determined and concluded that respondent has violated Rule 38(a) of the Rules and Regulations promulgated under § 5(a) of the Fur Products Labeling Act.

Findings and Conclusions As To Charge 3, That Respondent Has Failed To Maintain Full And Adequate Records

It is charged in paragraph 6 of the complaint that respondent, in violation of Rule 44(e), failed to maintain full and adequate records disclosing the facts upon which his claims and representations as to comparative prices, percentage savings, and reductions from regular or usual prices were based. This rule provides:

> Persons making pricing claims or representations of the types * * * [advertisements "with comparative prices and percentage claims except on the basis of current market values or unless the time of such compared price is given"] * * * shall maintain full and adequate records disclosing the facts upon which such claims or representations are based.

It is now well established that furriers must, under Rule 44(e), keep such records as will be "an aid to the Commission in investigating and determining if false or deceptive advertising claims have been made" and shall "indicate the facts on which they made their claim so that the Commission can determine the propriety of making such a claim on those facts" (*Morton's, Inc.* v. *F.T.C.* (C.A. 1, 1961), 286 F. 2d 158, 163–164 [7 S.&D. 6, 12–13], followed in *Gimbel Brothers, etc.*, Federal Trade Commission Docket 7888 (February 23, 1962) [60 F.T.C. 359], mimeographed Commission opinion, page 9).

The evidence herein is clear that the respondent has not maintained any record whatsoever of the prices at which he formerly sold the furs he had advertised on numerous occasions at reduced prices. The Commission's representative, Propert, although given full cooperation by the respondent, upon careful checking of respondent's business records and diligent search over a period of some ten or twelve days, for a total of from 30 to 60 hours, in respondent's place of business (R. 429), could find no records of

prices to sustain the pricing claims made by respondent in his various advertisements in evidence here, except as to one special purchase of furs made in New York (R. 330–332, 336, 359). Respondent's records consisted of a stock record book, purchase invoices, and certain entries as to cost of furs as set by respondent after their purchase. Each fur product was identified by a specific item number which was to be found in the invoice file. While labels and tags showing the alleged current prices of garments then in stock were attached thereto, these are not records of permanent character required by the Rule. Respondent repeatedly admitted, and even glorified his position, that he was not required to, and did not, keep any permanent record of his actual past or currently set selling prices (R. 125–131, 141–143, 744–751). He particularly testified that he had once considered setting down his retail prices, but had decided against doing so, as his inflated retail prices "would look a little ridiculous" because they "would be strictly fictitious to begin with" (R. 93). He relied, however, on several things which he claimed were sufficient to justify his advertising "was" and "now" selling prices and the like. Among these were his alleged general knowledge of the fur business, the cost to him of the garments, his specific recollection of the items which he had sold, his ability to go to the racks where garments were hung and identify the price from the tag affixed thereto, his usual selling prices, and the formula on which he set up his prices, based upon his costs. These matters of personal skill and memory on the part of respondent or any of his employees do not comprise records in any sense. Adequate and appropriate records, by their very nature, cannot be kept in one's memory, where they are not accessible to inspection as provided in said Rule.

The Commission, in determining whether a violation has occurred, cannot be expected to rely upon the vagaries and faulty recollection of any furrier, unsupported by permanent written records. Respondent's claims that he kept the evidence as to the "cost" of garments and that his prices were established on a fixed formula of "cost" are irrelevant. The evidence shows he actually had no regular fixed formula, but raised or lowered prices according to his then judgment of the current market value of each garment. However liberally construed, the Commission's said Rule requires that a furrier must "keep such records as are needed to disclose the truth or falsity of the pricing representations made". That the maintenance of such records would be unduly burdensome, as claimed by respondent, is wholly irrelevant to the requirements of Rule 44(e) *(Gimbel Brothers, supra)*.

It is therefore determined and concluded that respondent has failed to maintain full and adequate records disclosing the facts upon which his claims and representations as to comparative prices, his percentage-savings claims, and his representations as to reductions from regular or usual prices were based, and is therefore in violation of Rule 44(e) of the Rules and Regulations promulgated under the Fur Products Labeling Act.

Findings and Conclusions As To Charge 1, That Respondent Misbranded His Fur Garments By Attaching Labels Bearing Fictitious Prices

It is charged in paragraph 3 of the complaint that certain of respondent's fur products were misbranded in that labels affixed thereto contained fictitious prices, and misrepresented the regular retail selling prices of such fur products by setting forth purported regular prices higher than the retail prices at which respondent, in the recent regular course of his business, had usually and regularly sold such fur products, in violation of § 4(1) of the Fur Products Labeling Act.

Said § 4(1) of the Act provides:

* * * a fur product shall be considered to be misbranded—(1) if it is falsely or deceptively labeled or otherwise falsely or deceptively identified, or if the label contains any form of misrepresentation or deception, directly or by implication, with respect to such fur product * * *.

Since respondent had maintained no records whatsoever of any of his actual selling prices, Propert, the Commission's investigator, made an extensive analysis of such data as he could find, and prepared therefrom a series of tabulations (CXs 18 through 24) made up from the pricing and code data found on the labels of some 288 fur products which were in respondent's stock at the time of the investigation. He also made copies of exemplary labels or tags attached to garments in respondent's then current stock (CX 16 series). These pricing studies show that the prices on respondent's garment labels or tags are generally 15% higher than the actual selling prices, which were frequently arrived at after negotiations with customers.

The yellow tags described the genus, origin, item numer and type of garment, as well as its alleged current selling price. This was the tag the customer could see and read. A green ticket or tag, also attached to such garment, contained a coded price for the information of the salesman, and a cost indication keyed to respondent's stock record book, about which the salesman was not permitted to know anything. While the record is clear that the

salesmen could not, and did not, know the cost of the garment to respondent, and were not permitted to reduce the price of any garment unless especially authorized to do so after conference with respondent or one of his executives, and that such reduction in price to effect a sale took place only on certain occasions, nevertheless such fictitious pricing practice falls within the judicial condemnation enunciated in *De Gorter, et al.* v. *F.T.C.*, (C.A. 9, 1957), 244 F. 2d 270, 281 [6 S. & D. 310, 323].

> On each garment there were three prices: a ticketed top price written in dollars and cents, fixed arbitrarily by the * * * [furriers] * * *. To guide the sales person, two additional prices, *in code*, were placed upon the tag—at either of which the fur could be sold, the percentage of the sales person's commission depending on the price secured. The ticketed price was merely a *bargaining* price, of the type which characterizes oriental huckstering.
>
> * * * * * * *
>
> As already appears, the ticketed price was merely the highest price that the * * * [furriers] * * * had placed on the garment, which, when reduced by the sales person to the coded prices, led the customer to believe he was "picking up" a bargain which, in reality he was not.

Such practice has most recently been held illegal by the Commission in Docket 8446, *Edgar Gevirtz, etc.* July 17, 1962 [61 F.T.C. 74]. (Gevirtz is the reluctant expert witness called herein for the Commission, who was excused as hereinbefore stated.)

Respondent testified that some of his customers desire to bargain, and he urges that he has the right to bargain and change his prices to hold his trade. Of course, if his advertised and labeled prices are the actual, true record and sale prices of his product, the merchant has a right to bargain with his customers. But whatever rights he may have to bargain, he cannot advertise and label his products with fictious prices, and then reduce such prices in his bargaining, so that the customer is deceptively led to believe that he is the beneficiary of a great cut in price, which is the practice of respondent as herein established.

It is therefore determined and concluded that respondent has misbranded his fur products as charged, in violation of § 4(1) of the Fur Products Labeling Act.

Findings and Conclusions As To Charge 2(a), That Respondent's Advertisements Contain Fictitious Prices

It is charged paragraph 5(a) of the complaint that by means of his said advertisements, respondent has falsely and deceptively represented the prices of his fur products as having been reduced from his regular or usual prices, when the so-called regular or usual

prices were in fact fictitious, in that they were not the prices at which said products were usually sold by respondent in the regular course of his business, in violation of §5(a)(5) of the Fur Products Labeling Act and Rule 44(a) of the Rules and Regulations promulgated thereunder.

Section 5(a)(5) of the Fur Products Labeling Act provides:

> * * * a fur product or fur shall be considered to be falsely or deceptively advertised if any advertisement, representation, public announcement or notice which is tended to aid, promote, or assist directly or indirectly in the sale or offering for sale of such fur product or fur—(5) * * * contains any form of misrepresentation or deception, directly or by implication, with respect to such fur product or fur * * * .

Rule 44(a) provides:

> No person shall * * * advertise a fur or fur product at prices purported to be reduced from what are in fact fictitious prices, nor at a purported reduction in price when such purported reduction is in fact fictitious.

Respondent has been very resourceful in his advertising. He has cleverly offered his fur products for sale in a wide variety of ways, stating the same general theme of substantially reduced prices by using a multitude of differing arrangements of words and figures all to the same end, the deception of the retail customer.

The numerous advertisements in evidence show the following representative types, among others, of advertising with respect to reduced prices:

> "Was" and "now" prices listed with the words "up to ½ off" (CXs 3, 6 and 13);
> Usually sells for $500 to $700 — sale price $299" (CXs 7, 8, 12 and 14);
> "Save up to ½ of original price — now as low as $1695," etc. (CXs 10, 15–A and –B);
> "At drastically reduced prices — $88," etc., for various garments (CX 14); and
> "Out they go at fantastic bargain prices," followed by listed prices for specific garments (CX 25).

Since respondent maintained no record of his regular and usual prices, the tabulations and computations prepared by Propert establish beyond question that the "regular or usual" prices advertised by respondent must, of necessity, have been fictitious. And since the Act "places an affirmative burden" on respondent "to state the truth respecting his furs offered for sale" (*Mannis* v. *F.T.C.*, *supra*), and he has offered no such proof, his contentions in defense of this charge, like all his other defenses made herein of justification or

excuse for his unlawful acts, are rejected as entirely irrelevant. The falsity of his alleged prices is clearly shown.

It is therefore determined and concluded that respondent has published fictitious prices in his advertising, in violation of § 5(a)(5) of the Fur Products Labeling Act, and Rule 44(a) of the Rules and Regulations promulgated thereunder.

Findings and Conclusions As To Charge 2(b), That Respondent Has Set Forth Earlier Or Former Comparative Prices Without Stating The Time When Such Prices Were In Effect

It is charged in paragraph 5 of the complaint that respondent, in violation of Rule 44(b) of the Rules and Regulations promulgated under the Fur Products Labeling Act, has set forth earlier or former comparative prices in his advertising, without stating when such prices were in effect.

