

Complaint

63 F.T.C.

## IN THE MATTER OF

CENTRAL SEWING CENTER, INC., ET AL., DOING BUSINESS AS  
TRI-STATE DISTRIBUTINGORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE  
COMMISSION ACT*Docket 8556. Complaint, Mar. 5, 1963—Decision, Sept. 20, 1963*

Order requiring Denver, Colo., sellers of sewing machines and vacuum cleaners to the public, to cease representing falsely in advertising and orally that their "bait" offers made to develop leads to prospects, were bona fide offers to give sewing machines free to specially selected persons; that an excessive amount set forth as "Retail Value" was the usual price and a stated lesser figure represented savings; that a customer preferring one of their regular line would be granted a substantial discount; that drawings for their products displayed at theaters or business establishments—actually schemes to obtain leads to prospective customers—were bona fide contests and that participants won valuable certificates entitling them to reductions from usual prices; and that their products and practices had been tested and approved by "Good Housekeeping" and "Parents Magazine".

## 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 Central Sewing Center, Inc., a corporation, and Leonard H. Dorey, individually and as an officer of said corporation, and said respondents collectively, doing business as Tri-State Distributing, 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 Central Sewing Center, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Colorado, with its principal office and place of business located at 1417 South Broadway, in the city of Denver, State of Colorado.

Respondent Leonard H. Dorey is an individual and an officer of respondent corporation. He formulates, directs and controls the acts and practices of the respondent corporation, including the acts and practices hereinafter set forth. His address is the same as that of the respondent corporation.

Respondents Central Sewing Center, Inc., and its officers, and Leonard H. Dorey, as an individual and as an officer of respondent

corporation, trade and do business collectively, under the name and style of Tri-State Distributing, at the principal office and place of business hereinabove set forth.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of sewing machines and vacuum cleaners 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 Colorado 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 purchase of their products, respondents have made certain statements and representations with respect thereto in direct mail advertisements and through other advertising media, of which the following are typical:

Your name has been selected in your vicinity to receive a 1961 NEW HOME Sewing Machine during our advertising campaign. The Sewing machine will cost you absolutely nothing. All you must purchase is one of our moderately priced Cabinets for it. Cabinets are priced from \$29.50. TRI-STATE DISTRIBUTING is going to place a few of these fine NEW HOME machines throughout the state as part of our annual advertising budget \* \* \* The retail value of the machine we are making available to you is \$119.50 \* \* \*. Guaranteed and backed by New Home Sewing Machine Corp. \* \* \*. (Depiction of a sewing machine and cabinet.)

PAR. 5. By and through the use of the aforementioned statements, by oral statements of respondents or their salesmen, and by other written statements of similar import and meaning not specifically set out herein, respondents represented, directly or by implication:

1. That their offers were being made only to a limited number of specially selected persons.

2. That they were making genuine, bona fide offers to give the advertised sewing machines free to purchasers of a sewing machine cabinet.

3. Through the use of the aforesaid amount in connection with the words "Retail Value", that said amount was the price at which the merchandise referred to was usually and customarily sold at retail in all of the trade areas in which said merchandise was offered for sale, and through the use of said amount and the lesser amount for said machine and cabinet that the difference in said amounts repre-

mented a saving to the purchaser from the price at which said merchandise was usually and customarily sold in all of said trade areas.

4. Through the oral statements of respondents' said salesmen, that customers who elected to purchase one of their regular line of sewing machines rather than the aforementioned machines would be granted discounts or allowances in the amount of the above stated price or some other substantial sum from the prices usually and customarily charged by respondents for said regular line of sewing machines.

PAR. 6. In truth and in fact:

1. Respondents' said offers were not being made only to a limited number of specially selected persons. Said offers were made to numerous members of the general public through frequent mailings to broad segments thereof.

2. Respondents were not making genuine, bona fide offers to give the advertised sewing machines free to purchasers of a sewing machine cabinet. On the contrary, respondents' said offers were made for the purpose of developing leads as to prospective purchasers of respondents' products at greatly increased prices.

3. The amount set out in connection with the words "Retail Value" was not the price at which the merchandise referred to was usually and customarily sold at retail in all of the trade areas in which said merchandise was offered for sale and purchasers of respondents' said merchandise would not realize a saving of the difference between the said higher and lower price amounts.

4. Customers who elected to purchase one of respondents' regular line of sewing machines rather than the aforementioned machines would not be granted discounts or allowances in the amount of the above stated price or some other substantial sum from the prices usually and customarily charged by respondents for said regular line of sewing machines. Said discounts or allowances purportedly granted in lieu of said advertised machines or leaders are not based on the net prices, disregarding purported discounts, bonuses or allowances, at which said regular line sewing machines are usually and customarily sold by respondents in the normal course of their business.

Therefore, the statements and representations as set forth in Paragraphs 4 and 5 hereof, were and are false, misleading and deceptive.

PAR. 7. In the course and conduct of their business and for the purpose of inducing the purchase of their products, respondents have caused certain of their products to be displayed at theaters or business establishments for use as subjects of drawings or contests. Participants in said drawings received form letters from respondents

788

## Complaint

which contained certain statements, of which the following are typical:

CONGRATULATIONS You have been given \$85 toward the purchase of any new sewing machine \* \* \* or \$45 toward any new vacuum cleaner \* \* \*.

Various insignia or emblems are also depicted on said form letters, including the following:

(Insigne) Replacement or refund of money GUARANTEED BY GOOD HOUSEKEEPING if not as advertised therein.

(Insigne) COMMENDED by the Consumer Service Bureau of PARENTS' Magazine as advertised therein.

PAR. 8. By and through the use of the aforementioned statements, by oral statements of respondents or their salesmen, and by other written statements of similar import and meaning not specifically set out herein, respondents represented, directly or by implication:

1. That they conduct bona fide contests and that recipients of said form letters have won a valuable prize, through their participation therein, consisting of a certificate entitling them to a discount or bonus in the amounts stated, as reductions from the prices at which such products are usually and customarily sold by respondents.

2. That respondents' products and their advertising and practices have been tested or approved by "Good Housekeeping" or "Parents' Magazine", and that respondents were authorized to depict such insignia or emblems in their advertisements.

PAR. 9. In truth and in fact:

1. Respondents do not conduct bona fide contests. Said contests are schemes to obtain leads as to persons interested in purchasing respondents' products and almost everyone participating therein receives a discount or bonus certificate as an award or prize. Said recipients of said form letters have not won a valuable prize. Said certificates are valueless since the purported reductions in the various amounts stated therein are not from the net prices disregarding purported discounts, bonuses and allowances at which such products are usually and customarily sold by respondents in the normal course of their business.

2. Respondents' products, advertising, or practices have not been tested or approved by "Good Housekeeping" or "Parents' Magazine" and respondents are not authorized to depict their emblems or insignia in their advertisements.

Therefore, the statements and representations, as set forth in Paragraphs 7 and 8 hereof, were and are false, misleading, and deceptive.

PAR. 10. In the course and conduct of their business respondents have used such statements as "guaranteed" in their advertisements,

Initial Decision

63 F.T.C.

thereby implying that their products were guaranteed in every respect and without qualification.

PAR. 11. In truth and in fact respondents' guarantee is not unconditional but is limited in certain respects which limitations were not disclosed in their advertisements. Furthermore, the proper identity of the guarantor is not disclosed in many of said advertisements.

Therefore, the statements and representations, as set forth in Paragraph 10 hereof, were and are false, misleading and deceptive.

PAR. 12. In the conduct of their business at all times mentioned herein, the respondents have been in substantial competition in commerce with corporations, firms and individuals engaged in the sale of sewing machines and vacuum cleaners of the same general kind and nature as those sold by respondents.

PAR. 13. 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. 14. The aforesaid acts and practices of respondents, as herein alleged, were, and are, all to the prejudice and injury of the public and of the 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.

*Mr. Terral A. Jordan* and *Mr. John J. McNally* supporting the complaint.

No appearance filed for respondents.

INITIAL DECISION BY JOSEPH W. KAUFMAN, HEARING EXAMINER

MAY 17, 1963

The complaint herein, charging respondents with violation of Section 5 of the Federal Trade Commission Act by the making of false and misleading representations for the purpose of inducing the sale of merchandise, was issued March 5, 1963, and was duly served upon respondents by registered mail on March 18, 1963, and March 20, 1963. The respondents have not filed their answers to this complaint within the time required (nor did they appear at the time and place set for hearing) and are now in default. Pursuant to the provisions of Rule 4.5(2c) of the Commission's Rules of Practice for Adjudica-

tive Proceedings, and on complaint counsel's motion, the hearing examiner hereby declares the respondents in default and now finds the facts to be as alleged in the complaint, and issues his initial decision containing such findings, appropriate conclusions drawn therefrom and order to cease and desist, as follows:

## FINDINGS OF FACT

1. Respondent Central Sewing Center, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Colorado, with its principal office and place of business located at 1417 South Broadway, in the city of Denver, State of Colorado.

Respondent Leonard H. Dorey is an individual and an officer of respondent corporation. He formulates, directs and controls the acts and practices of the respondent corporation, including the acts and practices hereinafter set forth. His address is the same as that of the respondent corporation.

Respondents Central Sewing Center, Inc., and its officers, and Leonard H. Dorey, as an individual and as an officer of respondent corporation, trade and do business collectively, under the name and style of Tri-State Distributing, at the principal office and place of business hereinabove set forth.

2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of sewing machines and vacuum cleaners to the public.

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 Colorado 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.

4. In the course and conduct of their business and for the purpose of inducing the purchase of their products, respondents have made certain statements and representations with respect thereto in direct *mail advertisements* and through *other advertising media*, of which the following are typical:

Your name has been selected in your vicinity to receive a 1961 NEW HOME Sewing Machine during our advertising campaign. The sewing machine will cost you absolutely nothing. All you must purchase is one of our moderately priced Cabinets for it. Cabinets are priced from \$29.50. TRI-STATE DISTRIBUTING is going to place a few of these fine NEW HOME machines

Initial Decision

63 F.T.C.

throughout the state as part of our annual advertising budget \* \* \* The *retail value* of the machine we are making available to you is \$119.50 \* \* \*. Guaranteed and backed by New Home Sewing Machine Corp. \* \* \*. (Depiction of a sewing machine and cabinet.)

5. By and through the use of the aforementioned statements, by oral statements of respondents or their salesmen, and by other written statements of similar import and meaning not specifically set out herein, respondents represented, directly or by implication:

1. That their offers were being made only to a limited number of specially selected persons.

2. That they were making genuine, bona fide offers to give the advertised sewing machines free to purchasers of a sewing machine cabinet.

3. Through the use of the aforesaid amount in connection with the words "*Retail Value*", that said amount was the price at which the merchandise referred to was usually and customarily sold at retail in all of the trade areas in which said merchandise was offered for sale, and through the use of said amount and the lesser amount for said machine and cabinet that the difference in said amounts represented a saving to the purchaser from the price at which said merchandise was usually and customarily sold in all of said trade areas.

4. Through the *oral statements* of respondents' said salesmen, that customers who elected to purchase one of their regular line of sewing machines rather than the aforementioned machines would be granted discounts or allowances in the amount of the above stated price or some other substantial sum from the prices usually and customarily charged by respondents for said regular line of sewing machines.

6. In truth and in fact:

1. Respondents' said *offers were not being made only to a limited number of specially selected persons*. Said offers were made to numerous members of the general public through frequent mailings to broad segments thereof.

2. Respondents were not making genuine, bona fide offers to give the advertised sewing machines free to purchasers of a sewing machine cabinet. On the contrary, respondents' said offers were made for the purpose of *developing leads* as to prospective purchasers of respondents' products at greatly increased prices.

3. The amount set out in connection with the words "*Retail Value*" was not the price at which the merchandise referred to was usually and customarily sold at retail in all of the trade areas in which said merchandise was offered for sale and purchasers of respondents' said

merchandise would not realize a saving of the difference between the said higher and lower price amounts.

4. Customers who elected to purchase one of respondents' *regular line of sewing machines* rather than the aforementioned machines would not be granted discounts or allowances in the amount of the above stated price or some other substantial sum from the prices usually and customarily charged by respondents for said regular line of sewing machines. Said discounts or allowances purportedly granted in lieu of said advertised machines or leaders are not based on the net prices, disregarding purported discounts, bonuses or allowances, at which said regular line sewing machines are usually and customarily sold by respondents in the normal course of their business.

Therefore, the statements and representations as set forth in Paragraphs 4 and 5 hereof, were and are false, misleading and deceptive.

7. In the course and conduct of their business and for the purpose of inducing the purchase of their products, respondents have caused certain of their products to be displayed at theaters or business establishments for use as subjects of drawings or contests. Participants in said drawings received form letters from respondents which contained certain statements, of which the following are typical:

CONGRATULATIONS You have been given \$85 toward the purchase of any new sewing machine \* \* \* or \$45 toward any new vacuum cleaner \* \* \*.

Various insignia or emblems are also depicted on said form letters, including the following:

(Insigne) Replacement or refund of money GUARANTEED BY GOOD HOUSEKEEPING if not as advertised therein.

(Insigne) COMMENDED by the Consumer Service Bureau of PARENTS' MAGAZINE as advertised therein.

8. By and through the use of the aforementioned statements, by oral statements of respondents or their salesmen, and by other written statements of similar import and meaning not specifically set out herein, respondents represented, directly or by implication:

1. That they conduct bona fide contests and that recipients of said form letters have won a valuable prize, through their participation therein, consisting of a certificate entitling them to a discount or bonus in the amounts stated, as reductions from the prices at which such products are usually and customarily sold by respondents.

2. That respondents' products and their advertising and practices have been tested or approved by "Good Housekeeping" or "Parents' Magazine", and that respondents were authorized to depict such insignia or emblems in their advertisements.

9. In truth and in fact:



1. Respondents do not conduct bona fide contests. Said contests are schemes to obtain leads as to persons interested in purchasing respondents' products and almost everyone participating therein received a discount or bonus certificate as an award or prize. Said recipients of said form letters have not won a valuable prize. Said certificates are valueless since the purported reductions in the various amounts stated therein are not from the net prices disregarding purported discounts, bonuses and allowances at which such products are usually and customarily sold by respondents in the normal course of their business.

2. Respondents' products, advertising, or practices have not been tested or approved by "Good Housekeeping" or "Parents' Magazine" and respondents are not authorized to depict their emblems or insignia in their advertisements.

Therefore, the statements and representations, as set forth in Paragraphs 7 and 8 hereof, were and are false, misleading, and deceptive.

10. In the course and conduct of their business respondents have used such statements as "guaranteed" in their advertisements, thereby implying that their products were guaranteed in every respect and without qualification.

11. In truth and in fact respondents' guarantee is not unconditional but is limited in certain respects which limitations were not disclosed in their advertisements. Furthermore, the proper identity of the guarantor is not disclosed in many of said advertisements.

Therefore, the statements and representations, as set forth in Paragraph 10 hereof, were and are false, misleading and deceptive.

12. In the conduct of their business, at all times mentioned herein, the respondents have been in substantial competition in commerce with corporations, firms and individuals engaged in the sale of sewing machines and vacuum cleaners of the same general kind and nature as those sold by respondents.

13. 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.

#### CONCLUSION

The aforesaid acts and practices of respondents, as herein alleged, were, and are, all to the prejudice and injury of the public and of the 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.

## ORDER

*It is ordered*, That respondent Central Sewing Center, Inc., a corporation, and its officers, and respondent Leonard H. Dorey, individually and as an officer of said corporation, and said respondents separately or collectively doing business as Tri-State Distributing, or under any other trade name or names, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of sewing machines, vacuum cleaners or other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, unless true, directly or by implication, that any offer to sell said products is being made only to a limited number of persons or to specially selected persons.

2. Representing, directly or by implication, that said products are offered for sale when such offer is not a bona fide offer to sell the merchandise so, and as, offered.

3. Using the words, "Retail Value", or words of similar import, to refer to any amount which is in excess of the price or prices at which such merchandise is usually and customarily sold in the trade area where the representation is made; or otherwise misrepresenting the usual and customary retail selling price or prices of such merchandise in the trade area.