Rule 44(b) provides:

> No person shall, with respect to a fur or fur product, advertise such fur or fur product with comparative prices and percentage savings claims except on the basis of current market values or unless the time of such compared price is given.

In *Associated Dry Goods Corp., et al.* (1959), 56 F.T.C. 638, 655, it was held that where in advertising the price of their fur products, respondents, also Los Angeles furriers, used such terms as regularly," "formerly," "originally" and "was" prices, set out in comparison to "now" prices which were lesser,

> the lower figures indicated the prices at which the garments were then being offered to the public; the higher figures indicated the prices at which the garments previously had been offered for sale by the respondents. This is * * * evident from the wording of the representations. Since respondents' former prices are shown in these price comparisons, rather than current market values, the time at which the former prices were in effect should have been stated so as to comply with Rule 44(b). We conclude that violations have been shown in this respect * * *.

The record, as already stated, is replete with advertisements of respondent using the terms "was" and "now" and the like, in comparative pricing. In none of these many ads did respondent state at what time the former prices referred to were in effect. As a practical matter he could not do so, because not only had he failed to keep a permanent record of his actual prices, but he frequently changed his prices, at his discretion, to accord profit-wise with what he admits that he thought was their increased replacement value in the market. Small wonder that respondent complains it would be burdensome for him to keep a record of his prices, in view of

the speed with which he changed his mind regarding the current market value of his products!

It is therefore determined and concluded that respondent has failed to set forth in his advertisements of comparative prices and percentage savings claims the time when the former or compared prices were in effect, in violation of Rule 44(b) of the Rules and Regulations promulgated under the Fur Products Labeling Act.

CONCLUSIONS

Based upon due consideration of the entire record herein, the hearing examiner concludes that counsel supporting the complaint has adequately sustained the burden of proof incumbent upon him, and has established by reliable, probative and substantial evidence that respondent has violated the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder in all respects charged in the complaint herein.

The respondent has now been before the Commission in two proceedings in the past several years: the case at bar, and a former case, *Samuel A. Mannis and Company*, 56 F.T.C. 833, affirmed 293 F. 2d 774. In that former case, the Commission, in its decision, found that respondent had misbranded his fur products in five different ways; that he had falsely invoiced his fur products in three different ways; and that he had falsely advertised such products in eleven different ways. In its order (56 F.T.C., at pages 858-860), the Commission prohibited each of such violations specifically and separately. In the present proceeding, it has been determined that the respondent has misbranded his fur products in one particular; has falsely advertised such products in four particulars; and has failed to maintain adequate records of his prices.

None of the charges in the present proceeding were involved in the prior case; and in the present proceeding, no false invoicing is involved. But respondent has now been found, in these two proceedings before the Commission, to have misbranded his fur products in a total of six different ways, and to have falsely advertised such products in a total of fifteen different ways. Since, under the Fur Products Labeling Act and the present 49 Rules promulgated thereunder, an infinite number of violations are possible, the hearing examiner is of the opinion that a cease-and-desist order should issue herein, broad enough to preclude the necessity of further proceedings before the Commission to prohibit the endless specific future viola-

tions. The Commission's latest expression of its policy in this respect states:

> In framing remedial measures to prevent the recurrence of unfair trade practices, we are not required to confine the order to a narrow prohibition of the illegal practices in the precise forms in which they have existed in the past as long as the remedy imposed is reasonably related to the unlawful practices found to exist. * * * (Docket 8085, *Country Tweeds, Inc., et al.*, September 21, 1962) [61 F.T.C. 1250, 1281].

Accordingly,

It is ordered, That Samuel A. Mannis, an individual trading as Samuel A. Mannis and Co. and as Furs By Mannis, or under any other trade name, and his representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the sale, advertising, or offering for sale in commerce, or the transportation or distribution in commerce of fur products, or in connection with the sale, advertising, offering for sale, transportation, or distribution of fur products which are made in whole or in part of fur which has been shipped and received in commerce, as "commerce", "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

1. Misrepresenting fur products by the use, in any manner, of false, misleading or deceptive statements of any kind in his labeling or advertising;

2. Misbranding fur products by:

   A. Falsely or deceptively labeling, or otherwise identifying, such products as to the regular prices thereof by any representation that the regular or usual price of any fur product is any amount higher than the price at which respondent has usually and customarily sold such products in his recent regular course of business;

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

   A. Represents directly or by implication that the regular or usual price of any fur product is any amount higher than the price at which respondent has usually and customarily sold such products in his recent regular course of business;

B. Sets forth earlier or former comparative prices without stating the time such prices were in effect;

C. Represents directly or by implication, through such statements as "Federal Trade Commission law states no fur nor fur product shall be labeled, invoiced or advertised in any manner which is false, misleading or deceptive in any respect", or by words or statements of similar import or meaning, even if true in fact, that the United States Government or any department or agency thereof has approved respondent's labeling, advertising, or any other practice of respondent;

D. Fails to set forth all items of information required by the Fur Products Labeling Act or the Rules and Regulations promulgated thereunder, in type of equal size and conspicuousness, and in close proximity with each other;

4. Making claims and representations respecting prices or values of fur products, unless respondent maintains full and adequate records disclosing the facts upon which such claims or representations are based.

Opinion of the Commission

AUGUST 2, 1963

By MacIntyre, *Commissioner:*

This matter was heard by the Commission upon the appeal of respondent from the initial decision of the hearing examiner sustaining the complaint. The complaint herein, issued December 30, 1960, charges that respondent has violated the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder.

Among the charges in the complaint upheld by the hearing examiner were allegations that (1) certain fur products were misbranded by affixing thereto labels containing fictitious prices in excess of the retail prices at which the respondent usually and regularly sold such fur products in the recent regular course of his business and (2), that respondent falsely represented in newspaper advertisements that certain fur products had been reduced from a stated regular or usual price, when, in fact, the stated usual or regular price was fictitious and was not the price at which said garments had been sold by respondent in the recent regular course of business.

As proof of both of these violations, the hearing examiner relies upon a series of tabulations prepared by a Commission investigator. The tabulations compare gross average profits which would be realized on a group of 288 furs in respondent's store at the time the investigation was conducted, if they were to be sold at the prices on

their labels, with the gross profit margin actually realized on accomplished sales of furs in an immediately preceding period. It is the Commission's views that these tabulations do not constitute substantial evidence to support the hearing examiner's order to cease and desist.

Among the deficiencies which the Commission notes in the tabulations is that the accomplished sales were compiled for the period February through August, a period during which retail fur prices are somewhat higher than during the peak sales winter months. Moreover, the record does not demonstrate that the tagged garments, allegedly fictitiously priced, were representative of or similar in grade and quality to the garments which had been sold in the preceding period and for which the actual gross margin of profit was computed.

The Commission views with disfavor the practice of inflating the advertised or labeled price of any article beyond the price for which it or like articles have been sold or offered in the recent regular course of business. However, proof that such garments have been falsely and fictitiously priced in advertisements or on labels ordinarily includes a showing that garments similar in grade and quality have been recently sold for a lower price.

Such proof is difficult to adduce under the best of circumstances, and is almost an impossibility when, as here, the respondent does not maintain the proper records as required by law and regulation. But difficulty of proof is never a substitute therefor, and the fictitious pricing allegations of this complaint must fall, for they have not been proven by reliable and substantial evidence. This respondent will, in the future, be required to maintain adequate records in support of any pricing advertising or labeling of the types described in subsections (a), (b), (c) and (d) of Rule 44 of the Rules and Regulations under the Fur Products Labeling Act with the result that his future practices can and will be subjected to the scrutiny which Congress has directed.

In several of its newspaper advertisements the respondent has printed the following legend in large, boldfaced type:

FEDERAL TRADE COMMISSION LAW STATES
"NO FUR NOR FUR PRODUCTS SHALL BE LABELED, INVOICED OR ADVERTISED IN ANY MANNER WHICH IS FALSE, MISLEADING OR DECEPTIVE IN ANY RESPECT"

The complaint alleged that this statement was deceptive and the hearing examiner concluded that "the inclusion of this broad, although legally correct, statement of law in the context or respondent's advertising implies full and general sanction, endorsement, and

approval by the Commission of respondent's labeling, invoicing and pricing practices, including any and all such matters which are set forth or referred to in the advertisements themselves. Such use of statutory language falls within the ambit of an exceedingly audacious, unfair, misleading and highly improper practice."

The Commission does not feel that the respondent's representation is as flatly deceptive and unlawful as the hearing examiner finds. The representation is literally true, but, of course, this would not save it if it was used in a manner likely to deceive. See *Kalwajtys* v. *Federal Trade Commission*, 237 F.2d 654, 656 (7th Cir. 1956) [6 S.&D. 72, 74]. But in this instance we are not persuaded that the record evidence supports the hearing examiner's conclusion that the advertising implies full and general sanction, endorsement and approval by the Commission of respondent's labeling, invoicing and pricing practices. There is no testimony in the record to support the hearing examiner's interpretation, and while he correctly holds that the Commission need not sample public opinion to interpret advertising, we are unable to here hold upon the basis of the advertisement alone that unlawful deception has been practiced. Thus, respondent's appeal of the hearing examiner's holding on this point must be allowed.

Upon a review of the complete record, the Commission has concluded that the findings and conclusion of the hearing examiner dealing with all of the remaining counts of the complaint not discussed above in this opinion are appropriate and proper and respondent's appeal with respect thereto is denied.

An order modifying the initial decision in conformity with the Commission's views as above expressed will issue.

Decision of the Commission and Order to file Report of Compliance

This matter having been heard by the Commission upon respondent's appeal from the initial decision which sustained all of the allegations of the complaint, and the Commission having determined that certain of respondent's allegations of error are well founded and that the appeal should be granted in part and denied in part:

It is ordered, That the initial decision of the hearing examiner be, and it hereby is, modified by vacating and setting aside:

1. All of the findings and conclusions appearing therein under the heading "Findings And Conclusions As To Charge 2(c), That Respondent's Advertising Represents Commission Approval Of His Practices."

2. All of the findings and conclusions appearing therein under the heading "Findings And Conclusions As To Charge 1, That Respondent Misbranded His Fur Garments By Attaching Labels Bearing Fictitious Prices."

3. All of the findings and conclusions contained therein under the heading "Findings And Conclusions As To Charge 2(a), That Respondent's Advertisements Contain Fictitious Prices."