4. Representing in any manner that, by purchasing any of their merchandise, customers are afforded savings amounting to the difference between respondents' stated selling price and any other price used for comparison with that selling price, unless the comparative price used represents the price at which the merchandise is usually and customarily sold at retail in the trade area involved, or is the price at which such merchandise has been usually and regularly sold by respondents at retail in the recent, regular course of their business.

5. Representing, directly or by implication, that contests to select the winners of prizes or awards are being conducted when all of such winners are not selected on the basis of a bona fide drawing or other competitive elimination.

6. Representing, directly or by implication, that awards or prizes are of a certain value or worth when the recipients thereof are not in fact benefited by or do not save the amount of stated value or worth of such prizes or awards.

7. Representing, unless true, directly or by implication, that "Good Housekeeping" or "Parents' Magazine" have authorized the use of any insignia or emblem by respondents, or have tested or approved respondents' products, advertising, or practices; or misrepresenting in any manner or by any means that respondents' products, advertising, or practices have been tested or approved by any organization or publication.

8. Representing, directly or by implication, that said products are guaranteed unless the nature, extent and duration of the guarantee, the manner in which the guarantor will perform thereunder and the name and address of the guarantor are clearly and conspicuously disclosed and respondents do in fact fulfill all of their requirements under the terms of said guarantee.

#### FINAL DECISION

This matter having come before the Commission on the exceptions of counsel supporting the complaint to the initial decision of the hearing examiner filed May 17, 1963; and

The Commission having determined that the exceptions of counsel supporting the complaint should be granted since the record does not warrant the inclusion of the phrase "unless true" in Paragraphs 1 and 7 of the order to cease and desist entered by the hearing examiner on May 17, 1963:

*It is ordered*, That the initial decision be modified by striking from Paragraphs 1 and 7 of the order to cease and desist the phrase "unless true".

*It is further ordered*, That the initial decision as modified 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 set forth herein.

---

#### IN THE MATTER OF

#### EDWARD B. GOTTHELF TRADING AS COMMODITY FUTURES FORECAST

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

*Docket C-592. Complaint, Sept. 20, 1963—Decision, Sept. 20, 1963*

at order requiring an individual in New York City engaged in selling to  
the public a weekly advisory letter known as "Commodity Futures Fore-

## Complaint

cast", a daily statistical bulletin titled "Commodex", and management services incident to the purchase and sale of commodity futures, to cease representing falsely in circulars and other advertising material that stated large profits had been realized for accounts he managed, that they were typical and could be expected, that the transactions reflected the recommendations in his aforesaid advisory letter, and that he managed customers' accounts in accordance with the principles contained in his "Forecast" and "Commodex".

## 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 Edward B. Gotthelf, an individual trading as Commodity Futures Forecast, hereinafter referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Edward B. Gotthelf, an individual trading as Commodity Futures Forecast, has his principal office and place of business located at 90 West Broadway in the city of New York, State of New York.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the advertising, offering for sale and sale of a weekly advisory letter known as "Commodity Futures Forecast", a daily statistical bulletin known as "Commodex", and management services incident to the purchase and sale of commodity futures, to the public. Said publications have an annual subscription price of \$200 each and the remuneration for said management services is founded on a percentage of the profits attained.

PAR. 3. In the course and conduct of his business, respondent now causes, and for some time last past has caused, said publications and materials in connection with said management services, when sold, to be sent by United States mail from his place of business in the State of New York to purchasers thereof located in various other States of the United States, and maintains, and at all times mentioned herein has maintained a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR 4. In the course and conduct of his business, and for the purpose of inducing the purchase of said publications and management services, respondent has made and published or caused to be published certain statements, claims and representations in circulars and other

Complaint

63 F.T.C.

material distributed by him. Among and typical of the foregoing, but not all inclusive thereof, are the following:

*\$5,600.50 Profit in 3 Months With No Effort and Little Risk*

Attached is a record of results on closed transactions for the first 3 months of this year \* \* \* Commodity Futures Forecast makes commodity trading simple and profitable. It is the only service using Commodex for part of its technical conclusions \* \* \* Look over the attached bulletin and note how positions are doing. Read the comments of subscribers and managed accounts.

*Summary of closed trades  
Jan. 1 to Mar. 31, 1961*

Opened	Closed	Commodity	Bought	Sold	Profit	Loss
Dec. 2.....	Jan. 3.....	January eggs.....	37.25	38.75	\$189	
Dec. 5.....	Jan. 16.....	May rye.....	1.16 $\frac{1}{2}$	1.18 $\frac{3}{4}$	198	
Jan. 16.....	Jan. 30.....	September cocoa.....	22.35	21.75		\$250
Feb. 6.....	Feb. 6.....	July oats.....	71 $\frac{1}{4}$	69 $\frac{1}{2}$		125
Jan. 16.....	Feb. 6.....	September wheat.....	1.92	1.98 $\frac{3}{8}$	300	
		do.....	1.92	1.95 $\frac{3}{8}$	150	
Jan. 3.....	Feb. 6.....	July rye.....	1.21	1.29 $\frac{3}{8}$	400	
		do.....	1.21	1.28 $\frac{1}{2}$	356	
Nov. 28.....	Jan. 30.....	March lard.....	11.37	12.42	400	
Jan. 9.....	Feb. 13.....	May corn.....	1.12	1.19 $\frac{3}{8}$	312	
Jan. 9.....	Feb. 13.....	September eggs.....	34.90	38.25	442	
Dec. 27.....	Feb. 13.....	May wool.....	111.20	114.20	132	
Jan. 16.....	Feb. 13.....	March lard.....	11.37	13.55	1,152	
Jan. 16.....	Feb. 20.....	July-May wheat.....	21	16	250	
Feb. 4.....	Feb. 27.....	September eggs.....	35.35	38.10	376	
Feb. 4.....	Mar. 6.....	do.....	35.50	38.10	354	
Feb. 6.....	Mar. 6.....	May potatoes.....	2.64	2.86	90	
Feb. 20.....	Mar. 20.....	May wheat.....	2.03	2.11 $\frac{3}{8}$	400	
Feb. 20.....	Mar. 27.....	do.....	1.99 $\frac{7}{8}$	2.11 $\frac{3}{8}$	543	
Total.....					5,955	355

*Approximate Weekly Investment—Below \$5,000*

\* \* \* \* \*  
If you can afford to speculate, Commodity Futures Forecast gives help and advice when needed. Here are excerpts from recent unsolicited letters:

During the 4 months I have subscribed to your service, and followed your recommendations, I have made a 40-percent profit on my original investment.

E.L.R.S.

I am pleased with the way you have handled my account \* \* \* and wish to increase the amount of my investment with an additional \$5,500 for which a check is being mailed \* \* \*

B.B.

I am very happy with the results realized in my managed commodity account. I am amazed you have done so well in a very irregular market. I appreciate the efforts and expert management and feel very optimistic.

C.W.

Incidentally, I want to take this opportunity to congratulate you upon the high percentage of accuracy of your recommendations.

E.A.P.

Up to the present time we are very satisfied with your method. Now we wish to increase this account.

M.H.M.

Followers of Commodex were able to realize up to \$24,665 on an investment of \$1,600 to \$4,000.

798

## Complaint

PAR. 5. Through the use of the aforesaid statements, claims and representations and others similar thereto, but not specifically set out herein, respondent has represented, directly or by implication:

a. That the profits or earning set forth in the summary of closed trades had been realized for an account or portfolio managed by him; that the stated profits or earnings were typical and could be expected generally; and that the transactions reflected the recommendations contained in his advisory letter, Commodity Futures Forecast.

b. That he managed the accounts of his customers according to the information or principles contained in Commodity Futures Forecast and Commodex.

PAR. 6. In truth and in fact:

a. The profits or earnings set forth in the summary of closed trades were not realized for any account or portfolio managed by him. Such profits or earnings were not typical, nor could they be expected generally; and the transactions did not reflect the recommendations contained in the advisory letter, Commodity Futures Forecast.

b. The information or principles contained in Commodity Futures Forecast and Commodex were not followed in the management of customers' accounts.

Therefore, the statements, claims and representations as set forth in Paragraphs 4 and 5 hereof were and are false, misleading and deceptive.

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

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

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

63 F.T.C.

## DECISION AND ORDER

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

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

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

1. Respondent Edward B. Gotthelf, an individual trading as Commodity Futures Forecast, has his office and principal place of business located at 90 West Broadway, in the city of New York, State of New York.

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

## ORDER

*It is ordered,* That respondent Edward B. Gotthelf, an individual trading as Commodity Futures Forecast, or under any other name, and respondent's agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale or sale of publications and management services, or other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. a. Representing directly or by implication that profits or earnings have been realized for any account or portfolio managed by him unless such profits or earnings have been in fact realized by an account or portfolio managed by him.

b. Representing directly or by implication that the transactions reflected the recommendations contained in the advisory letter, Commodity Futures Forecast, unless such transactions have been there recommended.

c. Representing directly or by implication that customers made or realized profits or earnings of a specified amount when such specified amount is in excess of those customarily made unless it is clearly and conspicuously disclosed in immediate conjunction therewith that such profits or earnings are exceptional and are not realized or to be expected by customers generally; or otherwise representing profits or earnings in any manner not in accordance with the facts.

2. Representing directly or by implication that customers' accounts are being managed in accordance with the information or principles contained in Commodity Futures Forecast or Commodity Futures Forecast or Commodity Futures Forecast unless all such transactions conform to the information or principles set forth in such publications.

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

---

IN THE MATTER OF  
THE MODE LTD., ET AL.

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

*Docket C-593. Complaint, Sept. 20, 1963—Decision, Sept. 20, 1963*

Consent order requiring retail furriers in Boise, Idaho, to cease violating the Fur Products Labeling Act by representing falsely on labels and in advertising that prices of fur products were reduced from so-called regular prices which were fictitious; by invoicing furs deceptively as "Broadtail", and failing to show on invoices the true animal name of furs, and to set forth the term "Broadtail Lamb" as required; by advertising which failed to describe as "Natural", furs which were not artificially colored; and by 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 The Mode Ltd., a corporation, and Ethel C. Chapman, Albert S. Rice and Marie Mautz, individually and as officers of said corporation, hereinafter referred to as respondents have violated the provisions of said Acts and the Rules and Regulations promulgated



under the Fur Products Labeling Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent The Mode Ltd., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Idaho.

Respondents Ethel C. Chapman, Albert S. Rice and Marie Mautz are officers of the corporate respondent and formulate, direct and control 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 802 Idaho Street, Boise, Idaho.

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 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 to show the true animal name of the fur used in the fur product.

PAR. 5. 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. 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 "Broadtail Lamb" was not set forth on invoices in the manner required by law, in violation of Rule 10 of said Rules and Regulations.

PAR. 7. 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.

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 that 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.

PAR. 8. 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. 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 that the said advertisements, either directly or by implication, represented through statements such as "AUTUMN FUR SALE", 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 prices at which the respondents regularly and usually sold such fur products and savings were not afforded purchasers of respondents' products as represented, in violation of Section 5(a)(5) of the Fur Products Labeling Act.

PAR. 10. Respondents falsely and deceptively advertised fur products in violation of Section 5(a)(5) of the Fur Products Labeling Act by affixing labels to such fur products which contained fictitious prices and misrepresented the regular retail selling prices of such fur products in that the prices represented on such labels as the regular prices of such fur products were in excess of the retail prices at which respondents regularly and usually sold such fur products in the recent regular course of business.

PAR. 11. 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. 12. The aforesaid acts and practices of respondents, as herein alleged, are in violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder and constitute unfair and deceptive acts and practices and unfair methods of competition in commerce under the Federal Trade Commission Act.

## DECISION AND ORDER

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

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by 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 The Mode Ltd., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Idaho, with its office and principal place of business located at 802 Idaho Street, Boise, Idaho.

Respondents Ethel C. Chapman, Albert S. Rice and Marie Mautz are officers of said corporation, and their address is the same as that of said corporation.

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

## ORDER

*It is ordered,* That respondents The Mode Ltd., a corporation, and its officers, and Ethel C. Chapman, Albert S. Rice and Marie Mautz, 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, 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 "com-

merce", "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 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. 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.

4. Failing to set forth the term "Broadtail Lamb" in the manner required where an election is made to use that term instead of the word "Lamb".

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 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.

2. 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.

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

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

*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  
NATIONAL CELLULOSE INSULATION MANUFACTURERS  
ASSOCIATION, INC., ET AL.

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

*Docket C-594. Complaint, Sept. 20, 1963—Decision, Sept. 20, 1963*

Consent order requiring a trade association of manufacturers of cellulose insulation and four corporate members in the States of Ohio, Indiana, Wisconsin, and Minnesota, to cease representing falsely—as they did in brochures distributed to dealers, institutions, etc.—that tests by independent laboratories established the greater efficiency of their insulation over others; that their product would eliminate possibility of settling, moisture and paint failure problems; and that it was a more effective protection against fire than mineral or glass fiber materials.

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 National Cellulose Insulation Manufacturers Association, Inc., a corporation; Electra Manufacturing Corp., a corporation; Hagan Mfg. Company, a corporation; Oren Corporation, a corporation; and Pal-O-Pak Insu-

## Complaint

63 F.T.C.

lation Co., Inc., a 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 National Cellulose Insulation Manufacturers Association, Inc. (hereinafter NCIMA), is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its principal place of business in the city of Delphos, State of Ohio.

Respondent Electra Manufacturing Corp. (hereinafter Electra) is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its principal place of business located at 2244 Tedrow Street in the city of Toledo, State of Ohio.

Respondent Hagan Mfg. Company (hereinafter Hagan) is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its principal place of business located at 101 South Main Street, in the city of Delphos, State of Ohio.

Respondent Oren Corporation (hereinafter Oren) is a corporation organized, existing and doing business under and by virtue of the laws of the State of Indiana, with its principal place of business located at 2917 West Jackson, in the city of Muncie, State of Indiana.

Respondent Pal-O-Pak Insulation Co., Inc. (hereinafter Pal-O-Pak), is a corporation organized, existing and doing business under and by virtue of the laws of the State of Wisconsin, with its principal place of business located at 135 Cottonwood Avenue, in the city of Hartland, State of Wisconsin.

PAR. 2. Respondent NCIMA, a not for profit corporation, is a trade association of manufacturers of cellulose insulation.

Respondents Electra, Hagan, Oren, and Pal-O-Pak are members of NCIMA.

Respondents Electra, Hagan, Oren and Pal-O-Pak are now, and for a number of years last past have been, engaged in the advertising, offering for sale, sale and distribution of cellulose insulation to distributors for resale to the public.

PAR. 3. In the course and conduct of their businesses. Electra, Hagan, Oren, and Pal-O-Pak now cause, and for some time past have caused, their said products, when sold, to be shipped from their respective places of business (Electra in the State of Ohio, Hagan

in the State of Ohio, Oren in the State of Indiana, and Pal-O-Pak in the States of Wisconsin and Minnesota) to purchasers in other States of the United States, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business as aforesaid, and for the purpose of inducing the purchase of cellulose in commerce, as "commerce" is defined in the Federal Trade Commission Act, respondents caused to be prepared by NCIMA and NCIMA did prepare an advertising brochure entitled "Comfort—Safety—Economy." This brochure was distributed to the respondent members of NCIMA, who caused the said brochures to be distributed to dealers, distributors, architects, utilities, designers and similar institutional groups, for the purpose of inducing the purchase of cellulose insulation.

Among and typical, but not all inclusive of the representations caused to be published, are the following:

Cellulose fiber insulation is 15 to 20 percent more efficient than any other insulation; and this fact is proven by independent laboratory tests.

This eliminates the possibility of settling, moisture and paint failure problems. Properly manufactured, cellulose fiber insulation has a permanent fire retardant quality covering its own non-combustibility. In addition, it will not support combustion. Other commonly known types of insulation melt under the heat of fire conditions.

Cellulose insulation, due to its greater efficiency, will provide more economy inch for inch than mineral or glass fiber materials.

PAR. 5. By and through the use of such statements appearing in the aforesaid brochure and others of similar import not specifically set out herein, respondents represented, directly or by implication:

1. That respondents have had tests conducted on all insulations by independent laboratories.
2. That cellulose fiber insulation will eliminate the possibility of moisture and paint failure problems.
3. That cellulose fiber insulation would be effective protection against a fire under temperatures that would melt other commonly known types of insulation.
4. Efficiency alone determines the economy of cellulose insulation when compared with mineral or glass fiber materials.

PAR. 6. In truth and in fact:

- (1) Respondents have not had tests conducted on all insulation by independent laboratories.



Decision and Order

63 F.T.C.

(2) Cellulose fiber insulation will not eliminate the possibility of settling, moisture, and paint failure problems.

(3) Structures insulated by cellulose fiber insulation would be destroyed at temperatures that would melt other commonly known types of insulation.

(4) Efficiency alone does not determine the economy of cellulose insulation when compared with mineral or glass fiber materials.

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 insulating materials whose use is the same general kind and nature as that sold by respondents.

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

PAR. 9. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce, in violation of Section 5 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. Respondent National Cellulose Insulation Manufacturers Association, Inc., 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 Delphos, Ohio.

Respondent Electra Manufacturing Corp. 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 2244 Tedrow Street, Toledo, Ohio.

Respondent Hagan Mfg. Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its office and principal place of business located at 101 South Main Street, Delphos, Ohio.

Respondent Oren Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Indiana, with its office and principal place of business located at 2917 West Jackson, Muncie, Indiana.

Respondent Pal-O-Pak Insulation Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Wisconsin, with its office and principal place of business located at 135 Cottonwood Avenue, Hartland, Wisconsin.

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 National Cellulose Insulation Manufacturers Association, Inc., a corporation; Electra Manufacturing Corp., a corporation; Hagan Mfg. Company, a corporation; Oren Corporation, a corporation; and Pal-O-Pak Insulation Co., Inc., a corporation, and respondents' agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of cellulose insulation, 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. Cellulose fiber insulation has been approved by independent laboratory tests as more efficient than other insu-

Complaint

63 F.T.C.

lations unless specific findings to the extent represented have been made by an independent laboratory.

2. Cellulose fiber insulation will eliminate the possibility of settling, moisture or paint failure problems.

3. Cellulose fiber insulation will provide effective fire protection at temperatures that would melt other commonly known types of insulation.

4. Efficiency alone determines the economy of cellulose insulation when compared with mineral or glass fiber materials.

*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

THOMAS SMILIOS TRADING AS THOMAS SMILIOS

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

*Docket C-595. Complaint, Sept. 20, 1963—Decision, Sept. 20, 1963*

Consent order requiring a manufacturing furrier in New York City to cease violating invoicing provisions of the Fur Products Labeling Act by failing to set forth required information and item numbers on invoices and to use the term "natural" to describe fur products which were not artificially colored.

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 Thomas Smilios, an individual trading as Thomas Smilios, hereinafter referred to as respondent, has violated the provisions of said Act 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 Thomas Smilios is an individual trading under his own name.

Respondent is a manufacturer of fur products with his office and principal place of business located at 253 West 27th Street, New York, New York.

PAR. 2. Subsequent to the effective date of the Fur Products Labeling Act on August 9, 1952, respondent has been and is now engaged in the introduction into commerce, and in the manufacture for introduction into commerce, and in the sale, advertising, and offering for sale in commerce, and in the transportation and distribution in commerce, of fur products; and has manufactured for sale, sold, advertised, offered for sale, transported and distributed fur products which have been made in whole or in part of 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 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 with invoices which failed to set forth any of the information required by Section 5(b)(1) of the Fur Products Labeling Act.

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

(a) 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.

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

PAR. 5. 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 under the Federal Trade Commission Act.

#### DECISION AND ORDER

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

Decision and Order

63 F.T.C.

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

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

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

1. Respondent Thomas Smilios is an individual trading under his own name with his office and principal place of business located at 253 West 27th Street, in the city of New York, State of New York.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

## ORDER

*It is ordered,* That respondent Thomas Smilios, an individual trading as Thomas Smilios, or under any other trade name, and respondent's representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce, of any fur product; or in connection with the sale, advertising, offering for sale, transportation or distribution, of any fur product which is made in whole or in part of fur which has been shipped and received in commerce; as "commerce", "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

Falsely or deceptively invoicing fur products by:

1. Failing to furnish invoices to customers to whom fur products were sent 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.

814

## Complaint

2. 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.

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

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

---

IN THE MATTER OF  
JOSEPH BOLLELLA TRADING AS  
EMPIRE COMMODITY ASSOCIATION

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

*Docket C-596. Complaint, Sept. 20, 1963—Decision, Sept. 20, 1963*

Consent order requiring an individual engaged in New York City in the sale of management services incident to the purchase and sale of commodity futures, to cease representing falsely, through use of his trade name and otherwise, that his private business was an association with members united in a common effort; and representing falsely in circulars, membership agreement forms, etc., that he deducted 20% of net profits for his management fee when he actually deducted 20% of every profitable transaction and clients sustained all losses, and that he operated pursuant to the Commodity Exchange Act and the regulations of the United States Department of Agriculture.

## 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 Joseph Bollella, an individual trading as Empire Commodity Association, hereinafter referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Joseph Bollella, an individual trading as Empire Commodity Association, has his principal office and place

## Complaint

63 F.T.C.

of business located at 714 Morris Park Avenue, in the city of New York, State of New York.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the advertising, offering for sale, and sale of management services incident to the purchase and sale of commodity futures to the public.

PAR. 3. In connection with this business, the respondent has been and now is transmitting and receiving, through the United States mail, and otherwise disseminating in commerce, advertising matter, pamphlets, circulars, letters, membership agreement forms, checks and money orders which are sent and received between respondent's place of business in the State of New York and other persons located in various other States of the United States.

In carrying out his aforesaid business operations respondent has engaged in commercial intercourse in commerce between and among various States of the United States, including the transmission and receipt of advertising material, pamphlets, circulars, letters, membership agreement forms, checks and money orders.

PAR. 4. In the course and conduct of his business, and for the purpose of inducing the purchase of said management services, respondent has made and published or caused to be published certain statements, claims and representations in circulars, membership agreement forms, and other materials distributed by him. Among and typical, but not all inclusive, are the following:

Empire Commodity Association

That for the services rendered, and to be rendered, the undersigned hereby agrees to a quarterly service and disbursement fee of \$10.00 and, further, explicitly authorizes that from profits of each and every transaction the management is hereby authorized to deduct 20% of said profit as and for management's fee.

There is no management fee unless the Association via its trading capabilities make gains for its investing members.

The undersigned and each and every member of EMCA represents each to the other that the Association is operating under and pursuant to the Commodities Exchange Act and all regulations and rulings of the Commodities Exchange Authority of the Department of Agriculture of the United States.

PAR. 5. Through the use of the trade name "Empire Commodity Association" standing alone or through the use of the aforesaid statements and representations, and others similar thereto, separately or in connection with said trade name, respondent represents and has represented, directly or by implication that said "Association" constitutes and comprises an association with members who are united in a common effort.

PAR. 6. In truth and in fact:

Respondent is not organized into and does not constitute an association for any purpose whatsoever; but instead engages in a business organized for profit, which, under the direction of respondent, is operated for the sole purpose of selling management services, at a profit.

Therefore, the use of the trade name "Empire Commodity Association", standing alone, or in connection with the statements and representations set out in Paragraph 4 and referred to in Paragraph 5 hereof, and the aforesaid statements and representations alone, were and are false, misleading and deceptive.

PAR. 7. Through the use of the statements, claims and representations set out in Paragraph 4 and others similar thereto, but not specifically set out herein respondent has represented, directly or by implication:

(a) That for his management fee he is authorized to deduct 20% of net profits realized by his client;

(b) That he operates his business under and pursuant to the Commodity Exchange Act and all regulations and rulings of the Commodity Exchange Authority of the Department of Agriculture of the United States.

PAR. 8. In truth and in fact:

(a) The deductions made amounted to 20% of each and every profitable transaction realized by the client. Clients are required to sustain all losses.

(b) The business was not operated under and pursuant to the Commodity Exchange Act and all regulations and rulings of the Commodity Exchange Authority of the Department of Agriculture of the United States.

Therefore, the statements, claims and representations as set forth in Paragraphs 4 and 7 hereof were and are false, misleading and deceptive.

PAR. 9. In the conduct of his business, and at all times mentioned herein, respondent has been in substantial competition in commerce with corporations, firms and individuals in the sale of services of the same general kind and nature.

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



Decision and Order

63 F.T.C.

PAR. 11. The aforesaid acts and practices of respondent, as herein alleged, were and are all to the prejudice and injury of the public and of respondent's competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

## DECISION AND ORDER

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

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

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

1. Respondent Joseph Bollella, an individual trading as Empire Commodity Association, has his office and principal place of business located at 714 Morris Park Avenue, in the city of New York, State of New York.

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

## ORDER

*It is ordered,* That respondent Joseph Bollella, an individual trading as Empire Commodity Association, or under any other name, and respondent's agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale or sale of management services, or other products, in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

817

## Complaint

a. Using the word "association" or any abbreviation or contraction thereof, as a part of the trade name under which respondent conducts his business; or representing in any other manner or by any other means, directly or indirectly, that respondent's business is an association of any nature.

b. Representing, directly or by implication, that any amount will be deducted as a fee for management services from net profits, when such fee is deducted on all profitable transactions.

c. Misrepresenting, in any manner, the remuneration he deducts, charges or receives for any service.

d. Representing, directly or by implication, that he or any person associated with him in the operation of his business is operating under or pursuant to the Commodity Exchange Act.

e. Representing, directly or by implication, that he or any person associated with him in the operation of his business is operating under or pursuant to the regulations and rulings of the United States Department of Agriculture.

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

---

IN THE MATTER OF  
STYLEBILT FURS, INC., ET AL.

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

*Docket C-597. Complaint, Sept. 20, 1963—Decision, Sept. 20, 1963*

Consent order requiring manufacturing furriers in New York City to cease violating the Fur Products Labeling Act by failing to disclose on labels and invoices that certain furs were artificially colored; failing, on invoices, to show the true animal name of fur and the country of origin of imported furs, to use the terms "Persian Lamb" and "Natural" where required, and to comply in other respects with invoicing requirements; and furnishing false guaranties with fur products.

## COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act and by virtue of the authority vested in it by said Acts, the Federal Trade Commission having reason to believe that Stylebilt Furs, Inc., a corporation, and Jack Schimmel, individually and as an officer of said corporation, herein-

## Complaint

63 F.T.C.

after 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 Stylebilt Furs, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York.

Respondent Jack Schimmel 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 manufacturers of fur products with their office and principal place of business located at 115 West 30th Street, New York, New York.

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 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 violation of the Fur Products Labeling Act in that they were not labeled in accordance with the Rules and Regulations promulgated thereunder in that 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.

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 "Persian Lamb" was not set forth on invoices in the manner required by law, in violation of Rule 8, 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) Required item numbers were not set forth on invoices, in violation of Rule 40 of said Rules and Regulations.

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

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

Decision and Order

63 F.T.C.

## 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 Stylebilt Furs, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 115 West 30th Street, New York, New York.

Respondent Jack Schimmel 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, Stylebilt Furs, Inc., a corporation, and its officers, and Jack Schimmel, 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, 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. 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.

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 "Persian Lamb" in the manner required where an election is made to use that term instead of the word "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 on invoices the item number or mark assigned to fur products.

*It is further ordered.* That respondents Stylebilt Furs, Inc., a corporation, and its officers, and Jack Schimmel, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, do forthwith cease and desist from furnishing a false guaranty that any fur product is not misbranded, falsely invoiced or falsely advertised when the respondents have reason to believe that such fur product may be introduced, sold, transported, or distributed in commerce.

Complaint

63 F.T.C.

*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

## UNITED NATIONS PUBLICATIONS, INC., ET AL.

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

*Docket C-598. Complaint, Sept. 20, 1963—Decision, Sept. 20, 1963*

Consent order requiring the compilers of a book entitled "The International Directory and Almanac," engaged in the sale of the Directory and of advertising space therein, to cease representing falsely in advertising that monies received from customers were placed in trust and refunds were thereby guaranteed, and that they had their own art department; and to cease representing falsely, by their corporate name, that they were affiliated with the United Nations.

## 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 United Nations Publications, Inc., a corporation, and Fred Otash, 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 United Nations Publications, 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 949 N. Fairfax Avenue, Hollywood 49, California.

Respondent Fred Otash is president of the said corporate respondent and formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. The business address of respondent Fred Otash is the same as that of the corporate respondent. His residence address is 8948 Wonderland Avenue, Hollywood 46, California.

PAR. 2. Respondents are now, and for some time last past have been engaged, in the compilation, advertising, offering for sale, sale and distribution of a book entitled "The International Directory and Almanac", hereinafter referred to as the Directory.

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

Further, in the course and conduct of their business, respondents now cause, and for some time last past have caused, the dissemination of advertising material by United States Mails in the State of California and from that State into other States of the United States for the purpose of inducing, and which is likely to induce, directly or indirectly, the purchase of said Directory and of advertising space in said Directory in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business, at all times mentioned herein, respondents have been in substantial competition, in commerce, with other corporations, firms and individuals engaged in the business of publishing and selling directories.

PAR. 5. In the course and conduct of their business, and for the purpose of inducing the sale of said Directory and of advertising space in said Directory, respondents have made certain statements and representations in advertising disseminated as hereinabove set forth. Such statements and representations related to the establishment of a trust account and other matters. Typical, but not all inclusive, of such statements and representations are the following:

Publication Guaranteed or Money Refunded.

All funds received by the publisher for copies of the directory or advertisements, are placed in trust at Continental Bank, 8730 Sunset Blvd., Los Angeles 69, California. If the directory is not published for any reason, your money is refunded in full. And, if you are not completely satisfied with the directory, return it within 10 days and your money will be refunded in full.

Our art department will design your ad for you \* \* \*.

PAR. 6. Through the use of the aforesaid statements and representations, respondents have represented, directly or by implication:

1. That respondent corporation has its own art department for designing advertisements.
2. That monies received by respondents from their customers are placed in a trust account which insures or guarantees the availability at all times of funds sufficient to meet all requests for refunds.

PAR. 7. In truth and in fact:

1. Respondent corporation does not have its own art department.



Decision and Order

63 F.T.C.

2. No trust account has been established which insures or guarantees refunds to respondents' customers.

Therefore, said statements and representations set forth in Paragraphs 5 and 6 are false, misleading and deceptive.

PAR. 8. Further, in the course and conduct of their business, respondents have caused the corporate name "United Nations Publications, Inc.", to appear on their business stationery, in their advertising brochures and other printed matter.

Through use of the words "United Nations" as part of said corporate name, respondents represent, directly or by implication, that their business is affiliated with or sponsored by the well known world organization known as the United Nations.

PAR. 9. In truth and in fact, respondents' business is no way a part of, affiliated with or sponsored by the United Nations.

Therefore, the representation referred to in Paragraph 8 is false, misleading and deceptive.

PAR. 10. The use by respondents of the aforesaid false, misleading and deceptive statements and representations has had, and now has, the capacity and tendency to mislead members of the public into the erroneous and mistaken belief that said statements and representations were, and are, true and into the purchase of the said Directory and of advertising space therein by reason of said erroneous and mistaken belief.

PAR. 11. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce, within the intent and meaning of Section 5 of the Federal Trade Commission Act.

## DECISION AND ORDER

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

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

in such complaint, and waivers and provisions as required by the Commission's rules; and

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

1. Respondent, United Nations Publications, 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 949 N. Fairfax Avenue, in the city of Hollywood, State of California.

Respondent Fred Otash 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 respondent United Nations Publications, Inc., a corporation, and its officers, and respondent Fred Otash, individually and as an officer of said corporation, and said respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of The International Directory and Almanac or any other book or publication, or of advertising space therein, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that respondents have an art department or maintain their own staff for doing design and art work for advertisements intended for publication in their directory, or misrepresenting in any manner the facilities afforded by respondents' business.

2. Representing, directly or by implication, that monies received by respondents from their customers are placed in a trust account which insures or guarantees the availability at all times of funds sufficient to meet all requests for refunds.