4. All of the material found under the heading "Conclusions" including the order to cease and desist proposed by the hearing examiner.

It is further ordered, That the initial decision as modified by the vacating and setting aside of the above-described parts be, and it hereby is, adopted as the decision of the Commission, and that in lieu of the order proposed by the hearing examiner the Commission hereby issues this, its own order to cease and desist:

ORDER TO CEASE AND DESIST

It is ordered, That Samuel A. Mannis, an individual trading as Samuel A. Mannis and Co., and Furs By Mannis, or under any other trade name, and his representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the sale, advertising, or offering for sale in commerce, or the transportation or distribution in commerce of fur products, or in connection with the sale, advertising, offering for sale, transportation, or distribution of fur products which are made in whole or in part of fur which has been shipped and received in commerce, as "commerce", "fur" and "fur products" are defined in the Fur Products Labeling Act do forthwith cease and desist from:

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

A. Fails to set forth all items of information required by the Fur Products Labeling Act or the Rules and Regulations promulgated thereunder, in type of equal size and conspicuousness, and in close proximity with each other;

B. Sets forth earlier or former comparative prices without stating the time such prices were in effect.

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

Subsections (a), (b), (c), and (d) of Rule 44 of said Rules and Regulations provide as follows:

"(a) No person shall, with respect to a fur or fur product, advertise such fur or fur product at alleged wholesale prices or at alleged manufacturers cost or less, unless such representations are true in fact; nor shall any person advertise a fur or fur product at prices purported to be reduced from what are in fact fictitious prices, nor at a purported reduction in price when such purported reduction is in fact fictitious.

"(b) No person shall, with respect to a fur or fur product, advertise such fur or fur product with comparative prices and percentage savings claims except on the basis of current market values or unless the time of such compared price is given.

"(c) No person shall, with respect to a fur or fur product, advertise such fur or fur product as being 'made to sell for,' being 'worth' or 'valued at' a certain price, or by similar statements, unless such claim or representation is true in fact.

"(d) No person shall, with respect to a fur or fur product, advertise such fur or fur product as being of a certain value or quality unless such claims or representations are true in fact."

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

Complaint

IN THE MATTER OF

KAISER INDUSTRIES CORPORATION ET AL.

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

Docket 8341. Complaint, Mar. 16, 1961—Decision, Aug. 2, 1963*

Order dismissing, as lacking public interest, complaint charging the second largest producer of steel in the Western States with violation of Sec. 7 of the Clayton Act by its acquisition of the largest independent fabricator and erector of structural steel in Arizona.

COMPLAINT

The Federal Trade Commission, having reason to believe that the above-named respondents have violated, and are now violating, the provisions of Section 7 of the amended Clayton Act (U.S.C. Title 15, Sec. 18), hereby issues its complaint pursuant to Section 11 of the aforesaid Act (U.S.C. Title 15, Sec. 21), charging as follows:

PARAGRAPH 1. Respondent Kaiser Industries Corporation, hereinafter sometimes referred to as "Kaiser Industries", is a corporation organized and existing under the laws of the State of Nevada. It was incorporated on August 9, 1945, and has since undergone several name changes, its present name having been adopted on March 14, 1956. Its main office and principal place of business is located in the Kaiser Center, 300 Lakeside Drive, Oakland, California.

Respondent Henry J. Kaiser Company, hereinafter sometimes referred to as "Kaiser Company", is a corporation organized and existing under the laws of the State of Nevada. It was incorporated on December 30, 1941. Its main office and principal place of business is located in the Kaiser Center, 300 Lakeside Drive, Oakland, California.

Respondent Kaiser Aluminum & Chemical Corporation, hereinafter sometimes referred to as "Kaiser Aluminum" is a corporation organized and existing under the laws of the State of Delaware. It was incorporated on December 9, 1940, and has since undergone several name changes, its present name having been adopted on November 28, 1949. Its main office and principal place of business is located in the Kaiser Center, 300 Lakeside Drive, Oakland, California.

Respondent Kaiser Steel Corporation, hereinafter sometimes referred to as "Kaiser Steel", is a corporation organized and existing under the laws of the State of Nevada. It was incorporated December 1,

*As amended Jan. 9, 1962.

1941. Its main office and principal place of business is located in the Kaiser Center, 300 Lakeside Drive, Oakland, California.

PAR. 2. Kaiser Industries conducts its business both through direct operations and through ownership of stock in certain subsidiary and affiliated corporations. Those subsidiary and affiliated corporations include, among others, the respondents Kaiser Company, Kaiser Aluminum and Kaiser Steel. Kaiser Industries directs, controls, and for the purposes of this proceeding is responsible and liable for the acts, practices and policies of these subsidiary and affiliated companies.

PAR. 3. Kaiser Company, a wholly owned subsidiary of Kaiser Industries, conducts business both through direct operation and through ownership of stock in certain subsidiary and affiliated corporations. These subsidiary and affiliated corporations include, among others, the respondents Kaiser Aluminum and Kaiser Steel. In the conduct of its business, Kaiser Company acts for and on behalf of Kaiser Industries.

PAR. 4. Kaiser Aluminum is engaged in the production, manufacture, fabrication, erection, sale and distribution of aluminum and aluminum products. It is the third largest producer of primary aluminum in the United States. Its 1959 primary aluminum capacity of 609,000 tons, represented an increase of 325% since 1950 and constituted over 30% of the total national capacity. It is also a substantial producer of fabricated aluminum products, consisting of, among others, aluminum sheet, electrical conductor, rod and bar, extrusions, foil, foil food containers and forgings. Its products are marketed in major cities throughout the United States.

Kaiser Aluminum first entered the aluminum business in 1946 through the acquisition of three plants from the Federal government. In 1956 Kaiser Aluminum acquired Foil-Kraft, Inc., of Los Angeles, California, a fabricator of aluminum containers for frozen food, and Hokin Aluminum Co., of Chicago, Illinois, a fabricator of aluminum sheet and other products. Since 1946 Kaiser Aluminum has followed a consistent pattern of growth due in part to acquisition and mergers.

For the year ending December 31, 1959, Kaiser Aluminum had a net income of $22,328,000 based on net sales of $435,550,000, and the corporation's assets totaled $785,976,000. Approximately 37% of the voting securities of Kaiser Aluminum are owned by Kaiser Company, and approximately 8% are owned by Kaiser Industries.

PAR. 5. Kaiser Steel is engaged in the production, manufacture, fabrication, erection, sale and distribution of steel and steel products. It is the second largest producer of steel in the Western States and ranks ninth among steel producers in the United States. Its facilities located at Fontana, California, constitute the only fully integrated

steel plant on the Pacific Coast. The Fontana plant is served by large iron ore and coal reserves, owned in fee, and produces a diversified line of steel products, including plates, tubular products, carbon and alloy bars, hot and cold rolled strips, hot rolled sheets and structural shapes. These products are sold to various purchasers, including fabricators, throughout the western part of the United States. Since its incorporation, Kaiser Steel, both through acquisitions and internal growth, has consistently expanded its production, manufacture, fabrication, sale and distribution of steel and steel products in its various marketing areas.

In March 1951 Kaiser Steel merged with Utah Fuel Company and Book Cliffs Coal Corporation. In February 1955 it purchased from Union Steel Company facilities for fabricating finished steel products located at Montebello, California. As a result of this acquisition, Kaiser Steel became engaged, for the first time, in the fabrication and erection of structural steel and the manufacture of associated steel products. In May 1955 it purchased the Steel Division of Basalt Rock Company, consisting of two fabricating plants located at Napa and Fontana, California, and certain pipe mills.

For the year ending December 31, 1958, Kaiser Steel had a net profit of $5,422,000 based on net sales of $181,179,000, and the corporation's assets totaled $481,950,000. In 1957 Kaiser Steel's net sales of fabricated steel products exceeded $20,000,000. Approximately 80% of the voting securities of Kaiser Steel are owned by Kaiser Company.

PAR. 6. Each of the respondents named herein is engaged in commerce as "commerce" is defined in the Clayton Act.

PAR. 7. Allison Steel Manufacturing Company, hereinafter referred to as "Allison", is a corporation organized and existing under the laws of the State of Arizona. Its main office and principal place of business is located at 19th Avenue and Southern Pacific Tracks, Phoenix, Arizona.

Allison is engaged in the manufacture, fabrication, erection, sale and distribution of steel and aluminum products in commerce, as "commerce" is defined in the Clayton Act. It operates a completely modern manufacturing and fabricating plant which covers approximately 35 acres and includes over 400,000 square feet under roof. It has complete facilities for the fabrication and erection of structural steel and structural aluminum. Most of its business is done by special contract whereby Allison is awarded contracts on the basis of public or private bids submitted to customers which include, among others, general contractors, mining companies, engineering companies and Federal, state and city agencies.

Allison is also a jobber and warehouser for certain types of manufactured metal products. In addition it does miscellaneous other work, including, among others, the manufacturing of derricks, cranes, heavy truck and bus bodies; fabrication of reinforcing steel; and work on special government contracts.

Prior to May 1958 Allison was the largest independent fabricator and erector of structural steel in the State of Arizona and had accounted for approximately 40% of such business in that State. In Maricopa County, Arizona (which includes the City of Phoenix), it has accounted for as much as 50% of such business. Early in 1957 Allison diversified its activities by entering the field of fabrication of Aluminum along heavy and structural lines. Within six months Allison's product line was constituted as follows: fabrication and erection of structural steel, 56%, and of structural aluminum, 19%; and fabrication of other steel products, 19%, and of other aluminum products, 6%. By July 1957 Allison was one of the largest independent fabricators of structural aluminum and other aluminum products in the State of Arizona and in Maricopa County, Arizona. Allison has also performed contracts for the fabrication and erection of steel and aluminum in, among others, the States of New Mexico, Colorado, Nevada, and California.

The basic raw materials which are purchased for the fabrication and erection of structural steel and structural aluminum and the manufacture of associated steel and aluminum products are obtained primarily from steel and aluminum producers located in the western part of the United States, including Kaiser Steel and Kaiser Aluminum.

For the year 1958 Allison had a net income of $236,932 based on total sales of $10,006,626 and its total assets were $4,822,148.

PAR. 8. On or about May 15, 1958, Kaiser Steel acquired approximately 45% of the outstanding capital stock, which is the voting stock, of Allison for a total consideration of $1,112,960. Subsequent to the date of this acquisition, at least two executives of the Kaiser interests were elected to the Board of Directors of Allison.

PAR. 9. The fabrication and erection of structural steel and structural aluminum and the manufacture of associated steel and aluminum products by independent non-integrated fabricators are industries of great importance to the economy of the United States. In recent years a substantial number of acquisitions and mergers of non-integrated fabricators by integrated producers of primary steel and aluminum has led to a serious trend toward concentration in a few large companies tending to lessen competition and develop monopolistic industry conditions.

PAR. 10. Prior to the acquisition of the Allison stock, as set forth in Paragraph 8, the Kaiser interests, particularly Kaiser Steel and Kaiser Aluminum, were actual and potential competitors with others in supplying primary steel and aluminum to Allison, and were actual or potential competitors with Allison in the fabrication and erection of structural steel and structural aluminum and in the manufacture of other steel and aluminum products.

PAR. 11. The respondents have violated, and are now violating, Section 7 of the amended Clayton Act in that the acquisition of a substantial portion of the voting stock of Allison, as hereinbefore described, may have the effect of substantially lessening competition or tending to create a monopoly in the sale of primary steel and aluminum and in the fabrication and erection of structural steel and structural aluminum and in the manufacture of other steel and aluminum products in Maricopa County, Arizona, the State of Arizona, or in other sections of the country, in the following ways, among others:

1. Actual and potential competition in the supply of primary steel and aluminum to Allison has been, or may be, substantially lessened.

2. Actual and potential competition in the fabrication and erection of structural steel and structural aluminum and in the manufacture of other steel and aluminum products has been or may be substantially lessened.

3. Actual and potential competition between the respondents and Allison in the fabrication and erection of structural steel and structural aluminum and the manufacture of other steel and aluminum products has been or may be eliminated.

4. The respondents' competitive advantage over other fabricators and erectors of structural steel and structural aluminum and manufacturers of other steel and aluminum products has been or may be enhanced to the detriment of actual and potential competition.

5. Mergers and acquisitions on the part of other producers of primary steel and aluminum, and on the part of other fabricators and erectors of structural steel and structural aluminum and manufacturers of other steel and aluminum products, have been or may be fostered, with a consequent increase in concentration and tendency toward monopoly, to the detriment of actual and potential competition.

6. The respondents' competitive advantage as integrated producers, manufacturers, fabricators, and erectors of structural steel and structural aluminum and other steel and aluminum products, and as suppliers of materials to non-integrated fabricators and erectors has

been or may be enhanced to the detriment of actual and potential competition.

7. Allison has been eliminated as the largest independent fabricator and erector of structural steel in the State of Arizona.

8. Allison has been eliminated as one of the largest independent fabricators and erectors of structural aluminum in the State of Arizona.

PAR. 12. The foregoing acquisitions, acts and practices of the respondents, as hereinbefore alleged and set out, constitute a violation of Section 7 of the Clayton Act (U.S.C. Title 15, Sec. 18), as amended and approved December 30, 1950.

ORDER DISMISSING COMPLAINT

Complaint counsel having filed on July 26, 1963, a motion to dismiss the complaint in this matter; and

It appearing that this matter is now before the Commission, having been removed from the jurisdiction of the hearing examiner and placed on suspense by the Commission's orders of February 7 and June 21, 1963; and

It further appearing, for the reasons set out in the motion of complaint counsel, that further proceedings in this matter would not be in the public interest;

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

IN THE MATTER OF

JONAS BROTHERS OF SEATTLE, 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-533. Complaint, Aug. 2, 1963—Decision, Aug. 2, 1963

Consent order requiring manufacturing furriers with principal place of business in Seattle, Wash., and two branch stores in Anchorage and Fairbanks, Alaska, to cease violating the Fur Products Labeling Act by failing, in labeling, invoicing and advertising, to show the true animal name of fur in fur products and when fur was artificially colored, and to use the terms "Dyed Mouton Lamb" and "natural" as required; failing, in invoicing and advertising, to show the country of origin of imported furs; representing falsely, in newspaper advertising, that prices of fur products were reduced from so-called "regular" prices which were fictitious; failing to maintain adequate records disclosing the facts on which pricing claims

were based; substituting nonconforming labels for those affixed by the manufacturer or distributor; and failing in other respects to comply with requirements of the Act.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act and by virtue of the authority vested in it by said Acts, the Federal Trade Commission having reason to believe that Jonas Brothers of Seattle, Inc., a corporation and Jonas Brothers of Alaska, Inc., a corporation, and A. C. Bert Klineburger, Peter Bading and Chris Klineburger, individually and as officers of the said corporations, hereinafter referred to as respondents have violated the provisions of said Acts and the Rules and Regulations 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 Jonas Brothers of Seattle, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Washington.

Respondent Jonas Brothers of Alaska, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Alaska.

Respondents A. C. Bert Klineburger, Peter Bading and Chris Klineburger are officers of the corporate respondent and formulate, direct and control the acts, practices and policies of the said corporate respondents including those hereinafter set forth.

The respondents are manufacturers, distributors and retailers of fur products with their office and principal place of business located at 1507 Twelfth Avenue, Seattle, Washington.

Respondent Jonas Brothers of Alaska, Inc., operates two branch stores; one located at Fifth and G Streets, in Anchorage, Alaska, and the other at 203 Cushman Street, in Fairbanks, Alaska.

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 furs which have been shipped and received in commerce as the terms "commerce", "fur" and "fur product" are defined in the Fur Products Labeling Act.

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

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

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

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

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

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

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

(b) The term "natural" was not used on labels 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.

(c) Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was not completely set out on one side of labels, in violation of Rule 29(a) of said Rules and Regulations.

(d) Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was set forth in handwriting on labels, in violation of Rule 29(b) of said Rules and Regulations.

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

(f) Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was not set forth separately on labels with respect to each section

of fur products composed of two or more sections containing different animal furs, in violation of Rule 36 of said Rules and Regulations.

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

Among such falsely and deceptively invoiced fur products, but not limited thereto, were fur products covered by invoices 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 product was bleached, dyed, or otherwise artificially colored, when such was the fact.

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

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

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

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

(c) The term "natural" was not used on invoices 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.

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

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

PAR. 8. Certain of said fur products were falsely and deceptively advertised in violation of the Fur Products Labeling Act in that certain advertisements intended to aid, promote and assist, directly or indirectly, in the sale and offering for sale of such fur products were not in accordance with the provisions of Section 5(a) of the said Act.

Among and included in the aforesaid advertisements but not limited thereto, were advertisements of respondents which appeared in issues of the Daily News Miner and Anchorage Times, newspapers published in the cities of Fairbanks and Anchorage, respectively, in the State of Alaska.

Among such false and deceptive advertisements, but not limited thereto, were advertisements which failed:

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

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

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

PAR. 9. By means of the aforesaid advertisements and others of similar import and meaning not specifically referred to herein, respondents falsely and deceptively advertised fur products in violation of the Fur Products Labeling Act in that the said fur products were not advertised in accordance with the Rules and Regulations promulgated thereunder in the following respects:

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

(b) 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 the said Rules and Regulations.

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

(d) All parts of the information required under Section 5(a) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder were not set forth in type of equal size and conspicuousness and in close proximity with each other in violation of Rule 38(a) of the aforesaid Rules and Regulations.

PAR. 10. By means of the aforesaid advertisements and other advertisements of similar import and meaning not specifically referred to herein, respondents falsely and deceptively advertised fur products in that said advertisements represented that the prices of fur products were reduced from regular or usual retail prices and that the amount of such price reductions afforded savings to the purchasers of respondents' products, when the so-called regular or usual retail prices were in fact fictitious in that they were not the prices at which said merchandise was usually sold by respondents in the recent regular

course of business and the represented savings were not thereby afforded to the purchasers, in violation of Section 5(a)(5) of the Fur Products Labeling Act and Rule 44(a) of the Rules and Regulations promulgated under the said Act.

PAR. 11. By means of the aforesaid advertisements and others of similar import and meaning not specifically referred to herein respondents falsely and deceptively advertised fur products in that the said advertisements contained representations, either directly or by implication, that the prices of such fur products were reduced from the prices at which the respondents regularly and usually sold such fur products in the recent regular course of business and the amount of such purported reduction constituted savings to the purchasers of respondents' products, when in fact such fur products were not reduced in price from the price at which the respondents regularly and usually sold such fur products and savings were not afforded purchasers of respondents' products as represented.

PAR. 12. In advertising fur products for sale, as aforesaid, respondents made pricing claims and representations of the types covered by subsections (a), (b), (c) and (d) of Rule 44 of the Regulations under the Fur Products Labeling Act. Respondents in making such claims and representations failed to maintain full and adequate records disclosing the facts upon which such pricing claims and representations were based, in violation of Rule 44(e) of the said Rules and Regulations.

PAR. 13. Respondents in introducing, selling, advertising, and offering for sale, in commerce, and in processing for commerce, fur products; and in selling, advertising, offering for sale and processing fur products which have been shipped and received in commerce, have misbranded such fur products by substituting thereon, labels which did not conform to the requirements of Section 4 of the Fur Products Labeling Act, for the labels affixed to said fur products by the manufacturer or distributor pursuant to Section 4 of said Act, in violation of Section 3(e) of said Act.

PAR. 14. The aforesaid acts and practices of respondents, as herein alleged, are in violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder and constitute unfair and deceptive acts and practices and unfair methods of competition in commerce under the Federal Trade Commission Act.

DECISION AND ORDER

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

violation of the Federal Trade Commission Act and the Fur Products Labeling Act, and the respondents having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

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

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

1. Respondent, Jonas Brothers of Seattle, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Washington.

Respondent, Jonas Brothers of Alaska, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Alaska.

Respondents, A. C. Bert Klineburger, Peter Bading and Chris Klineburger, are officers of said corporation.

All respondents have their office and principal place of business located at 1507 Twelfth Avenue, Seattle, Washington.

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 Jonas Brothers of Seattle, Inc., a corporation, and its officers, and Jonas Brothers of Alaska, Inc., a corporation, and its officers, and A. C. Bert Klineburger, Peter Bading and Chris Klineburger, 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 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:

A. Misbranding fur products by:

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

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

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

4. Failing to set forth the term "Natural" as part of the information required to be disclosed on labels under the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder to describe fur products which are not pointed, bleached, dyed, tip-dyed, or otherwise artificially colored.

5. Failing to completely set out information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations thereunder on one side of the labels affixed to fur products.

6. Setting forth information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder in handwriting on labels affixed to fur products.