3. Using the words "United Nations" or any other word or words of similar import as part of any corporate or trade name; or representing in any other manner that respondents' business is in any way affiliated with or sponsored by the United Nations.

4. Representing in any manner that their business is affiliated with any organization with which it is in fact not affiliated.

*It is further ordered.* That the respondents herein shall, within sixty (60) days after service upon them of this order, file with the

Complaint

63 F.T.C.

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

TOP FORM MILLS, INC., ALSO TRADING AS  
LADY RUSSEL LINGERIE ET AL.

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

*Docket 8454. Complaint, Dec. 1, 1961—Decision, Sept. 23, 1963*

Order requiring New York City manufacturers of ladies' lingerie and sleepwear to cease representing falsely—through such practices as use of the words "Paris", "Cannes" and "Biarritz" and the name "Jacques Heim" on labels and in advertisements and advertising mats supplied to retailers, and by instructions for washing in French and English on attached tags—that their said products were made in France and designed by a great Paris couturier.

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 Top Form Mills, Inc., a corporation, also trading as Lady Russel Lingerie, and Manuel Kitrosser and Eleanor Topping,\* individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Top Form Mills, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 16 East 34th Street, in the city of New York, State of New York. Top Form Mills, Inc., a corporation, also trades as Lady Russel Lingerie.

Individual respondents Manuel Kitrosser and Eleanor Topping are officers of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. The addresses of all respondents herein are 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 distribu-

---

\*The correct name of this respondent is Elinore Topping.

tion of ladies' lingerie and sleepwear to retailers for resale to the public. Included in said ladies' lingerie and sleepwear were those designated as "Top Form" and "Top Form Tailored Lady", "Spring Fling", "Lady Russel", "Opaque Panel" and "Jacques Heim".

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

PAR. 4. In the course and conduct of their said business and for the purpose of inducing the sale of their said ladies' lingerie and sleepwear, respondents have made many statements and representations with respect to the origin, nature and source of said products through labels, tags and advertisements, in advertising mats supplied to retailers and through circulars, letters, announcements and invitations.

In connection with the labels and tags respondents have attached, or caused to be attached, to said products are the following:

1. JACQUES  
HEIM

PARIS

2. JACQUES HEIM  
PARIS

CANNES BIARRITZ

[Printed on the folded back part of this label  
are instructions in English for washing fol-  
lowed by instructions in French for Washing.]

LADY RUSSEL'S LINGERIE  
NEW YORK CITY

In connection with their advertising appearing in newspapers of general circulation, in advertising mats supplied retailers, and in circulars, letters, announcements and in invitations, the following are typical:

3.

*Lady Russel Announces Lingerie by*  
JACQUES HEIM

(Picturization of lady in nightwear with wording printed interspersed  
from above knees down to feet)

pert, flirty; surely the sauciest \* \* \* by the Couturier who began the Bikini

Pink champagne showing Lady Russel's own designs

plus the Jacques Heim delights throughout

June Market Season

LADY RUSSEL LINGERIE

38 East 30th St., New York

Murray Hill 6-6427

## Complaint

63 F.T.C.

4.

*LINGERIE*

JACQUES HEIM

(Picture of model in nightwear)

Great Paris Couturier gives French accent to lingerie by Lady Russel  
now peep-showing \* \* \* 38 East 30th St., N.Y.

5.

## JACQUES HEIM

(Picture of model in nightwear or in slips)

Great Paris Couturier gives French accent to lingerie by Lady Russel  
Here's to the charming Frenchman, Jacques Heim, who says  
"pretty lingerie is a woman's secret weapon!"

\* \* \*

(Store Name)

6.

*Lady Russel presents her new Paris-appeal specialty*

LINGERIE BY JACQUES HEIM

You are invited to attend the pink champagne showing  
of Lady Russel's New Lingerie

\* \* \*

PAR. 5. Through the use of the aforesaid labels, tags and statements, respondents represented, directly or by implication, that their "Jacques Heim" ladies' lingerie and sleepwear was made in France and by a great Paris couturier Jacques Heim who designed the same.

PAR. 6. Said statements and representations were false, misleading and deceptive. In truth and in fact, said products were mislabeled and were not made in France nor by Jacques Heim. Further, the use of the word "Paris" on the label sewn on to the product in connection with the name of Jacques Heim and the use of the additional French city names of "CANNES" and "BIARRITZ" along with that of "PARIS", and the name "JACQUES HEIM" and the instructions for washing or laundering in both English and French on the tag attached to the product served to further emphasize and accentuate the representations as to the country of origin, the manufacturer and the designer of same. In truth and in fact, said products were made in the United States of America and are of domestic origin and design.

PAR. 7. Respondents' said acts and practices further serve to place in the hands of uninformed or unscrupulous dealers the means and the instrumentality whereby such persons may mislead the purchasing public as to the nature, origin, creation and manufacture of said products.

PAR. 8. There are those of the purchasing public who have a preference for goods, wares and merchandise which are manufac-

tured or produced in foreign countries and more especially ladies' lingerie and sleepwear made in France by Parisian couturiers.

PAR. 9. Respondents, through the use of the word "Mills" as part of the corporate name of respondent Top Form Mills, Inc., on letterheads, invoices and statements, and through the use of the further legend "FACTORY: ST. PAUL, VA." and "FACTORY: ROUTE #1, LEBANON, VA.", and like or similar statements on letterheads, invoices and statements, have thereby represented that they owned, operated or controlled a mill, or mills, in which some or all the various products sold by them were, and are, manufactured, and that the same were at the locations listed.

PAR. 10. In truth and in fact, said representations were, and are, false, misleading and deceptive. Respondents, at all times mentioned herein, did not, and do not now, own, operate or control a mill in which any of the products sold by them are manufactured. Respondents did not, and do not now, own, operate or control a mill or factory at any of the addresses listed.

PAR. 11. A substantial portion of the purchasing public have a marked preference for dealing directly with a mill in the belief that savings and other advantages may accrue to them.

PAR. 12. 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. 13. 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. 14. The aforesaid acts and practices of respondents, as herein alleged, were, and are, all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce, in violation of Section 5(a) (1) of the Federal Trade Commission Act.

*Mr. Charles S. Cox* supporting the complaint.

*Ostrow, Golman & Sklaire*, New York, N.Y., by *Mr. Harold Sacks* for respondents.

Initial Decision

63 F.T.C.

## INITIAL DECISION BY DONALD R. MOORE, HEARING EXAMINER

JUNE 19, 1962

## STATEMENT OF PROCEEDINGS

The complaint in this proceeding was issued by the Federal Trade Commission December 1, 1961, and was duly served on all respondents. The complaint charges respondents with misrepresenting that lingerie and sleepwear designed and made in the United States was designed and made in France, and with misrepresenting that they owned, operated or controlled one or more mills that manufactured the merchandise they sold. The practices of the respondents are alleged to constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce, in violation of the Federal Trade Commission Act.

After being served with the complaint, respondents appeared by counsel and filed answer denying generally any violation of law, but admitting certain of the factual allegations, and also advancing certain "affirmative defenses".

A prehearing conference was held January 31, 1962, in New York, New York, at which respondents, through their counsel, made certain admissions, and there was an exchange of information between counsel. Thereafter, pursuant to notice, hearings were held March 19-21, 1962, in New York, New York, before the undersigned hearing examiner, duly designated by the Commission to hear this proceeding. At those hearings, testimony and other evidence were offered in support of and in opposition to the allegations of the complaint, which testimony and evidence were duly recorded and filed in the office of the Commission.

Both sides were represented by counsel, participated in the hearings, and were afforded full opportunity to be heard, to examine and cross-examine witnesses and to introduce evidence bearing on the issues.

Before the hearing, the hearing examiner, by notice dated March 14, 1962, took official notice that "There are those of the purchasing public who have a preference for goods, wares and merchandise which are manufactured or produced in foreign countries and more especially ladies' lingerie and sleepwear made in France by Parisian couturiers." Official notice was likewise taken that "A substantial portion of the purchasing public have a marked preference for dealing directly with a mill in the belief that savings and other advantages may accrue to them." Respondents were advised that they

would be given an opportunity at the hearings to show the contrary of the matters proposed to be officially noticed.

At the close of the evidence in support of the complaint, counsel for respondents moved to dismiss the complaint as to all respondents for failure of proof. That motion was taken under advisement and decision deferred until the filing of this initial decision. The motion is now denied except as otherwise indicated herein.

Proposed findings of fact and conclusions of law and a proposed form of order, together with supporting briefs, were filed at the conclusion of all the evidence by counsel supporting the complaint and counsel for respondents. Proposed findings not adopted, either in the form proposed or in substance, are rejected as not supported by the evidence or as involving immaterial matters.

After carefully reviewing the entire record in this proceeding, and the proposed findings, conclusions and order filed by the parties, together with the supporting briefs, the hearing examiner finds that this proceeding is in the interest of the public, and based on the entire record and his observation of the witnesses, makes the following findings of fact and conclusions drawn therefrom, and issues the following order.

#### FINDINGS OF FACT

1. Respondent Top Form Mills, Inc.,<sup>1</sup> is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 16 East 34th Street, in the city of New York, State of New York. Respondent Top Form also trades as Lady Russel Lingerie.

Respondent Manuel Kitrosser is an officer of the corporate respondent, and respondent Elinore Topping (incorrectly spelled in the complaint as Eleanor Topping) was an officer of the corporate respondent until January 5, 1962. Respondent Manuel Kitrosser formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. The address of respondent Manuel Kitrosser is the same as that of the corporate respondent.

2. Respondent Top Form and respondent Manuel Kitrosser are now, and for some time have been, engaged in the advertising, offering for sale, sale and distribution of ladies' lingerie and sleepwear to retailers for resale to the public. Such lingerie and sleepwear included garments designated as "Top Form", "Top Form Tailored Lady", "Spring Fling", "Lady Russel", "Opaque Panel" and

<sup>1</sup> Sometimes referred to hereafter as Top Form or corporate respondent.



Initial Decision

63 F.T.C.

"Jacques Heim". The use of the designation "Jacques Heim" was discontinued by respondents in December 1959 or January 1960.<sup>2</sup> The contractual right of Top Form to use the "Jacques Heim" designation expired April 30, 1960.

Respondent Elinore Topping was vice president of respondent Top Form until January 1962, but there is no evidence of the extent of her participation in the policies, acts and practices of the corporation. Until January 1962, she was the beneficial owner of 50 percent of the stock of respondent Top Form. (The complaint is being dismissed as to her, and the term "respondents," as used hereafter, will not include Elinore Topping.)

3. In the course and conduct of their business, respondents now cause, and for some time have caused, their products, when sold, to be shipped from their place of business in the State of New York, or from the places of business of various subsidiary or affiliated corporations, to purchasers located in various other States of the United States and in the District of Columbia, and maintain, and have maintained, a substantial course of trade in such products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

4. In the conduct of their business, respondents are now, and for some time 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.

5. In the course and conduct of their business and for the purpose of inducing the purchase of their lingerie and sleepwear, respondents have made many statements and representations with respect to the origin, nature and source of such products. These statements and representations have been made on labels and tags, in advertisements and in advertising mats supplied to retailers, and circulars, letters, announcements and invitations.

6. Among the labels and tags respondents have attached or caused to be attached, to their products are the following:

(a) JACQUES HEIM—PARIS (CX 1 and 25)

(b) JACQUES HEIM—PARIS—CANNES—BIARRITZ

The hang-tag (CX 2) on which the above appeared also included instructions in English for washing, followed by instructions in French for washing.

It also bore the legend,

"LADY RUSSEL LINGERIE NEW YORK CITY".

<sup>2</sup> The record does not indicate whether discontinuance took place before or after respondents were aware of the Commission's investigation.

830

Initial Decision

7. Among respondents' advertising representations appearing in newspapers of general circulation, in advertising mats supplied to retailers, and in circulars, letters, announcements and invitations, the following are typical:

(a)

*Lady Russel Announces Lingerie by*  
 JACQUES HEIM  
 pert, flirty, surely the sauciest \* \* \* by the couturier  
 who began the Bikini  
 Pink Champagne Showing—Lady Russel's own designs plus the  
 Jacques Heim delights—throughout June Market Season  
 LADY RUSSEL LINGERIE  
 38 East 30th St., New York  
 Murray Hill 6-6427 (CX 5 and 6)

(b)

LINGERIE  
 JACQUES HEIM  
 great Paris Couturier gives French accent to lingerie by  
*Lady Russel*  
 now peep-showing \* \* \* 38 East 30th St., N.Y. (CX 7)

(c)

JACQUES HEIM  
 great Paris Couturier gives French accent to lingerie by  
*Lady Russel*  
 Here's to the charming Frenchman, Jacques Heim, who says  
 "pretty lingerie is a woman's secret weapon!" (CX 27-b)

(d)

*Lady Russel presents her new Paris-appeal specialty*  
 LINGERIE by JACQUES HEIM  
 You are invited to attend the Pink Champagne Showing  
 of Lady Russel's New Lingerie (CX 4)

8. Through the use of the labels, tags, advertisements, circulars, letters, announcements and invitations referred to in Paragraph 5, and as typified by the excerpts set forth in Paragraphs 6 and 7, respondents represented, directly or by implication, that their "Jacques Heim" lingerie and sleepwear were designed and made in France by a great Paris couturier, Jacques Heim. The fact that the representations were sometimes accompanied by the name "Lady Russel," with a New York address, does not overcome the basic representation of French origin.

9. To the extent that the statements and representations set forth above represent that respondents' lingerie and sleepwear were made in France by Jacques Heim—and the examiner finds that they so represent—they are admittedly false, misleading and deceptive. It is admitted by respondents that the garments advertised and labeled as set forth above were made in the United States, not by Jacques

Initial Decision

63 F.T.C.

Heim, but by a mill in New Britain, Connecticut (Respondents' Answer, Paragraph 5; Tr. 34, 82, 179). The dispute as to this phase of the case revolves around the allegation of the complaint that the Jacques Heim products were "of domestic origin and design".

While admitting the products were not made in France, but were of domestic manufacture, respondent Manuel Kitrosser insisted, however, that they were "not of domestic origin". According to Kitrosser, "The product was of Parisian origin, manufactured in the United States," and the style and pattern were designed in Paris (Tr. 82).

10. Certain of the facts concerning the relationship between respondents and Jacques Heim are not disputed by the parties. It appears that Jacques Heim is a French couturier of some standing, with salons in Paris, Biarritz, Cannes and Deauville (RX's 2, 41-a, b).

Respondent Top Form was granted the exclusive use of the trademark "Jacques Heim" for ladies' slips, sleepwear and panties for the period from May 1, 1959, to April 30, 1960 (RX 1-a, b).

Sketches of lingerie and sleepwear were received by respondent Top Form from Jacques Heim, together with two "muslins". A "muslin" was described as "an actual garment made out of a muslin fabric which, in the fashion world, is what you usually use in designing a garment, a fashion garment, and from that you adapt the pattern and the style \* \* \*." (Tr. 73). The muslins received were slip patterns.

Jacques Heim participated in the advance publicity for the launching of the Jacques Heim line by respondent Top Form.

Samples of Top Form lingerie were sent to and acknowledged by Jacques Heim, and they were approved by him, at least implicitly (RX 36, Tr. 178).

11. The garments labeled and advertised under the Jacques Heim name included six garments in the sleepwear line and at least two, possibly four, different styles of slips. There were two lines of sleepwear. One, known as the "Lili" set, comprised "baby doll" pajamas, a shift gown, a waltz gown and a peignoir. The other set, identified as "Gigi," consisted of a button-front sleepcoat and Capri pajamas. (Tr. 67-68, 151-156.)

12. Referring to garments pictured in a Macy's advertisement in the New York Times (CX 26), illustrative of both the "Lili" and "Gigi" line, the witness Frederic E. Freedgood, merchandise manager for the Sleepwear Division of Top Form, testified that the ideas and the design of the merchandise pictured were taken from sketches submitted by Jacques Heim (CX 16-22 and RX 3-21). He added:

They had to be modified to fit an American consumer market. What the French woman will wear or what Mr. Heim wanted the American woman to

wear, as against what the American woman would wear, were two things, two different things. (Tr. 160-61.)