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

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

B. Falsely or deceptively invoicing fur products by:

1. Failing to furnish invoices to purchasers of fur prod-

ucts showing in words and figures plainly legible all the information required to be disclosed in each of the subsections of Section 5(b)(1) of the Fur Products Labeling Act.

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

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

4. Failing to set forth the term "Natural" as part of the information required to be disclosed on invoices under the Fur Products Labeling Act and Rules and Regulations promulgated thereunder to describe fur products which are not pointed, bleached, dyed, tip-dyed or otherwise artificially colored.

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

6. Failing to set forth on invoices the item number or mark assigned to fur products.

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

1. Fails to set forth in words and figures plainly legible all the information required to be disclosed by each of the subsections of Section 5(a) of the Fur Products Labeling Act.

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

3. Fails to set forth the term "Natural" as part of the information required to be disclosed in advertisements under the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder to describe fur products which are not pointed, bleached, dyed, tip-dyed or otherwise artificially colored.

4. Fails to separately set forth in advertisements relating to fur products composed of two or more sections containing different animal furs the information required under Section

5(a) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder with respect to the fur comprising each section.

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

6. Represents, directly or by implication, that any price, when accompanied or unaccompanied by any descriptive language, was the price at which the merchandise advertised was usually and customarily sold (at retail) by the respondents unless such advertised merchandise was in fact usually and customarily sold at such price by respondents in the recent past.

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

8. Falsely or deceptively represents in any manner that prices of respondents' fur products are reduced.

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

It is further ordered, That respondents, Jonas Brothers of Seattle, Inc., a corporation and Jonas Brothers of Alaska, Inc., a corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, sale, advertising or offering for sale, in commerce, or the processing for commerce, of fur products; or in connection with the selling, advertising, offering for sale, or processing of fur products which have been shipped and received in commerce, do forthwith cease and desist from misbranding fur products by substituting for the labels affixed to such fur products pursuant to Section 4 of the Fur Products Labeling Act labels which do not conform to the requirements of the aforesaid Act and the Rules and Regulations promulgated thereunder.

It is further ordered, That each of 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

BERLEKAMP CORPORATION ET AL.

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

Docket C-534. Complaint, Aug. 2, 1963—Decision, Aug. 2, 1963

Consent order requiring Fremont, Ohio, distributors of advertising signs and advertising specialties, to cease representing falsely, by affixing union labels thereto, that such products were manufactured by union labor.

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 Berlekamp Corporation, a corporation, and Kenneth I. Berlekamp, 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 Berlekamp Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its principal office and place of business located at 1304 Sycamore Street, in the city of Fremont, State of Ohio.

Respondent Kenneth I. Berlekamp is president of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of advertising signs and advertising specialties.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said products, when sold, to be shipped from their place of business in the State of Ohio to purchasers thereof located in various other States of the United States, and 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 advertising signs and advertising specialties, respondents have affixed, and caused to be affixed, a union label to their advertising signs and advertising specialties offered for sale, sold and distributed by them. Said union label* is in words and figure as follows:

LOCAL NO. 56
AMALGAMATED
UNION LITHOGRAPHERS LABEL
OF AMERICA
TOLEDO

PAR. 5. By and through the use of the aforesaid union label, the respondents represented, directly or by implication, that the products bearing such label were manufactured and produced in a place where union labor performed the manufacturing and producing operations on such products.

PAR. 6. In truth and in fact, such products bearing such union label were not manufactured and produced in a place where union labor performed the manufacturing and producing operations on such products.

Therefore the statement and representation as set forth in Paragraphs 4 and 5 hereof was and is 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 advertising signs and advertising specialties of the same general kind and nature as that sold by respondents.

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

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

*Pictorial figure is omitted in printing.

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 Berlekamp Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its office and principal place of business located at 1304 Sycamore Street, in the city of Fremont, State of Ohio.

Respondent Kenneth I. Berlekamp is an officer of said corporation, and his address is the same as that of said corporation.

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

ORDER

It is ordered, That respondents Berlekamp Corporation, a corporation, and its officers, and Kenneth I. Berlekamp, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of advertising signs and advertising specialties or other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Affixing, or causing to be affixed, a union label to the advertising signs and advertising specialties or other products offered for sale, sold and distributed by them unless such products have in fact been manufactured and produced

in a place where union labor performed the manufacturing and producing operations on such products.

2. Representing, directly or by implication, that a product has been, or will be made by union labor when such product has not been, or will not be, made by union labor.

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

KAYE-BEN COMPANY, INC., ET AL. DOING BUSINESS AS FURS BY ALEX

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

Docket C-535. Complaint, Aug. 2, 1963—Decision, Aug. 2, 1963

Consent order requiring Houston, Tex., retail furriers to cease violating the Fur Products Labeling Act by affixing to fur products labels representing prices falsely as reduced from regular prices which were in fact fictitious, by making the same false representations in newspaper advertising, and by failing to keep adequate records as a basis for pricing claims.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act and by virtue of the authority vested in it by said Acts, the Federal Trade Commission having reason to believe that Kaye-Ben Company, Inc., a corporation doing business as Furs by Alex, and Alex Segall, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Fur Products Labeling Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Kaye-Ben Company, Inc., is a corporation doing business as Furs by Alex and organized, existing and doing business under and by virtue of the laws of the State of Texas.

Respondent Alex Segal is an officer of the corporate respondent and formulates, directs and controls the acts, practices and policies of the said corporate respondent including those hereinafter set forth.

Respondents are retailers of fur products with their office and principal place of business located at 4110 Main Street, Houston, Texas.

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

PAR. 3. Certain of said fur products were misbranded in that labels affixed thereto represented that prices of fur products had been reduced from regular or usual prices of such fur products and that the amount of such reductions constituted savings to purchasers when the so-called regular or usual prices were in fact fictitious in that they were not the prices at which said merchandise was usually sold by respondents in the recent regular course of business and the represented savings were not thereby afforded to purchasers, in violation of Section 4(1) of the Fur Products Labeling Act.

PAR. 4. Certain of said fur products were falsely and deceptively advertised in violation of the Fur Products Labeling Act in that certain advertisements intended to aid, promote and assist, directly or indirectly, in the sale and offering for sale of such fur products were not in accordance with the provisions of Section 5(a) of the said Act.

Among and included in the aforesaid advertisements but not limited thereto, were advertisements of respondents which appeared in issues of the Houston Post, a newspaper published in the city of Houston, State of Texas.

PAR. 5. By means of the aforesaid advertisements and other advertisements of similar import and meaning not specifically referred to herein, respondents falsely and deceptively advertised fur products in that said advertisements represented that the prices of fur products were reduced from regular or usual retail prices and that the amount of such price reductions afforded savings to the purchasers of respondents' products, when the so-called regular or usual retail prices were in fact fictitious in that they were not the prices at which said merchandise was usually sold by respondents in the recent regular course of business and the represented savings were not thereby afforded to the purchasers, in violation of Section 5(a)(5)

of the Fur Products Labeling Act and Rule 44(a) of the Rules and Regulations promulgated under the said Act.

PAR. 6. Respondents falsely and deceptively advertised fur products by affixing labels thereto which represented that prices of such fur products had been reduced from regular or usual prices of such products and that the amount of such reductions constituted savings to purchasers when the so-called regular or usual prices were, in fact, fictitious in that they were not the prices at which said merchandise was usually sold by respondents in the recent regular course of business and the represented savings were not thereby afforded to purchasers, in violation of Section 5(a)(5) of the Fur Products Labeling Act and Rule 44(a) of the Rules and Regulations.

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

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

DECISION AND ORDER

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

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by 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 Kaye-Ben Company, Inc., is a corporation doing business as Furs by Alex and organized, existing and doing business under and by virtue of the laws of the State of Texas, with its office and principal place of business located at 4110 Main Street, Houston, Texas.

Respondent Alex Segall is an officer of said corporation and his office 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 Kaye-Ben Company, Inc., a corporation doing business as Furs by Alex or under any other trade name, and its officers, and Alex Segall, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, into commerce, or the sale, advertising or offering for sale in commerce, or the transportation or distribution, in commerce, of any fur product; or in connection with the sale, advertising, offering for sale, transportation or distribution, of any fur product which is made in whole or in part of fur which has been shipped and received in commerce; as "commerce", "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

A. Misbranding fur products by:

1. Falsely or deceptively labeling or otherwise identifying such products by any representation that any price, when accompanied or unaccompanied by any descriptive language, was the price at which the merchandise so represented was usually and customarily sold at retail by the respondents unless such merchandise was in fact usually and customarily sold at retail by respondents at such price in the recent past.

2. Misrepresenting in any manner on labels or other means of identification the savings available to purchasers of respondents' products.

3. Falsely or deceptively representing in any manner, directly or by implication, on labels or other means of

identification that prices of respondents' fur products, are reduced.

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

1. Represents, directly or by implication, that any price, when accompanied or unaccompanied by any descriptive language, was the price at which the merchandise advertised was usually and customarily sold at retail by the respondents unless such advertised merchandise was in fact usually and customarily sold at retail at such price by respondents in the recent past.

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

3. Falsely or deceptively represents in any manner that prices of respondents' fur products, are reduced.

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

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

IN THE MATTER OF

HERITAGE FURS VANCOUVER FUR FACTORY ET AL.

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

Docket C-536. Complaint, Aug. 2, 1963—Decision, Aug. 2, 1963

Consent order requiring Portland, Oreg., retail furriers to cease violating the **Fur Products Labeling Act by affixing to fur products labels containing fictitious prices, thereby misrepresenting the usual retail selling prices; affixing labels containing the name "Vancouver Fur Factory" and so describing their business in advertising when they were not manufacturers of fur products; and advertising falsely by radio broadcasts, "TREMENDOUS ONE-HALF PRICE SALE", "SAVE 50%", etc., when prices of fur products were not reduced by such percentage.**

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act and by virtue of the authority vested in it by said Acts, the Federal Trade Commission having reason to believe that Heritage Furs Vancouver Fur Factory, a corporation, and William H. Overton, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Fur Products Labeling Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Heritage Furs Vancouver Fur Factory is a corporation organized, existing and doing business under and by virtue of the laws of the State of Oregon with its office and principal place of business located at 1122 South West Morrison Street, Portland, Oregon.

Individual respondent William H. Overton is an officer of the said corporation and controls, directs and formulates the acts, practices and policies of the said corporation. His office and principal place of business is the same as that of the said corporation.

Respondents retail fur products.

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

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

PAR. 4. Certain of said fur products were misbranded in violation of Section 4(1) of the Fur Products Labeling Act in that labels affixed to such fur products contained the name "Vancouver Fur Factory" thereby implying that purchasers of such fur products

were dealing directly with the manufacturer thereof and by such direct dealing could obtain price savings that were not obtainable by purchasers of fur products in the usual retail channels of trade, when in truth and in fact, respondents are not manufacturers of fur products and purchasers of their fur products are not obtaining price savings by direct dealing with the manufacturer.

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

Said advertisements were intended to aid, promote and assist, directly or indirectly, in the sale and offering for sale of said fur products.

Among and included in the advertisements as aforesaid, but not limited thereto, were advertisements of respondents which were broadcasted over Radio Station KGW, Portland, Oregon.

PAR. 6. In advertising fur products for sale as aforesaid, respondents represented through such statements as "TREMENDOUS ONE-HALF PRICE SALE", "ALL ONE-HALF PRICE" and "SAVE 50%" that prices of fur products were reduced in direct proportion to the percentage of savings stated and that the amount of such reductions afforded savings to purchasers of respondents' fur products when in fact such prices were not reduced in direct proportion to the percentage stated and the represented savings were not thereby afforded to said purchasers, in violation of Section 5(a)(5) of the Fur Products Labeling Act.

PAR. 7. In advertising fur products for sale as aforesaid, respondents falsely and deceptively advertised such fur products in violation of Section 5(a)(5) of the Fur Products Labeling Act in that the advertisements of respondents described their business as "Heritage Furs Vancouver Fur Factory", thereby implying that purchasers of such fur products were dealing directly with the manufacturer thereof and by such direct dealing could obtain price savings that were not obtainable by purchasers of fur products in the usual retail channels of trade, when in truth and in fact, respondents are not manufacturers of fur products and purchasers of their fur products are not obtaining price savings by direct dealing with the manufacturer.

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

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

Decision and Order

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

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

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

1. Respondent Heritage Furs Vancouver Fur Factory is a corporation organized, existing and doing business under and by virtue of the laws of the State of Oregon with its office and principal place of business located at 1122 South West Morrison Street, Portland, Oregon.

Respondent William H. Overton is an officer of the said corporation, and his address is the same as that of said corporation.

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

ORDER

It is ordered, That respondents, Heritage Furs Vancouver Fur Factory, a corporation, and William H. Overton, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the sale, advertising, or offering for sale in commerce or the transportation or distribution in commerce of any fur product, or in connection with the sale, advertising, offering for sale, transportation, or distri-

bution of any fur product which is made in whole or in part of fur which has been shipped and received in commerce, as "commerce", "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

1. Misbranding fur products by:

A. Falsely or deceptively labeling or otherwise identifying such products by any representation that any price, when accompanied or unaccompanied by any descriptive language, was the price at which the merchandise so represented was usually and customarily sold at retail by respondents in the recent past.

B. Representing directly or by implication through the use of the term "Fur Factory" or any other words or terms of similar import and meaning that respondents are manufacturers of any fur product unless the respondents are manufacturers of such fur product.

C. Representing in any manner that savings are available to purchasers of respondents' fur products when in fact such savings are not available to purchasers of respondents' fur products.

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

A. Represents directly or by implication through percentage savings claims that prices of fur products are reduced to afford purchasers of respondents' fur products the percentage of savings stated when the prices of such fur products are not reduced to afford the percentage of savings stated.

B. Represents directly or by implication through the use of the term "Fur Factory" or any other words or terms of similar import and meaning that respondents are manufacturers of any fur product unless the respondents are manufacturers of such fur product.

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

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

IN THE MATTER OF

SIEGFRIED SONNEBERG ET AL. DOING BUSINESS AS THE SONNEBERG COMPANY

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

Docket C-537. Complaint, Aug. 2, 1963—Decision, Aug. 2, 1963

Consent order requiring New York City importers and distributors of automotive parts which they sold primarily to manufacturers and wholesalers, to cease selling synchronizer blocking rings manufactured in Italy with no markings indicating their foreign origin, and selling synchronizer assemblies comprised of said Italian parts along with other parts of domestic manufacture without disclosing the foreign origin of substantial parts thereof and with the words "Made in U.S.A." imprinted on the containers.

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 Siegfried Sonneberg, Manfred Sonneberg and Henni Sonneberg, individually and as copartners doing business as The Sonneberg Company, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondents, Siegfried Sonneberg, Manfred Sonneberg and Henni Sonneberg, are individuals and copartners doing business as The Sonneberg Company, with their office and principal place of business located at 418 West 25th Street in the city of New York, State of New York.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the importation, offering for sale, sale and distribution of automotive parts, including synchronizer blocking rings and synchronizer assemblies, primarily to manufacturers and to wholesalers who, in turn, resell to retailers, for resale to the public.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said products, when sold, to be shipped from their place of business in the State of New York 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 com-

merce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Certain of the synchronizer blocking rings offered for sale, sold and distributed by respondents are manufactured in and imported from Italy. Respondents' said foreign synchronizer blocking rings bear no markings indicating their manufacture in and importation from Italy. Upon importation, no additional work is performed on said synchronizer blocking rings, and a substantial percentage of the synchronizer blocking rings of foreign origin are sold and distributed in the same physical state as they were upon importation. The sale of said synchronizer blocking rings of foreign origin, without any disclosure thereon of their foreign origin, is false, misleading, and deceptive.

Other synchronizer blocking rings of foreign origin are assembled and packaged in a unit called a synchronizer assembly containing other parts manufactured in the United States. These synchronizer assemblies are not marked in any manner to disclose the foreign origin of the synchronizer blocking rings contained in said assemblies and which comprise a substantial part of said assemblies. The sale of said synchronizer assemblies without any disclosure of the foreign origin of substantial parts thereof is false, misleading and deceptive.

PAR. 5. Respondents' said synchronizer assemblies are packaged in boxes containing thereon the words "Made in U.S.A.", without any disclosure that the synchronizer blocking rings contained in said assemblies are of foreign origin. The words "Made in U.S.A." imprinted on said boxes constitute an affirmative representation that the assemblies contained in said boxes are wholly of domestic origin. Such representation is false, misleading and deceptive as said assemblies contain substantial parts of foreign origin.

PAR. 6. In the absence of clear and conspicuous disclosure that a product, including synchronizer blocking rings and synchronizer assemblies, is of foreign origin, the public believes and understands that it is of domestic origin, a fact of which the Commission takes official notice.

As to the aforesaid articles of merchandise, a substantial portion of the purchasing public has a preference for said articles which are of domestic origin, of which fact the Commission also takes official notice. Respondents' failure clearly and conspicuously to disclose the country of origin of said articles of merchandise is therefore, to the prejudice of the purchasing public.

PAR. 7. By the aforesaid practices, respondents place in the hands of manufacturers, wholesalers and distributors, means and instru-

mentalities by and through which they may mislead the public as to the country of origin of said products.

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

PAR. 9. The use by the respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said products are of domestic origin and into the purchase of substantial quantities of respondents' products by reason of said erroneous and mistaken belief.

PAR. 10. The aforesaid acts and practices of respondents, as herein alleged, were and are 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 Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Deceptive Practices proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; 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 aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by the respondents that the law has been violated as alleged in such complaint, and waivers and provisions as required by the Commission's rules; and

The Commission, having reason to believe that the respondents have violated the Federal Trade Commission Act, and having determined that complaint should issue stating its charges in that respect, hereby issues its complaint, accepts said agreement, makes the following jurisdictional findings and enters the following order:

1. Siegfried Sonneberg, Manfred Sonneberg, and Henni Sonneberg, are individuals and copartners doing business as The Sonneberg Company, with their office and principal place of business located at 418 West 25th Street, New York, New York.

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, Siegfried Sonneberg, Manfred Sonneberg and Henni Sonneberg, individually and as copartners doing business as The Sonneberg Company, or under any other name or names, 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 automotive parts, including synchronizer blocking rings, synchronizer assemblies, or any other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Offering for sale, selling or distributing any product which is in whole, or which contains a substantial part or parts, of foreign origin or fabrication without affirmatively disclosing the country or place of foreign origin or fabrication thereof on the products themselves, by marking or stamping on any exposed surface or on a label or tag affixed thereto, of such degree of permancy as to remain thereon until consummation of consumer sale of the product, and of such conspicuousness as to be likely observed and read by purchasers and prospective purchasers making casual inspection of the product.

2. Offering for sale, selling or distributing any such product marked in the manner set out above and enclosed in a package or container, without disclosing the country or place of foreign origin of the product, or substantial part or parts thereof, on the front or face of said package or container, so positioned as to clearly have application to the product so packaged, and of such degree of permanency as to remain thereon until consummation of the consumer sale of the product, and of such conspicuousness as to be likely observed and read by purchasers and prospective purchasers making casual inspection of the product so packaged.

3. Representing, directly or indirectly, in any manner or by any means, that their products are of domestic origin when said products are in whole or contain a substantial part of which is, of foreign origin.

4. Placing in the hands of jobbers, retailers, dealers, and others, means and instrumentalities by and through which they may deceive and mislead the purchasing public concerning any merchandise in respect to the origin of respondents' merchandise.

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

IN THE MATTER OF

GLACIER PUBLISHING INTERNATIONAL, INC., ET AL

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

Docket C-538. Complaint, Aug. 2, 1963—Decision, Aug. 2, 1963

Consent order requiring New York City publishers of pocket-size paper covered books, to cease misrepresenting the contents or utility of their said paperbacks by such practices as stating on the outside front cover of their Car Buyers Pricing Guide, "* * * GIVES THE FACTS * * * NEW CAR WHOLESALE AND RETAIL PRICES", etc., and on the cover of the Appliance Buyers Pricing Guide, "BEST BUYS-DEALERS' COSTS", and in the introduction "* * * Best buy, based on extensive consumer usage and testing reports * * *", etc., when the aforesaid new car wholesale prices were inaccurate and fictitious and the test reports alluded to in the "Appliance Buyers Pricing Guide" were nonexistent.

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 Glacier Publishing International, Inc., a corporation, Glacier Publishing Corporation, a corporation, Timothy Birnbaum and Peter F. McGuire, individually and as officers of each of said corporations, and Henry Scharf, individually, 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 thereto would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Glacier Publishing Corporation is a corporation, organized, existing and doing business under and by

virtue of the laws of the State of New York, and is a wholly owned subsidiary of Glacier Publishing International, Inc., a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware. Individual respondents Timothy Birnbaum and Peter F. McGuire are officers of each of said corporations, and together with respondent Henry Scharf formulate, direct and control the acts, practices and policies of the corporate respondents. Individual and corporate respondents have maintained their principal office and place of business at 26 Broadway, in the City of New York, State of New York.