In explaining the adaptation, he pointed out, for example, that the tassels or fringe seen on some of the Jacques Heim sketches (e.g., CX 18) were not sellable on the American market at that time. Top Form, however, achieved the same "soft frilly effect" through the use of lace (Tr. 161).

Thus, although the fringe in the Jacques Heim sketches was not adopted as such, Freedgood's testimony was that "We adopted the style line of it." He continued:

When you speak of style line in fashion industry, you speak of an area where you put an effect of either lace or trim, or it could be ribbon, it could be a fold, it could be buttons, it could be many, many things. But the purpose of a designer is to give you a look, and that is what Mr. Heim gave us. (Tr. 163)

13. According to Freedgood (Tr. 166), the "Gigi" line was adapted from two Jacques Heim sketches (CX 18 and RX 21), and the Jacques Heim sketches were also the basis for the look and the style line of the "Lili" items.

Freedgood referred to a Jacques Heim sketch (CX 16) as illustrative of the "Empire look" used in the "Lili" set, and the shift gown, the baby doll pajamas and the peignoir depicted on CX 26 as illustrative of Top Form's adaptation (Tr. 168). The waltz gown, however, was modeled after the Jacques Heim sketch in the record as RX 7, again with the substitution of lace in place of tassels (Tr. 170).

14. Summarizing, Freedgood stated that Top Form got the two major style lines of its sleepwear from Jacques Heim. He said:

What we are interested in, and what every designer is interested in, and what many manufacturers and the whole fashion industry are interested in, is to get a design or fashion line, a look. This is the primary thing.

\* \* \* \* \*

But [what] we, as manufacturers, and I as a merchandise person, would be interested in, would we be getting the Jacques Heim look, which is distinguished from any other designer's look. That's what we were interested in.

\* \* \* Mr. Heim gave us that look. That's how we got the look. We took it directly from his designs. \* \* \* We took his look and made it "sellable" on the American market. (Tr. 171-72.)

15. Counsel supporting the complaint emphasizes, in his proposed findings, that in referring to the "equal common denominator" characterizing the "Lili" line, Freedgood stated: "I designed them. I worked with the designers on them" (Tr. 166). In the examiner's opinion, however, these statements are not inconsistent with his overall testimony that Top Form used the Jacques Heim designs in adaptations for the American market.

Initial Decision

63 F.T.C.

16. The testimony of respondent Manuel Kitrosser was along similar lines. After the execution of the agreement between Glamour Gams, Inc., and Top Form (RX 1-AB), whereby Top Form was authorized to use the name Jacques Heim, Kitrosser met with the American representatives of Jacques Heim "and asked them to have Mr. Heim design a line of slips and sleepwear for us." Thereafter, the sketches were submitted, together with the muslin patterns. (Tr. 88.)

17. According to Kitrosser, the Jacques Heim sketches provided styles or motifs or models that Top Form tried to capture to present to the American market—certain ideas of style that were translated into lingerie produced by Top Form Mills (Tr. 90).

Kitrosser testified that respondents had a design from Jacques Heim covering sleepwear (Tr. 64-65); the baby doll sleepwear was designed by Jacques Heim "and adapted to our own use" (Tr. 77-78). He explained in detail (Tr. 66, 78-79) how the baby doll pajamas pictured on CX 5 and 6 "were born from" the Jacques Heim sketches, CX 18 and 19. The "adaptation" was using lace instead of fringe (Tr. 78). He identified a slip bearing the Jacques Heim label (CX 1) as "originally adapted from a design by Jacques Heim" (Tr. 61) and pointed to "two sketches (CX 16 and 17) that went into the adaptation of this garment" (Tr. 62).

The testimony of Kitrosser was that the "muslins" (CX's 23 and 24) submitted by Jacques Heim "were reproduced almost in identity in the Jacques Heim line" (Tr. 74).

Referring to these muslins, Kitrosser continued:

From these we will make a pattern to adapt to our American standards of fit. Our women apparently are built slightly differently from the French women, and their preferences are a little different. So, we take the general cut of this garment and make them with our specifications in the States. (Tr. 75.)

Respondents did not receive muslins for all the Jacques Heim sketches. The two muslins in evidence are the only two received by respondents (Tr. 75).

18. Kitrosser found in the Top Form catalog for the spring and summer of 1962 (RX 22) a variety of styles in slips and sleepwear that he said were based on the Jacques Heim sketches or muslins. Counsel supporting the complaint, in his proposed findings, scoffs at the asserted relationships. However, although Kitrosser's testimony in this respect may be of some assistance in assessing the claims regarding the utilization of the Jacques Heim designs, it has no direct bearing here, since there is no suggestion that the garments pictured and listed in the catalog (RX 22) were in any way represented as originating from Jacques Heim.

19. A partial explanation of the apparent lack of identity between the Jacques Heim sketches and the actual garments or advertising sketches is found at Tr. 71-72. Kitrosser stated:

For example, assuming that any one of these sketches were adopted—any one; it doesn't matter which it is—we would not make just this one piece. This, for example, is a long gown [CX 22]. When we took this style and presented it to our customers, we would take the same general style up at this area [indicating bodice area] and make all the four different types of garments that I mentioned before.

20. The adaptation of the Jacques Heim styles was done by designers on the staff of respondent Top Form (Tr. 64), and the patterns used for the manufacture of the garments in the Jacques Heim line were made by Top Form employees (Tr. 76). Top Form took ideas from several of the Jacques Heim drawings and combined them together on a particular item (Tr. 174).

21. Thus, in summary, there is at least a colorable basis for the claim that Jacques Heim designed the lingerie and sleepwear that respondents marketed under that name. Admittedly, his sketches were not adopted exactly or in their entirety, but the testimony is clear and specific that they were used to provide the "Jacques Heim look" in the creation of adaptations for the American market. Even discounting this testimony as self-serving, it stands in the record uncontradicted.

Aside from the fact that Top Form employees in this country "adapted" the Jacques Heim designs and made the actual patterns, the only ground advanced by counsel supporting the complaint in support of his contention that the garments are "of domestic origin<sup>3</sup> and design" is his own comparison of the physical exhibits and depictions in advertisements, on the one hand, and the Jacques Heim sketches, on the other, leading to his conclusion that there is no discernible relationship between them.

22. Like counsel supporting the complaint, the hearing examiner has some difficulty—at least in some instances—in detecting the relationships claimed between the sketches and the garments. But in the esoteric realm of fashion design, neither counsel's opinion, nor that of the examiner, is sufficient to overcome the evidence of record. The examiner cannot, on this record, find that the merchandise was not "designed" by Jacques Heim. This is not to say that respondents have proved that their garments were so designed. But that burden was not theirs. The burden was on counsel supporting the complaint to prove that Jacques Heim did not design the garments—

<sup>3</sup> The word "origin" is broad enough to cover both design and manufacture.

Initial Decision

63 F.T.C.

that they were of domestic origin and design. That burden has not been met.

23. There may be a suspicion<sup>4</sup> that this case is analogous to that of *Sidney J. Kreiss, Inc.*, Docket 7264, (order to cease and desist, May 19, 1960 [56 F.T.C. 1421]; order denying modification, July 10, 1961) [59 F.T.C. 1479] where,

Although respondents were granted the right to use the names of two fashion designers, Jeanne Lanvin and Oleg Cassini, in their sale of hosiery, the record fully establishes that neither of these at any time created, designed or styled the hosiery carrying their names.

But suspicion cannot substitute for evidence, and there is no basis for a finding here that the arrangement was simply the licensing of the Jacques Heim name without any participation by Heim in the designing of the garments bearing his name. It is true that the contractual arrangement (RX 1 A-B) is limited to licensing Top Form to use the trade name and trademark "Jacques Heim." Nevertheless, there is in the record also testimony and other evidence indicating participation by Jacques Heim in the creation of the garments bearing his name.

24. This case is obviously distinguishable from *John Gray the Fur Designer, Inc.*, Docket 3658, 29 F.T.C. 543 (1939). In that case, respondent represented that patterns for fur coats had been manufactured in Paris from designs produced by famous Parisian designers whereas the patterns admittedly were manufactured in New York from designs produced by respondent's employees; the named designers had no connection whatever with them; and purported telegrams or cablegrams from such designers quoted in respondent's advertisements were "wholly fictitious and false."

25. There is no evidence in this record that the word "design" has any specialized meaning, so that the representation that Jacques Heim "designed" the garments involved in this proceeding must be assessed against the ordinary meaning of the word, or against such specialized meanings as may be appropriate in the circumstances.

We turn first to Webster's New International Dictionary (Second Ed., 1950). The pertinent definition of the transitive verb "design" is as follows: "To fashion according to a plan; \* \* \* To sketch as a pattern or model; To delineate; \* \* \*. To execute as an integral or artistic whole; \* \* \*." For the noun "design", we find this definition, with particular reference to art: "A preliminary sketch; an

<sup>4</sup> See Respondents' Answer, Paragraphs 12-14 and Tr. 42-43 of the prehearing conference, January 31, 1962 (subsequently "corrected" at the hearing of March 19, 1962, Tr. 5-6) to the effect that respondents simply had a right, pursuant to a license agreement, to use the Jacques Heim name.

outline or pattern of the main features of something to be executed, as of a picture, a building, or a decoration \* \* \*."

Similarly, the Encyclopaedia Britannica (14th Edition, 1929), Volume 7, pages 259-60, defines "design" as "the arrangement of lines or forms which make up the plan of a work of art with especial regard to the proportion, structure, movement and beauty of line of the whole."

*Words and Phrases*, Volume 12, furnishes some guidance concerning "design in copyright and patent law." Two of the definitions appear to be applicable here:

A "design," in the view of the patent law, is that characteristic of a physical substance which by means of lines, images, configuration, and the like, taken as a whole, makes an impression, through the eye, upon the mind of the observer. The essence of a design resides, not in the elements individually, nor in their method of arrangement, but in the tout ensemble—in that indefinable whole that awakens some sensation in the observer's mind. Impressions thus imparted may be complex or simple; in one a mingled impression of gracefulness and strength, in another the impression of strength alone. But whatever the impression, there is attached in the mind of the observer, to the object observed, a sense of uniqueness and character. *Pelouze Scale & Mfg. Co. v. American Cutlery Co.*, 102 F. 916, 918, 43 C.C.A. 52.

"Designs", within meaning of design patent statute, consist of combinations and are to be tested for their over-all esthetic effect. *Amerock Corp. v. Aubrey Hardware Mfg., Inc.*, C.A. Ill., 275 F. 2d 346, 348.

26. When respondents' evidence of their achievement of a "Jacques Heim look" is assessed in the light of the emphasis in the quoted definitions on "design" as involving the "*tout ensemble*," "an integral or artistic whole," the differences in detail relied on by counsel supporting the complaint do not provide convincing proof that respondents' representations regarding design by Heim were false and misleading.

27. Accordingly, in the opinion of the examiner, the allegation in the complaint that the products are of domestic origin and design is not sustained by the greater weight of the evidence, except, as already indicated, that the goods were admittedly made in the United States and thus were of domestic origin as far as manufacture is concerned. The order, therefore, runs only against representations that the products were made in France or manufactured by Jacques Heim. There is insufficient basis in this record for a prohibition against representations that the products were designed in Paris by Jacques Heim.

28. Specifically, the representations that the goods were made in France by Jacques Heim stem from the use, on labels or in advertising, of the name Jacques Heim, either alone or with any or all of the



Initial Decision

63 F.T.C.

words, Paris, Biarritz or Cannes. The representation of French origin or manufacture likewise results from the use of those same terms, or others similar thereto, and also from the use, on tags attached to garments, of washing instructions in the French language. The use of terms denoting French origin, in the absence of disclosure of American manufacture, has the capacity and tendency to mislead and deceive.

29. The acts and practices of the respondents, as found above, served to place in the hands of uninformed or unscrupulous dealers the means and the instrumentality whereby such persons might mislead the purchasing public, as to the place of manufacture of respondents' products.

Not only is this a reasonable inference to be drawn from the representations themselves, but there is evidence of the manner in which retailers followed up on the representations made by respondents. For example, a half-page advertisement in the Sunday New York Times of September 13, 1959 (CX 26), is devoted to the depiction of Jacques Heim lingerie under the heading "Macy's International Exposition Brings a World of Fashion Dreams to Your Door". The text accompanying the sketches of the products is as follows:

#### DREAMS FROM PARIS

In Paris the great couturier Jacques Heim dreams up a world of angelic night dresses and captivating pajamas for Lady Russell to bring to you. French as only the French can be \* \* \*.

Another advertisement (RX 50) bears the heading:

Jacques Heim designed it, Lady Russell made it \* \* \* lingerie with the excitement of Paris.

The advertisement further states:

Designed with all the fashion allure of Parisian lingerie \* \* \*.

Still another store ad refers to:

Dreams From Paris Translated By JACQUES HEIM \* \* \*.

plus a further statement:

Lacy Nylon Tricot Gowns, Pajamas with Paris Tags! Created Especially for LADY RUSSELL. (RX 54.)

30. The fact that some advertisements may indicate domestic manufacture (*e.g.*, RX 51) does not detract from the general conclusion that retailers were provided the means and instrumentality to mislead the purchasing public into the erroneous belief that the goods were made in Paris or France by Jacques Heim.

31. The hearing examiner has taken official notice of the fact that "There are those of the purchasing public who have a preference for goods, wares and merchandise which are manufactured or produced in foreign countries and more especially ladies' lingerie and sleepwear made in France by Parisian couturiers." Nothing to the contrary having been shown by respondents, and in fact, the record herein reinforcing that conclusion, the examiner hereby makes such a finding of fact.

32. Respondents, through the use of the word "Mills" as part of the corporate name of respondent Top Form Mills, Inc., have represented that they owned, operated, or controlled a mill or mills in which some or all of the various products sold by them were and are manufactured.

The complaint refers to such representations as having been made "on letterheads, invoices and statements," but the only evidence in this record relates to invoices (CX 14-15 F). The advertisements utilize the trade name "Lady Russel" or "Lady Russel Lingerie", and the only letterhead in the record (RX 45 ab) is that of "Lady Russel". The current catalog (RX 22) bears the words "Top Form", but no reference is made to "Mills".

On invoices there was a further legend "Factory: St. Paul, Va." and "Factory: Route #1, Lebanon, Va.". Such statements constituted representations that respondents owned, operated or controlled at the locations listed a mill or mills in which some or all of the various products sold by them were and are manufactured.

33. Neither the corporate respondent, as such, nor the individual respondents, as such, have owned or operated mills or factories in which their products were manufactured. However, it is found that the corporate respondent and respondent Manuel Kitrosser, jointly or severally, control mills or factories for the manufacture of their products through stock ownership in other corporations. It is further found that Kitrosser, Top Form and Seymour Topping formerly controlled, jointly or severally, manufacturing facilities through such stock ownership. After the death of Seymour Topping in 1959, his interests passed to his widow, respondent Elinore Topping. Also, Top Form has been the sole stockholder in Russell Manufacturing Co., Lebanon, Virginia, since its incorporation in 1957. Russell manufactures lingerie for Top Form. (See Par. 36b, *infra*.)

34. It would unduly and unnecessarily prolong this initial decision to recite in detail the various corporate relationships that have existed in the past. It is sufficient to state generally that Top Form was originally organized in 1952 as Top Form Lingerie, Inc. Its name

Initial Decision

63 F.T.C.

was changed to Top Form Mills, Inc., in August 1953. The stock was held in equal shares by Seymour Topping and respondent Manuel Kitrosser. On the death of Seymour Topping in 1959, ownership of his stock devolved to his widow, Elinore Topping, who was appointed executrix and trustee of the estate. Subsequent to the issuance of the complaint in this proceeding, Elinore Topping transferred her stock to Top Form.

35. According to respondent Kitrosser, Top Form "is basically in the business of manufacturing and distributing of lingerie," with sales in excess of \$9 million in 1961. He testified that Top Form "actually does all its manufacturing" (Tr. 122). "It owns, operates and controls all its own plants." This is "Through stock ownership through the other plants" (Tr. 123). These plants include Southerland Mills, Inc., Graham, North Carolina, which supplies fabric for the manufacture of lingerie. Lingerie is manufactured by Russell Manufacturing Corporation, Lebanon, Virginia; Rockwell Manufacturing Company, Inc., St. Paul, Virginia; Manuela Manufacturing Corp., Naranjito Needlework Corporation and Island Needlework, Inc., all of Puerto Rico.