PAR. 2. Respondents have been engaged in the publication, advertising, offering for sale, sale and distribution of pocket-size paper covered books, sometimes hereinafter referred to as paperbacks. Said publications have been marketed nationally through a distributor and have been retailed at bookstores, drugstores, newsstands in railway and bus stations and at other retail outlets, to members of the public.

PAR. 3. In the course and conduct of their business, respondents have caused said paperbacks, when sold, to be shipped from their place of business in the State of New York to the purchasers thereof located in various other States of the United States, and at all times mentioned herein have maintained a substantial course of trade in said paperbacks 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 said paperbacks, respondents have made numerous statements and representations on the covers and in the introduction to said paperbacks with respect to the contents and utility of said paperbacks and with respect to the tests and surveys conducted to support information contained in said paperbacks. Among and typical of said statements and representations, but not all inclusive thereof, are the following:

(a) On the outside front cover of the Car Buyers Pricing Guide,

OFFICIAL
SPRING, 1961 $1.00
WHOLESALE AND RETAIL
PRICES OF ALL '61 CARS
OFFICIAL CAR BUYERS PRICING GUIDE GIVES THE FACTS * * *
NEW CAR WHOLESALE AND RETAIL PRICES * * *

car buyers
pricing guide;

and on the back outside cover of said paperback,

THE 1961 CAR BUYERS GUIDE brings you all the facts and prices on all the cars: * * *

If you're planning to buy or sell a car, new or used, foreign or domestic, you can drive a better bargain with this book, because OFFICIAL CAR BUYERS PRICING GUIDE will

*** * * Tell you just what it costs your dealer to get your new car * * *.**

(b) On the front outside cover of the Appliance Buyers Pricing Guide,

BEST BUYS • DEALERS' COSTS
1961 EDITION $1.00
OFFICIAL
'61 APPLIANCE
BUYERS PRICING
GUIDE

Wholesale and retail prices of all major appliances plus your BEST BUYS * * *;

and in the INTRODUCTION TO APPLIANCE BUYERS PRICING GUIDE;

In addition to listing all the appliances (alphabetically by manufacturer), each category has one manufacturer with an asterisk (*) next to his name. This is considered the Best Buy, based on extensive consumer usage and testing reports * * *.

PAR. 5. Through the use of the aforesaid statements and representations and others similar thereto, but not specifically set forth, respondents have represented, directly or indirectly:

(a) That the new car wholesale prices contained in respondents' "Car Buyers Pricing Guide are authentic prices actually used by the automobile manufacturers to bill automobiles that are sold by said manufacturers to new car dealers; and that such prices could be used by prospective purchasers of new cars to determine the dealer cost of new automobiles and thereby improve their bargaining position when negotiating with new car dealers towards the purchase of a new car.

(b) That the "Best Buy" recommendations contained in respondents, "Appliance Buyers Pricing Guide" are based upon test reports resulting from independent consumer surveys and extensive independent tests conducted by respondents or others under the direction of the respondents.

PAR. 6. In truth and in fact:

(a) The new car wholesale prices contained in respondents' "Car Buyers Pricing Guide" are not authentic prices actually used by the automobile manufacturers to bill automobiles that are sold by said manufacturers to new car dealers. Such new car wholesale prices as are contained in said paperback are substantially inaccurate and fictitious and could not be used by prospective purchasers to determine the

dealer cost of new automobiles or to improve their bargaining position when negotiating with new car dealers towards the purchase of a new car.

(b) The "Best Buy" recommendations contained in respondents' "Appliance Buyers Pricing Guide" are not based upon test reports resulting from independent consumer surveys and extensive independent tests conducted by respondents or others under the direction of the respondents. Said test reports are nonexistent and no independent consumer surveys or extensive independent tests have been conducted by respondents or others under the direction of the respondents.

Said statements and representations were, therefore, false, misleading and deceptive.

PAR. 7. By the aforesaid practices, respondents have furnished or otherwise placed in the hands of retailers, directly or indirectly, the means and instrumentalities by and through which they may mislead the public as to the contents and utility of said paperbacks and as to the tests and surveys conducted to support information contained in said paperbacks.

PAR. 8. In the conduct of their business, at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of paperbacks.

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

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

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Deceptive Prac-

tices proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; 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 aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by the respondents that the law has been violated as alleged in such complaint, and waivers and provisions as required by the Commission's rules; and

The Commission, having reason to believe that the respondents have violated the Federal Trade Commission Act, and having determined that complaint should issue stating its charges in that respect, hereby issues its complaint, accepts said agreement, makes the following jurisdictional findings and enters the following order:

1. Respondent Glacier Publishing International, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, and has maintained its principal office and place of business at 26 Broadway, in the city of New York, State of New York.

Respondent Glacier Publishing Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, and has maintained its principal office and place of business at 26 Broadway, in the city of New York, State of New York.

Respondents Timothy Birnbaum and Peter F. McGuire are officers of each of said corporations. They, together with respondent Henry Scharf, an individual, have the same address 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 Glacier Publishing International, Inc., a corporation, and its officers, Glacier Publishing Corporation, a corporation, and its officers, Timothy Birnbaum and Peter F. McGuire, individually, and as officers of each of said corporations, and Henry Scharf, individually, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the publication, offering for sale, sale, or distribution of the paperbacks "Car Buyers Pricing Guide" and "Ap-

pliance Buyers Pricing Guide" or any other publications, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, through the use of the words "OFFICIAL * * * NEW CAR WHOLESALE * * * PRICES * * *", or any other word or words of similar import and meaning, on the front outside cover of the paperback "Car Buyers Pricing Guide", or in any other manner, that said paperback contains authentic prices actually used by automobile manufacturers to bill automobiles that are sold by such manufacturers to new car dealers.

2. Representing, directly or by implication, through the use of the words " * * * you can drive a better bargain with this book, because OFFICIAL CAR BUYERS PRICING GUIDE will: * * * Tell you just what it costs your dealer to get your new car * * *", or any other word or words of similar import and meaning, on the back outside cover of the paperback "Car Buyers Pricing Guide", or in any other manner, that prospective purchasers of new cars can improve their bargaining position when negotiating with new car dealers towards the purchase of a new car through the use of the new car "wholesale" prices contained in said paperback.

3. Misrepresenting, in any manner, directly or by implication the contents or utility of any of said paperbacks or any other publication.

4. Representing, directly or by implication, that respondents, or others under the direction of respondents have conducted any tests or surveys when neither respondents nor others under the direction of respondents have conducted any tests or surveys.

5. Misrepresenting, in any manner, directly or by implication, the results of any tests or surveys.

6. Furnishing or otherwise placing in the hands of retailers of said paperbacks or any other publications, directly or indirectly, the means and instrumentalities by and through which they may mislead or deceive the public in the manner or as to the things hereinabove prohibited.

It is further ordered, That each of 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.

780-018—69——29

IN THE MATTER OF

ALBERT FINKEL ET AL. TRADING AS ROYAL FURS

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

Docket C-589. Complaint, Aug. 2, 1963—Decision, Aug. 2, 1963

Consent order requiring manufacturing furriers in Kansas City, Mo., to cease violating the Fur Products Labeling Act by failing, on labels and invoices, to show the true animal name of furs and to use the term "Natural" when furs were not artificially colored; failing to identify the manufacturer, etc., on labels; failing to disclose on invoices when fur products contained artificially colored or cheap or waste fur, and to show the country of origin of imported furs; and failing in other respects to comply with labeling and invoicing requirements.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act and by virtue of the authority vested in it by said Acts, the Federal Trade Commission having reason to believe that Albert Finkel and Margaret Finkel, individuals trading as Royal Furs, 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. Respondents Albert Finkel and Margaret Finkel are individuals trading under their own names and as Royal Furs.

Respondents are manufacturers of fur products and also engage in the wholesale and retail sale of fur products and have their office and principal place of business at 1003 Main Street, Kansas City, Missouri.

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 sold, advertised, offered for sale, transported and distributed fur products which have been made in whole or in part of furs which have 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 without labels and fur products with labels which failed:

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

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

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

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

(b) The term "natural" was not used on labels 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.

(c) Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was not completely set out on one side of labels, in violation of Rule 29(a) of said Rules and Regulations.

(d) Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was set forth in handwriting on labels, in violation of Rule 29(b) of said Rules and Regulations.

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

(f) Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was not set forth separately on labels with respect to each section of fur products composed of two or more sections containing different animal furs, in violation of Rule 30 of said Rules and Regulations.

(g) Required item numbers were not set forth on labels 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 fur products covered by invoices 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 product was bleached, dyed, or otherwise artificially colored, when such was the fact.

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

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

(b) The term "natural" was not used on invoices 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.

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

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

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

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

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

Decision and Order

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

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by 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 Albert Finkel and Margaret Finkel are individuals trading under their own names and as Royal Furs with their office and principal place of business located at 1003 Main Street, Kansas City, Missouri.

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 Albert Finkel and Margaret Finkel, individuals, trading under their own names and as Royal Furs, 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, 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:

A. Misbranding fur products by:

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

2. Setting forth information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder in abbreviated form on labels affixed to fur products.

3. Failing to set forth the term "Natural" as part of the information required to be disclosed on labels under the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder to describe fur products which are not pointed, bleached, dyed, tip-dyed, or otherwise artificially colored.

4. Failing to completely set out information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations thereunder on one side of the labels affixed to fur products.

5. Setting forth information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder in handwriting on labels affixed to fur products.

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

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

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

B. Falsely or deceptively invoicing fur products by:

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

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

3. Failing to set forth the term "Natural" as part of the information required to be disclosed on invoices under the Fur Products Labeling Act and Rules and Regulations promulgated thereunder to describe fur products which are not pointed, bleached, dyed, tip-dyed, or otherwise artificially colored.

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

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

6. Failing to set forth on invoices the item number or mark assigned to fur products.

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

IN THE MATTER OF

BARACUTA, INC., ET AL.

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

*Dockets C-540—C-566. Complaints, Aug. 12, 1963—Decisions, Aug. 12, 1963**

Consent orders requiring 27 wearing apparel manufacturers to cease discriminating in price among their customers in violation of Sec. 2(d) of the Clayton Act by favoring certain retailers with promotional payments not made proportionally available to competing stores, and postponing effective date of the orders until further order of the Commission.