36. The facts of record regarding these corporations are as follows:

(a) SOUTHERLAND MILLS, INC.—Business started as North Carolina corporation, Southerland Fabrics, Inc., April 8, 1946; capital stock acquired by Kitrosser and Seymour Topping in 1952. New corporation formed 1952, Softex Mills, Inc.; name changed to Southerland Fabrics, Inc., and later (1956) to present name (CX 33b). Engaged in manufacturing textile fabrics, including nylon, acetate and dacron tricot, used in the manufacture of ladies' lingerie and sleepwear. This firm had sales in 1961 of \$2.5 million, of which \$1 million is attributable to sales to Top Form. Southerland has a mill in Graham, North Carolina, and maintains its selling office at the New York offices of Top Form. It appears that the stock of Southerland formerly was held in approximately equal shares by Kitrosser and Seymour Topping (Tr. 13-14). Although respondents propose a finding that Top Form and Kitrosser now own equal shares, the record (Tr. 13-14) is not clear as to this, and Kitrosser referred to himself as the "sole stockholder" (Tr. 124; CF RX 29 A-B). In any event, the ownership interest is in one or both of the respondents.

(b) RUSSELL MANUFACTURING CO., INC.—Maintains a plant at Route 1, Lebanon, Virginia; incorporated February 27, 1957. Engaged in the manufacture of ladies' lingerie and sleepwear consisting of slips, sleepwear, panties and various undergarments, exclusively for Top Form Mills, Inc., and Yolande Corporation. All the textile fabrics used in the production of such products are supplied by Top Form Mills, Inc. This firm shares New York City office space with Top Form Mills. The sole stockholder of this corporation is and has been Top Form.

(c) ROCKWELL MANUFACTURING CO., INC.—A Virginia corporation incorporated in 1949, maintains a plant at St. Paul, Virginia, for manufacturing ladies' slips, half slips, panties and sleepwear, exclusively for Top Form Mills.

830

Initial Decision

Weekly production amounts to 3,000 dozen. All the textile fabrics used in the manufacture of these garments are supplied by Top Form. Shares New York City office space with Top Form.

(d) MANUELA MANUFACTURING CO., INC.—Operates a plant in Puerto Rico for the manufacture of ladies' lingerie exclusively for Top Form Mills, Inc., and Yolande Corporation. Incorporated March 4, 1959, in Puerto Rico. Weekly production, 1500 dozen. The sole stockholder of this corporation is Russell Manufacturing Co. Top Form Mills supplies all the textile piece goods used by Manuela in the production of ladies' lingerie.

(e) NARANJITO NEEDLEWORK CORPORATION—Operates a plant in Puerto Rico for the manufacture of needlework products used in the manufacture of ladies' lingerie by Manuela Manufacturing Co., Inc. Stockholders are and have been Top Form Mills, Inc., and Manuel Kitrosser, holding equal shares.

(f) YOLANDE CORPORATION—A New York corporation incorporated on December 18, 1928, under the corporate name of Lande & Miskend, Inc.; name changed August 21, 1946, to Yolande Corporation. This corporation maintains its own factory at 49-53 East 21st Street, New York, New York, and is engaged in manufacturing and selling children's dresses and ladies' lingerie. Shares New York City office space with Top Form Mills, Inc. Ninety percent of the voting stock of Yolande Corporation is owned by Safonie Corporation, which in turn is owned equally by Top Form Mills, Inc. and Manuel Kitrosser.

(g) ISLAND NEEDLEWORK, INC.—Operates a factory in Puerto Rico, and manufactures children's dresses exclusively for Yolande Corporation. The production is 600 dozen per week. The sole stockholder of this corporation is Yolande Corporation, ownership as above.

37. In 1960 and 1961, respondent Elinore Topping entered into agreements with Top Form Mills, Inc., and Manuel Kitrosser, wherein she agreed to sell them all of the stock owned by her late husband in Top Form Mills, Inc., Southerland Mills, Inc., Manuela Manufacturing Co., Inc., Rockwell Manufacturing Co., Inc., Russell Manufacturing Co., Inc., Naranjito Needlework Corporation and Safonie Corporation (RX 25, 26). Such transfer of stock was effected about January 5, 1962. She is no longer an officer of Top Form or any of the other corporations, but is retained as a "consultant" (RX 26k).

38. The present officers and directors of Top Form Mills, Inc., Southerland Mills, Inc., Manuela Manufacturing Co., Inc., Russell Manufacturing Co., Inc., Rockwell Manufacturing Co., Inc., Naranjito Needlework Corporation, Yolande Corporation, Safonie Corporation and Island Needlework, Inc. are as follows:

Manuel Kitrosser—President and Director

Esther Kitrosser—Secretary and Director

Sanford Kitrosser—Director

Al Gabe—Assistant Secretary

39. The uncontradicted testimony of respondent Manuel Kitrosser was to the effect that he alone formulates, directs and controls the policies and practices not only of respondent Top Form, but of the

other corporations listed above (Tr. 124-131). This extends to production and financial operations and general control of day-to-day activities.

40. Thus, the picture that emerges is of a constellation or cluster of closely held and closely affiliated corporations constituting in economics, if not in law, a single enterprise, apparently dominated and controlled by respondent Manuel Kitrosser since 1959 (and apparently previously dominated and controlled by Kitrosser and Seymour Topping until the latter's death in 1959).

41. To all intents and purposes, the corporation Top Form and respondent Kitrosser are one and the same. As such they constitute a parent corporation that exercises domination and control of each "subsidiary" so complete that the latter may be said to have no real mind or existence of its own and to be operated as a mere department of the business of Top Form.

RX 27-34, for example, show that respondent Kitrosser, acting for himself and/or as proxy for Top Form, in a single evening, held stockholders' and directors' meetings of the various affiliated corporations, as well as Top Form, revised their bylaws, elected new officers, ratified a complex agreement and had the corporations guarantee indebtedness and execute deeds of trust or mortgages for the benefit of respondent Top Form. His testimony (Tr. 124-131) also reinforces this conclusion.

42. As a matter of fact, "the economic enterprise is one, the corporate forms being largely paper arrangements that do not reflect the business realities."<sup>5</sup> The affairs of the group are "so intermingled that no distinct corporate lines are maintained," and the separate corporations "are but divisions or departments of a 'single enterprise.'"<sup>5</sup>

Here "dominion" is "so complete, interference so obtrusive, that by the general rules of agency the parent will be a principal and the subsidiary an agent."<sup>6</sup>

43. The manufacturing corporations in this proceeding are and have been merely the instrumentalities, conduits or adjuncts of their stockholders and the business conduits and alter ego of one another. In the opinion of the hearing examiner, to insist on looking narrowly at the legal fiction of corporate separateness so as to deny that the respondents here own, operate or control mills leads to manifest absurdity and produces inequitable consequences.

This appears to be a proper case for the application of the rule that "A subsidiary or auxiliary corporation which is created by a

<sup>5</sup> *NLRB v. Deena Artware, Inc.*, 361 U.S. 398, 402-403 (1960).

<sup>6</sup> *Berkey v. Third Avenue R. Co.*, 244 N.Y. 84, 95, 155 N.E. 58, 61.

parent corporation merely as an agency for the latter may sometimes be regarded as identical with the parent corporation, especially if the stockholders or officers of the two corporations are substantially the same or their systems of operation unified.”<sup>7</sup>

Although subsidiary corporations of a common parent are ordinarily independent of each other, “The rule, however, that ownership alone of capital stock in one corporation by another does not create an identity of corporate interest between the two companies, render the stockholding company the owner of the property of the other, or create the relation of principal and agent or representative between the two is not applicable where stock ownership has been resorted to not for the purpose of participating in the affairs of the corporation in the normal and usual manner, but for the purpose of controlling a subsidiary company so that it may be used as a mere agency or instrumentality of the owning company or companies.”<sup>8</sup>

44. The examiner recognizes that in most cases where courts have disregarded corporate entities, or “pierced the corporate veil,” the fiction of corporate separateness has been used as a cloak or cover for fraud or illegality, and that as a general principle, the concept of the legal entity will not be ignored to favor the corporation.

However, the authorities also teach that courts will disregard the corporate entity whenever its retention would produce injustice or inequitable consequences. Where it leads to manifest absurdity, the fiction of a separate corporate entity should not be recognized.

Each case involving disregard of the corporate entity must rest upon its special facts. The conditions under which a corporate entity may be disregarded vary according to the circumstances in each case, the two principal requirements being (1) that there be such unity of interest and ownership that the separate personalities of the corporation and the individual no longer exist, and (2) that if the acts are treated as those of the corporation alone an inequitable result will follow.<sup>9</sup>

45. There also are other considerations impelling a holding that there has been no improper use of the term “mills.” As far as this record shows, respondents did not undertake to capitalize on or emphasize the corporate name *Top Form Mills*. As already noted, the only evidence of its use is on invoices, and greater use appears to have been made of the trade name “Lady Russel”.

Thus, it appears that the “mills” representation was made primarily, if not exclusively, to the trade rather than to the general

<sup>7</sup> 13 Amer. Jur., *Corporations* § 8.

<sup>8</sup> *Id.*, § 1382.

<sup>9</sup> 13 Amer. Jur., *Corporations* § 7 (1961 Cum. Supp.).

Initial Decision

63 F.T.C.

consuming public. There is no evidence of deception on the part of any wholesaler, jobber or retailer. The hearing examiner recognizes that proof of deception is not necessary; that capacity and tendency to deceive are sufficient. If control of the various manufacturing corporations is not sufficient to justify the use of the word "mills" in the name of the corporate respondent, the finding would be that the corporate name has the capacity and tendency to deceive.

However, the two circumstances taken together convince the hearing examiner that excision of the word "mills" from the corporate name is not required in the public interest.

46. Unlike many of the cases in which the Commission has proceeded against misrepresentation of trade status as a manufacturer, there is here no evidence of any related representations such as "factory to you," "no middle man" or similar expressions concerning cost savings or other advantages stemming from dealing with a manufacturer.

47. Furthermore, there is no evidence in this record as to the nature of the transactions or dealings between respondent Top Form and the various manufacturing subsidiaries or affiliates, as was the case in *Progress Tailoring Company*, Docket No. 3747, 37 F.T.C. 277 (1943), affirmed, 153 F. 2d 103 (7th Cir., 1946).

As a matter of fact, were it not for the *Progress Tailoring* case, the examiner would be free from doubt, (if not free from error) in holding that this record does not warrant a cease and desist order against misrepresentation of the respondents as mills or manufacturers.

Progress Tailoring Company and several wholly owned subsidiaries sold wearing apparel directly to the consuming public. They represented that purchases made from the respondent were at manufacturer's prices, saving the purchaser the usual retailer's or middleman's cost and profit.

The wearing apparel was manufactured by another wholly owned subsidiary of Progress from cloth furnished to it by Progress. It was found that Progress, as the parent corporation, directed and controlled the policies and practices of all its wholly owned subsidiaries. The manufacturing subsidiary charged Progress for its services in cutting, trimming and tailoring the cloth furnished to it by Progress, and Progress in turn, passed the charges on to its selling subsidiaries, so that the price paid by purchasers included a substantial amount to cover the service charges of the manufacturing subsidiary.

In affirming the Commission's order, the Court of Appeals stated: Now the contention is made that membership in that family of corporations should entitle any of the petitioners to advertise that it manufactures the gar-

ments itself, and they argue that since Progress does directly and absolutely control a clothing manufacturing plant \* \* \*, the Commission erred in entering the order. Suffice it to say that corporate entity will be disregarded only when there are controlling reasons for doing so. 18 CJS § 6, page 378. Here the deception of the public is in no way affected by the corporate relationship, nor will disregarding the relationship correct the evil. Hence we agree with counsel for the Commission that there is no reason for disregarding the actual corporate entities and treating them as one.

In the instant case, however, it appears that the circumstances are sufficiently different so as to warrant treating the various corporate entities as a single enterprise.

In *Progress*, the record indicated that despite the ownership of stock in, and the interlocking control of, the corporations, the corporations conducted their business affairs, so far as those affairs affected the purchasing public, exactly as though there were no inter-corporate relationship. In other words, on that record, the inter-corporate relationship did not affect the price paid by the consumer despite representations to that effect.

No such considerations are presented on this record.

48. This case is also distinguishable from *FTC v. Pure Silk Hosiery Mills, Inc.*, 3 F. 2d 105 (7th Cir., 1924). There it was held that the acquisition by a corporation of less than one-sixth of the outstanding stock of a hosiery mill was not compliance with an order requiring it to stop using the word "mills" until it actually owned, operated or controlled a factory or a mill.

49. Similarly, the facts in this case serve to distinguish it from the *Herzfeld* case 34 F.T.C. 958 (1942), affirmed, 140 F. 2d 207 (2d Cir. 1944). There a partnership trading as Stephen Rug Mills "controlled" through contractual arrangements the mills where the rugs it sold were manufactured. It dictated size, quality, structure and quantity of the rugs produced and had the exclusive disposition of the entire output of certain mills in Europe and in China. The partners had a similar arrangement with an American mill, and as to it, they also had a mortgage on all the looms, machinery, equipment and raw materials, as well as on the lease of the mill premises. They owned "a substantial minority portion" of the capital stock of a corporation manufacturing rug cushions and related articles. The Commission found:

While these facts disclose that the respondents have exercised and are now exercising a measure of control over certain mills which supply them with rugs, the Commission is of the opinion and finds that these facts do not constitute respondents manufacturers or warrant the use by respondents of the word "Mills" in their trade name. Respondents have never owned any rug mill, nor have they operated any mill within the real meaning of the term.



Initial Decision

63 F.T.C.

The Court of Appeals affirmed the Commission's order prohibiting use of the word mills in the respondents' trade name or any other representation that they manufactured the rugs they sold. The court commented, however, that "the petitioners are near enough to being manufacturers to justify their use of the title as it stands, provided all chance of deception were removed." Under controlling Supreme Court decisions, however, the Court held that it was powerless to disturb the corrective measures found necessary by the Commission.

The distinction between the type of control exercised in the *Herzfeld* case and that shown to be exercised in the instant case is obvious.

50. The leading case in this field is *FTC v. Royal Milling Co.*, 288 U.S. 212 (1933). In that case, mixers and blenders of flour called themselves mills or milling companies and otherwise presented themselves as grinders of wheat. There were present none of the factors of actual control of the manufacturing facilities that we have in the instant matter. It may be noted in passing, however, that the court found it unnecessary to order excision of the deceptive words in the corporate or trade names but allowed a qualification to the effect that respondents were "not grinders of wheat". See also *Bear Mill Mfg. Co., Inc. v. FTC*, 98 F. 2d 67 (2d Cir. 1938) and *FTC v. Mid West Mills Inc.*, 90 F. 2d 723 (7th Cir. 1937); cf. *Charles Deer and Jack Deer, trading as Savoy Manufacturing Company*, D. 4763, 39 F.T.C. 417 (1944), affirmed, 152 F. 2d 65 (2d Cir. 1945).

51. Counsel supporting the complaint concedes—or almost concedes—in his proposed findings that respondent Top Form may now properly use the term "mills" in view of its ownership since 1957 of all the stock of Russell Manufacturing Corporation. But in urging an order, he retreats to the contention that respondent Top Form had improperly used the word "mills" as part of its corporate name from 1953 to 1957.

With this proceeding having been instituted in December 1961, and with decision being rendered in 1962, this argument provides an insubstantial basis for an order to cease and desist, particularly since respondent Top Form and respondent Kitrosser, jointly or severally, now clearly own, operate or control mills through stock ownership in other corporations.

The phrasing of the complaint poses in some problems here in that *all* respondents—Top Form, Kitrosser and Elinore Topping—are charged with representing "that *they* owned, operated or con-

trolled a mill or mills," whereas, it is alleged, "Respondents \* \* \* did not, and do not now, own, operate or control a mill \* \* \*."