COMPLAINT

The Federal Trade Commission, having reason to believe that each of the respondents named in the appendix herein has violated and is now violating the provisions of subsection (d) of Section 2 of the

*These orders were made effective on Aug. 9, 1965, *see Abby Kent Co., Inc., et al.*, docket No. C-328, et al., Aug. 9, 1965.

Clayton Act, as amended by the Robinson-Patman Act (U.S.C., Title 15, Sec. 13), and it appearing to the Commission that a proceeding by it in respect thereto is in the interest of the public, the Commission hereby issues its complaints stating its charges as follows:

PARAGRAPH 1. Each of the respondents is a corporation engaged in commerce, as "commerce" is defined in the amended Clayton Act, and sells and distributes its wearing apparel products from one State to customers located in other States of the United States. The sales of respondents in commerce are substantial.

PAR. 2. Each of the respondents in the course and conduct of its business in commerce paid or contracted for the payment of something of value to or for the benefit of some of its customers as compensation or in consideration for services and facilities furnished by or through such customers in connection with their sale or offering for sale of wearing apparel products sold to them by respondent, and such payments were not made available on proportionally equal terms to all other customers competing with favored customers in the sale and distribution of respondent's wearing apparel products.

PAR. 3. Included among, but not limited to, the practices alleged herein, each of the respondents has granted substantial promotional payments or allowances for the promoting and advertising of its wearing apparel products to certain department stores and others who purchase respondent's said products for resale. These aforesaid promotional payments or allowances were not offered and made available on proportionally equal to all other customers of respondents who compete with said favored customers in the sale of respondents' wearing apparel products.

PAR. 4. The acts and practices alleged in Paragraphs 1 through 3 are all in violation of subsection (d) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of each of the respondents named in the appendix herein, and subsequently having determined that complaint should issue, and each respondent having entered into an agreement containing an order to cease and desist from the practices being investigated and having been furnished a copy of a draft of complaint to issue herein charging each respondent with violation of subsection (d) of Section 2 of the Clayton Act, as amended, and

Each of the respondents having executed the agreement containing a consent order which agreement contains an admission of all the jurisdictional facts set forth in the complaint to issue herein, and a statement that the signing of the said agreement is for settlement

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

The Commission, having considered the agreements hereby accepts the same, issues its complaints in the form contemplated by said agreements, makes the following jurisdictional findings, and enters the following orders:

1. Each of the respondents named in the appendix herein is a corporation organized and existing under the laws of various States of the United States, with its office and principal place of business located as listed in the appendix herein.

2. The Federal Trade Commission has jurisdiction of the subject matter of these proceedings and of the respondents.

ORDER

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

(1) Paying or contracting for the payment of anything of value to, or for the benefit of, any customer of such respondent as compensation or in consideration for advertising or promotional services, or any other service or facility, furnished by or through such customer in connection with the handling, sale or offering for sale of wearing apparel products manufactured, sold or offered for sale by respondent, unless such payment or consideration is made available on proportionally equal terms to all other customers competing with such favored customer in the distribution or resale of such products.

It is further ordered, That the effective date of these orders to cease and desist be and it hereby is postponed until further Order of the Commission.

APPENDIX

The respondents are (addresses are New York City, unless otherwise indicated):

(C–540) Baracuta, Inc., 16 E. 40th St.
(C–541) Blue Jeans Corp., 130 W. 34th St.
(C–542) College-Town Sportswear, 35 Morrisey Blvd., Boston, Mass.

(C–543) Davis Sportswear Co., Inc., 5 Franklin St., Lawrence, Mass.
(C–544) Gail Byron Frocks Co., Inc., 463 Seventh Ave.
(C–545) Girltown, Inc., 35 Morrisey Blvd., Boston, Mass.
(C–546) C. F. Hathaway Co., 10 Water St., Waterville, Me.
(C–547) Junior Accent, Inc., 498 Seventh Ave.
(C–548) Century Sportswear Co., Inc., 20 Boyleston St., Boston, Mass.
(C–549) Jonathan Logan, Inc., 3901 Liberty Ave., North Bergen, N. J.
(C–550) The Manhattan Shirt Co., 1271 Avenue of the Americas.
(C–551) Novelty Veiling Co., Inc., 675 Sixth Ave.
(C–552) Petite Lady Dress Co., Inc., 1375 Broadway.
(C–553) Phillips-Van Heusen Corp., 417 Fifth Ave.
(C–554) Rosecrest, Inc., 24 Binford St., Boston, Mass.
(C–555) Boris Smoler & Sons, Inc., 3021 N. Pulaski, Chicago, Ill.
(C–556) Alice Stuart, Inc., 525 Seventh Ave.
(C–557) Sunnyvale, Inc., 1350 Broadway.
(C–558) Tanner of North Carolina, Inc., Rutherfordtown, N. C.
(C–559) Warshauer and Franck, Inc., 75 Kneeland St., Boston, Mass.
(C–560) Westover Fashions, Inc., 1400 Broadway.
(C–561) Boston Maid, Inc., 560 Harrison Ave., Boston, Mass.
(C–562) Devonbrook, Inc., 1400 Broadway.
(C–563) R. and M. Kaufman, Inc., 41 Holbrook St., Aurora, Ill.
(C–564) Linsk of Philadelphia, Inc., 3111 W. Allegheny Ave., Philadelphia, Pa.
(C–565) Modern Juniors, Inc., 1407 Broadway.
(C–566) D. F. Rodgers Mfg. Co., Inc., 1350 Broadway.

IN THE MATTER OF

MURRAY HOFFMAN ET AL. TRADING AS HOFFMAN & JACOBS

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

Docket C–567. Complaint, Aug. 12, 1963—Decision, Aug. 12, 1963

Consent order requiring manufacturing furriers in Los Angeles to cease violating the Fur Products Labeling Act by failing, on labels and invoices, to show the true animal name of fur in fur products and the country of

origin of imported furs, to disclose when furs were artificially colored and to use the term "natural" where required; using the term "Broadtail" improperly on invoices; and failing to comply in other respects with labeling and invoicing requirements.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act and by virtue of the authority vested in it by said Acts, the Federal Trade Commission having reason to believe that Murray Hoffman and Edward Jacobs, individually and as copartners trading as Hoffman & Jacobs, 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. Respondents Murray Hoffman and Edward Jacobs are individuals and copartners trading as Hoffman & Jacobs.

Respondents are manufacturers, wholesalers, and retailers of fur products with their office and principal place of business located at 635 South Hill Street, Los Angeles, California.

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 furs which have been shipped and received in commerce, as the terms "commerce", "fur" and "fur product" are defined in the Fur Products Labeling Act.

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

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

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

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

3. To show the country of origin of the imported furs contained in the fur product.

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 on labels 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 set forth in handwriting on labels, in violation of Rule 29(b) of said Rules and Regulations.

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

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

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

Among such falsely and deceptively invoiced fur products, but not limited thereto, were fur products covered by invoices 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 product was bleached, dyed, or otherwise artificially colored, when such was the fact.

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

PAR. 6. Certain of said fur products were falsely and deceptively invoiced with respect to the name or designation of the animal or animals that produced the fur from which the said fur products had been manufactured, in violation of Section 5(b)(2) of the Fur Products Labeling Act.

Among such falsely and deceptively invoiced fur products, but not limited thereto, were fur products which were invoiced as "Broadtail" thereby implying that the furs contained therein were entitled to the designation "Broadtail Lamb" when in truth and in fact they were not entitled to such designations.

PAR. 7. Certain of said fur products were falsely and deceptively invoiced in that said fur products were invoiced to show that the fur contained therein was natural, when in fact such fur was pointed, bleached, dyed, tip-dyed or otherwise artificially colored, in violation of Section 5(b)(2) of the Fur Products Labeling Act.

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

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

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

(c) The term "natural" was not used on invoices 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.

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

PAR. 9. Respondents in introducing, selling, advertising, and offering for sale, in commerce, and in processing for commerce, fur products; and in selling, advertising, offering for sale and processing fur products which have been shipped and received in commerce, have misbranded such fur products by substituting thereon, labels which did not conform to the requirements of Section 4 of the Fur Products Labeling Act, for the labels affixed to said fur products by the manufacturer or distributor pursuant to Section 4 of said Act, in violation of Section 3(e) of said Act.

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

DECISION AND ORDER

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

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, and 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 Murray Hoffman and Edward Jacobs are individuals and copartners trading as Hoffman & Jacobs with their office and principal place of business located at 635 South Hill Street, Los Angeles, California.

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 Murray Hoffman and Edward Jacobs individually and as copartners trading as Hoffman & Jacobs 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, 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 products; 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:

A. Misbranding fur products by:

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

2. Failing to set forth the term "Natural" as part of the information required to be disclosed on labels under the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder to describe fur products which are not pointed, bleached, dyed, tip-dyed, or otherwise artificially colored.

3. Setting forth information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder in handwriting on labels affixed to fur products.

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

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

B. Falsely or deceptively invoicing fur products by:

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

2. Setting forth on invoices pertaining to fur products any false or deceptive information with respect to the name or designation of the animal or animals that produced the fur contained in such fur product.

3. Representing directly or by implication on invoices that the fur contained in fur products is natural when such fur is pointed, bleached, dyed, tip-dyed or otherwise artificially colored.

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

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

6. Failing to set forth the term "Natural" as part of the information required to be disclosed on invoices under the Fur Products Labeling Act and Rules and Regulations promulgated thereunder to describe fur products which are not pointed, bleached, dyed, tip-dyed or otherwise artificially colored.

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

It is further ordered, That respondents Murray Hoffman and Edward Jacobs, individually and as copartners trading as Hoffman & Jacobs 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, sale, advertising or offering for sale, in commerce, or the processing for commerce, of fur products; or in connection with the selling, advertising, offering for sale, or processing of fur products which have been shipped and received in commerce, do forthwith cease and desist from misbranding fur products by substituting for the labels affixed to such fur products pursuant to Section 4 of the Fur Products Labeling Act labels which do not conform to the requirements of the aforesaid Act and the Rules and Regulations promulgated thereunder.

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

J. WEINGARTEN, INC.

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

Docket 7714. Complaint, Jan. 5, 1960—Decision, Aug. 13, 1963

Order dismissing "solely for the purpose of complying with the * * * order of the District Court" requiring the Commission to issue a final order disposing of the case by August 13—"without prejudice to the right of the