If the corporate entities may properly be disregarded—and the examiner so holds—then it is apparent that respondents individually or collectively did own, operate and control mills and that respondents Top Form and Kitrosser do so now.

52. Before ordering the drastic remedy of excising a trade name in use for nearly a decade, with consequent loss of good will, etc., consideration should be given to the economic realities as well as to other surrounding circumstances, such as the lack of evidence of corollary activities and representations furthering the deception that, on the basis of strict construction, may be said to be inherent in using the word "mills" in the name of a corporation that does not itself own mills.

Under all the circumstances recited, it is the conclusion of the examiner that no useful purpose would be served by an order directing respondents to cease representing themselves as mills or manufacturers, and the allegations in the complaint in that regard are being dismissed.

53. For completion of the record, the examiner finds that a substantial portion of the purchasing public have a marked preference for dealing directly with a mill in the belief that savings and other advantages may accrue to them. This finding is predicated on official notice and the absence of any evidence to the contrary.

#### CONCLUSIONS OF LAW

1. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents.
2. The complaint herein states a cause of action, and this proceeding is in the public interest.
3. The acts and practices of respondents Top Form Mills, Inc., and Manuel Kitrosser, as found herein, have had, and may have, the capacity and tendency to mislead and deceive members of the purchasing public with respect to the origin or place of manufacture of their products, and into the purchase of substantial quantities of such products as a result. As a consequence, trade has been unfairly diverted to respondents from their competitors and substantial injury has thereby been done to competition in commerce.
4. By their acts and practices respondents placed in the hands of retailers and others means and instrumentalities by and through which they might deceive and mislead the purchasing public as to the origin or place of manufacture of respondents' products.

Initial Decision

63 F.T.C.

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

6. The evidence does not support a finding that Elinore Topping participated in the acts and practices herein found unlawful. She is no longer an officer of the corporate respondent, and an order to cease and desist as to her is not warranted.

7. The evidence does not support the allegations (1) that respondents misrepresented that their Jacques Heim line of merchandise was designed in Paris by Jacques Heim and (2) that they misrepresented themselves as manufacturers or mills or as having factories or mills where their products were and are produced.

ORDER <sup>10</sup>

*It is ordered*, That respondents Top Form Mills, Inc., a corporation, also trading as Lady Russel Lingerie, and its officers, Manuel Kitrosser, individually and as an officer of such corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of ladies' lingerie and sleepwear in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or indirectly:

1. Through the use of the word or words "Paris", "Cannes", "Biarritz" on labels or otherwise, whether singularly or in connection with any other word or words, that products made in the United States were made in France;

2. That any products were made or produced in any specified country when such is not the fact;

3. That any of their products were manufactured or created by Jacques Heim, or by any other French couturier or designer, or by any other French person, firm or corporation;

4. That products made or produced in the United States are made in or imported from countries other than the United States.

*Provided, however*, That this order shall not be construed to prohibit truthful representations concerning the fashioning or design-

<sup>10</sup> With respect to the practices found by the hearing examiner to be unlawful, the order issued here is substantially that proposed in the complaint, with minor editorial changes and such other changes as were required by the findings and conclusions.

830

## Opinion

ing of such products when disclosure is made of the country of manufacture.

*It is further ordered,* That the complaint be, and it hereby is, dismissed as to Elinore Topping, except to the extent she may be bound by the order herein as an agent, representative or employee of respondent Top Form Mills, Inc., or of respondent Manuel Kitrosser.

*It is further ordered,* That the charges in the complaint relating to the design of the Jacques Heim merchandise and the representations as to mill or factory ownership, operation or control be, and they hereby are dismissed.

## OPINION OF THE COMMISSION

MAY 10, 1963

By HIGGINBOTHAM, *Commissioner*:

The complaint in this matter charges respondents with violating Section 5 of the Federal Trade Commission Act by falsely and deceptively representing that certain lingerie and sleepwear were designed and made in France by a Parisian couturier, Jacques Heim, and with misrepresenting that they owned, operated or controlled one or more mills in which some or all of the various products sold by them were manufactured. The hearing examiner held that respondents had misrepresented in advertising and labeling the country of origin of such products and included in his initial decision an order prohibiting this practice.<sup>1</sup> He further held that the charges in the complaint relating to the design of the "Jacques Heim" merchandise and the representations as to mill or factory ownership, operation or control had not been sustained by the evidence and ordered that they be dismissed. Counsel supporting the complaint has appealed from this decision, assigning as error the findings and conclusions on which the order of dismissal is based.

Since the instant matter is one of first impression for this Commission,<sup>2</sup> a detailed discussion of the facts and the applicable principles of law is appropriate—both to clarify the basis for our deci-

<sup>1</sup> The complaint was dismissed as to respondent Elinore Topping (erroneously named in the complaint as Eleanor Topping) in both her individual and official capacities. No appeal has been taken from this ruling.

<sup>2</sup> The Commission has previously issued cease and desist orders to protect the consuming public where respondents *admitted* that the alleged designer had in fact no "connection with the designing or manufacturing of such patterns." *John Grey The Fur Designer, Inc.*, 29 F.T.C., 543, 548 (1939); cf. *Sidney J. Kreiss, Inc., et al.*, 56 F.T.C. 1421, 1430 (1960), involving the alleged designs of Oleg Cassini and Jeanne Lanvin, (Modification denied July 10, 1961.)

sion here and also as a guide for the fashion industry in future matters.

## I

The first issue raised by the exceptions to the initial decision is whether certain lingerie and sleepwear, which respondents claimed were designed by Jacques Heim, were, in fact, designed or created by him.<sup>3</sup> The following facts bearing on this question have been found by the hearing examiner and are not in dispute: Jacques Heim is a French couturier, with salons in Paris, Biarritz, Cannes and Deauville. On February 25, 1959, respondent Top Form Mills, Inc., hereinafter referred to as Top Form, entered into an agreement with Glamour Gams, Inc., Heim's representative in this country, whereby Top Form was granted the exclusive use of the trade name and trademark "Jacques Heim" for certain articles of ladies' sleepwear and lingerie for the period May 1, 1959, to April 30, 1960.<sup>4</sup> Sketches of various items of lingerie and sleepwear were received by Top Form from Jacques Heim together with two slips referred to as "muslins". According to respondent Kitrosser a "muslin" is "an actual garment made out of a muslin fabric which, in the fashion world, is what you usually use in designing a garment, a fashion garment, and from that you adapt the pattern and the style \* \* \*." The garments labeled, advertised and sold to the retail trade by Top Form under the Jacques Heim name included one line of sleepwear known as the "lili" set, consisting of "baby doll" pajamas, a shift gown, a waltz gown and a peignoir, and another, identified as "Gigi", which consisted of a button-front sleepcoat and Capri pajamas.

The record is clear that the garments sold by respondents under the name "Jacques Heim" were not exact reproductions of the garments depicted in the Heim sketches nor of the muslins furnished by Heim. To the untrained eye or to one unversed in the art of fashion designing, there is no apparent similarity between respondents' garments and those conceived by Jacques Heim; however, respondents claim they took ideas from several of the Jacques Heim drawings and combined them together in a particular item.

Respondents have admitted that they did not adopt *in toto* any of the designs in the sketches submitted by Heim. Moreover, they

<sup>3</sup> We adopt the hearing examiner's Finding No. 8 that \* \* \* "respondents represented, directly or by implication, that their 'Jacques Heim' lingerie and sleepwear were designed and made in France by a great couturier, Jacques Heim." No exception was taken to that finding.

<sup>4</sup> This agreement contained certain restrictions with respect to the use of the name "Jacques Heim" in advertising and labeling, but made no reference whatever to the design or style of the lingerie and sleepwear which could be so designated.

have admitted that they made basic changes in the designs he did submit. In this connection, Mr. Freedgood testified that Heim's designs "had to be modified to fit an American consumer market", that they "would never have sold" in this country, and that "what the French woman will wear or what Mr. Heim wanted the American woman to wear, as against what the American woman would wear, were two things, two different things."

This "adaptation" of the Jacques Heim styles was made by designers of the staff of Top Form, and their employees made the patterns used for the manufacture of the garments sold to the public as the "Jacques Heim" line.

That respondents did depart radically from the Heim designs is apparent from the testimony of Freedgood and Kitrosser concerning the nature of the changes and from our own examination of the garments and sketches. For example, Kitrosser identified one of Heim's sketches (CX 18) as the prototype of respondents' adapted "Gigi" sleepwear (CX 5 and 6). The garment depicted in the Heim sketch has long pants and long sleeves, a sash or belt at the waist, fringe at the hip area, and a plain collar. Respondents' garment, on the other hand, has short pants and short sleeves, is loose fitting with no sash or belt, has lace instead of fringe at the hip area, and lace at the collar. It appears, therefore, that the closest point of similarity between the two is that one has lace at the same place that the other has fringe.

## II

On issues involving visual disparities, and thus possible deception of the consumer, neither the Commission nor hearing examiners should abdicate or surrender their judicial obligations for the serenity of conclusions proffered by "expert witnesses." Despite this principle, the hearing examiner in the instant case unwittingly abdicated his obligation to make an appropriate finding on the basis of the disparities manifest before his eyes. He admitted that he had difficulty "in detecting the relationship" claimed between the original sketches of Jacques Heim and the garments actually sold to the public as a Jacques Heim design.<sup>5</sup> He categorized the problem as one "in the esoteric realm of fashion design" and concluded that "neither counsel's opinion nor that of the examiner is sufficient to overcome the evidence of record." Apparently, to the examiner the decisive "evidence of record" was respondents' expert testimony and not the manifest disparity between the original design and the garments sold.

<sup>5</sup> Finding 22, I.D. p. S41.

We must view the garments and designs *de novo*. The hearing examiner's inability to make a finding on design is neither binding on us nor does it have the "probative force" of findings dealing with the credibility of a witness. See *Universal Camera v. NLRB*, 340 U.S. 477, 497 (1951). We, just as he, have had an equal opportunity to compare the original Jacques Heim designs and the garments sold to the public.

Even in litigation pertaining to infringement of designs, the courts have not required expert testimony, supplemental evidence, or consumer witnesses as a prerequisite for judicial interpretation of a design. And we can find no reason why the Commission must require such testimony as a prerequisite for appropriate proof.

In *Illinois Watch Co. v. Hingeco Mfg. Co.*, 81 F. 2d 41, 43, 45 (1st Cir., 1936), the Court of Appeals noted the obligation of a judge to use "his own eyes" in a design infringement case:

The outline and ornamentation of both designs in controversy were before the Court and he was at liberty to *use his own eyes and his own common sense* in comparing the two designs.

\* \* \* \* \*

The test of infringement of a design is whether the two designs have substantially the same effect on the *eye of the ordinary observer* giving such attention to the matter as purchasers usually give.<sup>6</sup> (Emphasis added.)

In exercising our administrative expertise, "the important criterion is the net impression which the advertisement is likely to make upon the general populace". *Charles of the Ritz Dist. Corp. v. F.T.C.*, 143 F. 2d 676, 679 (2d Cir., 1944).

Respondents did not advertise their garments as "substantial modifications", "alterations", or "adaptations" of Jacques Heim's original designs; instead, blatantly and without warning of the modifications, the public was told that the garments were designed by Jacques Heim; the public is entitled to get what is represented to it, *F.T.C. v. Algoma Lumber Co., et al.*, 291 U.S. 67, 78 (1934). Here they were entitled to obtain garments manufactured according to Heim's designs as pictured in his sketches—and we so hold. Finally, with all due deference to the hearing examiner, this Commission has always "had a right to look at the advertisement in question, consider the *relevant* evidence in the record that would aid it in inter-

<sup>6</sup> Similarly, in another design infringement case, *American Fabrics v. Richmond Lace Works*, 24 F. 2d 365, 367 (2d Cir., 1928), the Court refused to wear judicial blinders and as a basis for its judgment the Court noted: "From our own inspection, we should say that the general appearance of the two patterns is sufficiently different, so that no reasonable observer, giving such attention as purchasers usually do, would be deceived; \* \* \*". (Emphasis added.)

preting the advertisement, and then decide for itself whether the practices engaged in by the petitioner were unfair or deceptive \* \* \*." *Zenith Radio Corporation v. F.T.C.*, 143 F. 2d 29, 31 (1944). (Emphasis added.) To be sure, there was testimony in the record on what "designed" meant. However, the entire thrust of such evidence was its meaning to respondents and inferentially to the trade. This is not evidence relevant to the issue of deception of the consuming public. The function of this Commission in this case is to inform and protect "the ignorant, the unthinking and the credulous."<sup>7</sup> The expert has the more wherewithal to fend for himself.

In order to protect the public to what standard should we hold respondents? It is obvious that the fashion field is a volatile one. Fashions change from year to year. Fortunes are made and lost in short periods of time. Respondents knew the alluring appeal of the Jacques Heim name; in their advertisements they repeatedly emphasized his artistry in designing the Bikini and other famous styles.<sup>8</sup> There are thousands of firms competing for the business of American women, and we hold that the use of the name of a famous French couturier is a strong magnet in drawing women into stores. The possibility of confusion of the public and diversion of trade is enormous. Under the circumstances, the public is entitled to the highest standard of protection.

The design infringement cases raise the basic issue of whether trade may be diverted and goodwill lost by the deceit or confusion

<sup>7</sup> *Charles of the Ritz*, *supra*, citing and quoting with approval from *Florence Mfg. Co. v. J. C. Dowd & Co.*, 178 F. 73, 75 (2d Cir., 1910).

<sup>8</sup> As an example, see CX 5 and CX 6; these are advertisements showing a model wearing "Gigi" lingerie captioned the "pert, flirty, surely the sauciest \* \* \* by the couturier who began the Bikini \* \* \*"; see also RX 50—another advertisement containing the following language "Jacques Heim designed it, Lady Russel made it \* \* \* lingerie with the excitement of Paris, designed with all the fashion allure of Parisian lingerie, lavish tucks, trims and flutings: made in the original of practical fabrics"; also see RX 53—"Heim designs for New York firm, Big Sleeves, Defined Bosoms."

The scope of respondents' advertising campaign and their reliance on "designed by Jacques Heim" as a "sales come on" is shown by the composite promotional flyer—RX 54—containing advertisements from the Los Angeles Times, October 13, 1959: "Jacques Heim of Paris designs for Lady Russel lingerie"; The New York Times, Sunday, September 13, 1959: "Dreams from Paris. In Paris the great couturier, Jacques Heim dreams up a world of angelic nightdresses and captivating pajamas for Lady Russel to bring to you"; The Hartford Times, November 10, 1959: "Dreams from Paris translated by Jacques Heim"; Milwaukee Journal (undated): "Jacques Heim designed it, Lady Russel made it \* \* \* lingerie with excitement of Paris"; Chicago Daily News, September 23, 1959: "Jacques Heim designed this lacy nylon tricot lingerie for Lady Russel \* \* \*"; The Miami News, September 24, 1959: "Dreams from Paris designed by Jacques Heim"; Philadelphia Inquirer, November 8, 1959: "Sweetest dreams from Paris, Jacques Heim's designs in luxurious nylon tricot"; The Bridgeport Post, September 28, 1959: "From Paris, Jacques Heim, the great designer, sends Lady Russel the dreamiest, Frenchiest, sauciest nightwear ever."



of the public. And, the rules in the fashion design cases are similar to those which we expound today.

In infringement cases the patentee or copyright design holder is held to a strict burden of proof. In *Mary Muffett, Inc. v. Loma Dress Co., Inc.*, 39 F. Supp. 415, 416 (S.D., N.Y., 1941), the standard announced was whether there was "such a similarity that it amounts to identity". Similarly, in *Peter Pan Fabrics, Inc. and Henry Glass & Company v. Brenda Fabrics, Inc.*, 169 F. Supp. 142 (S.D., N.Y., 1959), where it was held that there was a basis for copyright infringement, the Court noted that "defendant's design is *substantially identical in form* \* \* \* substantially identical in color. The differences in the design are only those which would result from free-hand rather than photographic copying." *Ibid.* at 142. (Emphasis added.)

From our consideration of all the evidence and the applicable law, we find that the garments advertised and sold by respondents under the Heim name were designed by persons on respondents' staff and not by Heim. We may add that we would arrive at this conclusion solely on the basis of respondents' admission that they had changed, transposed, or rearranged dominant features of Heim's designs. By materially changing the outline, pattern or arrangement of the features embodied in the Heim designs, respondents created their own designs. Even if the garments produced bore a superficial resemblance to something Heim had done, that slight similarity would not meet the standard of Section 5.

We also regard as irrelevant the evidence adduced by respondents for the purpose of showing that samples of the garments in question had been approved by Jacques Heim. The issue is whether Heim designed the garments, not whether he approved what respondents had done. Moreover, the evidence on this point, a letter from Heim dated May 28, 1959, shows only that Heim had received from respondents samples of lingerie which "you wanted me to see" and thought they were "very pretty". There is nothing to indicate he approved the garments as his own design or that he considered such approval necessary. The fact that respondents supplied finished garments rather than patterns, and the further fact that Heim's letter was sent only a few days before the scheduled showing of the garments in New York show that respondents did not need Heim's approval.

As to the use of the word "mills" in the corporate name and respondents' invoices implying ownership of factories located at St. Paul and Lebanon, Virginia, we have considered the exceptions taken

830

Final Order

by counsel supporting the complaint. While adopting neither the examiner's reasoning nor his analysis of the earlier precedents, on the present state of the record, we are not inclined to reverse his dismissal of this aspect of the case.

To the extent indicated herein, the exceptions of counsel supporting the complaint are granted; in all other respects they are denied. The initial decision, modified to conform with this opinion, will be adopted as the decision of the Commission.

## FINAL ORDER

SEPTEMBER 23, 1963

On May 10, 1963, the Commission rendered its decision herein modifying the order contained in the initial decision and granted respondents, pursuant to Sec. 4.22(c) of the Commission's Rules of Practice dated June 1962, twenty days in which to file objections to the proposed final order.\* Counsel supporting the complaint was granted by order of the same date ten days in which to file a statement in reply to respondents' objections.

On June 6, 1963, respondents filed a "Motion of Respondents, TOP FORM MILLS, INC. and MANUEL KITROSSER, for Reargument or, in the Alternative, the Filing of Objections to the Proposed Final Order of the Federal Trade Commission, dated May 10, 1963." Said motion asserts that the Commission's decision incorrectly rejected the hearing examiner's findings with respect to the meaning of the word "design" and requests leave to reargue this aspect of the case. Respondents include in their motion certain objections and request, in the alternative, that they be considered as objections to the Proposed Final Order. Counsel supporting the complaint filed his statement in reply on June 18, 1963.

Respondents' motion contains no arguments not previously considered by the Commission in reaching its decision in this matter. As pointed out in the Commission's opinion, the public's understanding of the word "design", is the important criterion; the testimony of respondent Kitrosser and respondents' employee Freedgood as to their understanding of the term's meaning in the trade is not binding on the Commission. We believe that the Commission, just as a court, is competent to determine whether or not a design has been faithfully reproduced. *Cf. Mohr. et al. v. Federal Trade Commission*, 272 F. 2d 401, 405 (9th Cir. 1959), *Cert. den.* 362 U.S. 920

\*Proposed Final Order is omitted since it was entered as the Final Order of the Commission.

Final Order

63 F.T.C.

(1960) and cases cited in Commission's opinion, pp. 858-860. Thus, counsel supporting the complaint was not bound to produce experts, consumer witnesses or other testimony to explain what were disparities manifest to the eyes of the examiner and of this Commission.

Respondents' protestations that use of such designations as "Designed by Jacques Heim" merely suggests that the individual named has contributed a "theme", "presentation" or an "idea" to the manufacturer and that Jacques Heim had "approved" samples sent him, once more raise issues already considered by the Commission and on which the Commission has ruled.

We do not regard Paragraph (4) of the Proposed Final Order as either "ludicrous" or a vehicle for establishing the Commission as an arbiter of fashion design. In addition to protecting the public and competitors from deceptive and other illegal practices, a cease and desist order should afford guidance to respondents in terms as precise as possible. Rather than simply enjoining respondents from misrepresenting that any of their garments have been designed by Jacques Heim or any other French couturier, Paragraph (4) was included in an effort to inform respondents in some detail as to what is expected of them in making claims of this nature in the future. We think the public was entitled to believe that the so-called Jacques Heim garments manufactured by respondents were similar enough in form, shape and other detail so as to at least give the total appearance of designs executed by Jacques Heim. This is the concept incorporated in Paragraph (4) of the Proposed Final Order.

The Commission, for the reasons thus stated, having determined that respondents' motion and objections are without merit and that the Proposed Final Order should be entered as the final order of the Commission:

*It is ordered*, That the initial decision be modified by striking therefrom the last sentence of paragraph 10 of the Findings of Fact and substituting in lieu thereof the following: "Some samples of Top Form lingerie were sent to and acknowledged by Jacques Heim.";

*It is further ordered*, That paragraphs 15 through 27 and 32 through 53 be stricken;

*It is further ordered*, That paragraphs 28 through 31 be renumbered 16 through 19, and that the following be inserted after paragraph 14 as paragraph 15:

15. Respondents did not duplicate Jacques Heim's design for any particular garment, but attempted only to obtain from

Heim's designs a "look" for the garments which they proposed to sell. Respondents allege that they took ideas from several of the Heim drawings and combined them together on a particular item. This alleged "adaptation" of the Heim styles was made by designers on the staff of respondent Top Form, and the patterns used for the manufacture of the garments in the "Jacques Heim" line were made by Top Form employees. The testimony given by respondent Manuel Kitrosser and by the merchandise manager of Top Form's Sleepwear Division, Fred Freedgood, and our own comparison of Heim's sketches and respondents' garments disclose that respondents made material changes in the Heim designs by altering, transposing or rearranging the principal or distinctive features thereof. The garments sold by respondents were designed by persons on respondents' staff and not by Jacques Heim. The statements and representations made by respondents in advertising and labeling to the effect that the garments in question were designed by Jacques Heim are false, misleading and deceptive.

*It is further ordered*, That the conclusions of law contained in the initial decision be modified to read as follows:

1. The use by respondents of the representations herein found to be false and misleading have had, and may have, the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations are true and to induce the purchasing public to purchase substantial quantities of respondents' products because of such erroneous and mistaken belief.
2. The acts and practices of respondents, as found herein, were, and are, all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair and deceptive acts and practices and unfair methods of competition, in commerce, within the intent and meaning of the Federal Trade Commission Act. The proceeding is in the public interest.
3. By their acts and practices respondents placed in the hands of retailers and others the means and instrumentalities whereby the purchasing public may be misled as to the origin and design of respondents' products.
4. The evidence does not support a finding that Elinore Topping participated in the acts and practices herein found unlawful. She is no longer an officer of the corporate respondent, and an order to cease and desist as to her is not warranted.

Final Order

63 F.T.C.

*It is further ordered,* That the following order be, and it hereby is, substituted for the order contained in the initial decision:

*It is ordered,* That respondents Top Form Mills, Inc., a corporation, also trading as Lady Russel Lingerie, and its officers and Manuel Kitrosser, individually and as an officer of such corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of ladies' lingerie, sleepwear or any other clothing, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the words "Paris", "Cannes", "Biarritz" on labels or otherwise, whether singularly or in connection with any other word or words, to describe or refer to products made in the United States, or representing by any other means that any products made in the United States were made in France or in any other foreign country;

2. Misrepresenting in any manner the country of origin of any of their products;

3. Representing, directly or indirectly, that any of their products were manufactured, or designed, styled or created by Jacques Heim, or by any other French couturier or designer, or by any other French person, firm or corporation; and

4. Using the words "designed", "styled", or "created", or any word or words of similar import, together with the name of any person, to describe or refer to any of their products unless such products are identical as to configuration, combination of lines and patterns executed by such person and are so similar in form, size, shape, ornamentation and other detail as to give the total appearance to the purchasing public of being a precise copy thereof.

*It is further ordered,* That the complaint be, and it hereby is, dismissed as to Elinore Topping.

*It is further ordered,* That the charge in the complaint relating to use of representations as to mill or factory ownership, operation or control, be, and it hereby is, dismissed.

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

*It is further ordered,* That since the Commission's "Proposed Final Order" was issued under the Commission's Rules dated June, 1962, which provided for Proposed Final Orders, respondents herein shall, pursuant to Rule 5.6 of the Commission's Rules dated June,

830

## Complaint

1962 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. (The topic dealt with in Rule 5.6 is now in Rule 3.26(a) of the Commission's new rules which are now in effect.)

IN THE MATTER OF  
MONTALDO'S FURS, INC., ET AL.

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

*Docket C-599. Complaint, Sept. 23, 1963—Decision, Sept. 23, 1963*

Consent order requiring retail furriers in New York City, to cease violating the Fur Products Labeling Act by advertising in newspapers which failed to show the true animal name of fur and when fur was artificially colored, and to use the term "Dyed Broadtail-processed Lamb" as required, representing furs improperly as "Broadtail", and falsely advertising "\* \* \* Savings of 25% to 50% \* \* \*"; 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 Montaldo's Furs, Inc., a corporation, and Sidney Weiner, individually and as the principal stockholder of the said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Fur Products Labeling Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in the respect as follows:

PARAGRAPH 1. Respondent Montaldo's Furs, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York.

Individual respondent Sidney Weiner is the principal stockholder in the said corporation 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 512 Seventh Avenue, New York, New York.

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 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 St. Louis Post-Dispatch, a newspaper published in the city of St. Louis, State of Missouri.

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.

PAR. 4. 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 certain of said fur products were falsely or deceptively identified 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(a)(5) of the Fur Products Labeling Act.

Among such falsely and deceptively advertised fur products, but not limited thereto, were fur products advertised 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 designation.

PAR. 5. In advertising fur products for sale as aforesaid respondents represented through such statements as "Final Clearance of Furs Bringing You Savings of 25% to 50% Off" that prices of fur

products were reduced in direct proportion to the percentages stated and that the amount of said reduction afforded savings to the purchasers of respondents' products when in fact such prices were not reduced in direct proportion to the percentages stated and the represented savings were not thereby afforded to the said purchasers, in violation of Section 5(a)(5) of the Fur Products Labeling Act.

PAR. 6. 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 respect, the term "Dyed Broadtail-processed Lamb" was not set forth in the manner required, in violation of Rule 10 of the said 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 Montaldo's Furs, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 512 Seventh Avenue, New York, New York.

Respondent Sidney Weiner is the principal stockholder in 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 Montaldo's Furs, Inc., a corporation, and its officers and Sidney Weiner, individually and as the principal stockholder of the 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. 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:

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. 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 products

## Complaint

are not reduced to afford to purchasers the percentage of savings stated.

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

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

5. Falsely or deceptively identifies any such fur product as to the name or designation of the animal or animals that produced the fur contained in the fur product.

6. Fails 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".

B. 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  
MONTALDO'S, 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-600. Complaint, Sept. 23, 1963—Decision, Sept. 23, 1963*

Consent order requiring a St. Louis, Mo., retail furrier to cease violating the Fur Products Labeling Act by advertising in newspapers which failed to show the true animal name of fur and the country of origin of imported furs and to reveal when fur was artificially colored, to use the term "Dyed Broadtail-processed Lamb" as required and the word "Natural" where applicable; by failing in other respects to comply with advertising and invoicing requirements; and by failing to maintain 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

## Complaint

63 F.T.C.

reason to believe that Montaldo's, Inc., a corporation, and Jack Montaldo, individually and as an officer of said corporation hereafter 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 Montaldo's, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Missouri.

Respondent Jack Montaldo is an officer of the corporate respondent and controls, directs and formulates 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 14 Maryland Plaza, St. Louis, 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 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 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 St. Louis Post-Dispatch, a newspaper published in the city of St. Louis, State of Missouri.

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.

869

## Complaint

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. 4. In advertising fur products for sale as aforesaid respondents represented through such statements as "Final clearance of furs bringing you savings of 25% to 50% off", that prices of fur products were reduced in direct proportion to the percentages stated and that the amount of said reduction afforded savings to the purchasers of respondents' products when in fact such prices were not reduced in direct proportion to the percentages stated and the represented savings were not thereby afforded to the said purchasers, in violation of Section 5(a)(5) of the Fur Products Labeling Act.

PAR. 5. 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 Broadtail-processed Lamb" was not set forth in the manner required, in violation of Rule 10 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.

PAR. 6. 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 certain of said fur products were falsely or deceptively identified 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(a)(5) of the Fur Products Labeling Act.

Among such misbranded fur products, but not limited thereto, were fur products advertised 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 designation.

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

, Decision and Order

63 F.T.C.

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. 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 to set forth the information required under the said Act and said Rules and Regulations.

PAR. 9. Certain of said fur products were falsely and deceptively invoiced in violation of the Fur Products Labeling Act in that they were not invoiced in accordance with the Rules and Regulations promulgated thereunder inasmuch as required item numbers were not set forth on invoices in violation of Rule 40 of said Rules and Regulations.

PAR. 10. The aforesaid acts and practices of respondents, as herein alleged, are in violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder and constitute unfair and deceptive acts and practices 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 Montaldo's, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Missouri, with its office and principal place of business located at 14 Maryland Plaza, St. Louis, Missouri.

Respondent Jack Montaldo 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 Montaldo's, Inc., a corporation and its officers, and Jack Montaldo 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. 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:

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. 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 products are not reduced to afford to purchasers the percentage of savings stated.

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

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

5. Falsely or deceptively identifies any such fur product as to the name or designation of the animal or animals that produced the fur contained in the fur product.

6. Fails 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".

7. 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.

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

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 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

VITAMIN INDUSTRIES, INC., ET AL.

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

*Docket C-601. Complaint, Sept. 23, 1963—Decision, Sept. 23, 1963*

Consent order requiring distributors of three vitamin preparations in Omaha, Nebr., to cease misrepresenting the therapeutic and protective qualities of

their said products in advertising in newspapers and by radio and television broadcasts, etc., as in the order below in detail 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 Vitamin Industries, Inc., a corporation, and Joseph L. Zweiback, 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 Vitamin Industries, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Nebraska with its principal office and place of business at 1511 Davenport Street, Omaha, Nebraska.

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

PAR. 2. Respondents are now, and for some time last past have been, engaged in the sale and distribution of various preparations containing ingredients which come within the classification of foods, drugs and cosmetics as the terms "food", "drug", and "cosmetic" are defined in the Federal Trade Commission Act.

The designations used by respondents for certain of their said various preparations, the formulae thereof and directions for use are as follows:

I. *Designation*: Guardian 12 Plus Vitamins.

*Formula*: Each single capsule contains: Vitamin A—5,000 USP Units; Vitamin D—1,000 USP Units; Vitamin B<sub>1</sub>—3 Mg.; Vitamin B<sub>2</sub>—3 Mg.; Vitamin B<sub>6</sub>—0.25 Mg.; Calcium Pantothenate—1 Mg.; Vitamin C—50 Mg.; Nicotinamide—18 Mg.; Para-Amino Benzoic Acid—1 Mg.; Vitamin E—1 Int. Unit; Vitamin B<sub>12</sub>—USP Cobalamin Conc. 2 Mcg.; Rutin—1 Mg.; Biotin—1.5 Mcg.; Menadione—0.5 Mg.; Lemon Bioflavonoid Complex—12 Mg.

*Directions*: One to three capsules as a dietary supplement.

II. *Designation*: Guardian A/D/E PLEX

*Formula*: Guardian A/D/E Plex consists of a combination of two different capsules, one designated an "amber" capsule, the other a "D/E Plex" capsule.

A. Each amber capsule contains: Vitamin A—5,000 USP Units; Vitamin D—850 USP Units.



## Complaint

63 F.T.C.

B. Each D/E Plex capsule contains: Vitamin B<sub>1</sub>—3.5 Mg.; Vitamin B<sub>2</sub>—2.5 Mg.; Vitamin C—65 Mg.; Niacinamide—25 Mg.; Calcium Pantothenate—1 Mg.; Vitamin D—1,500 USP Units; Vitamin B<sub>6</sub>—100 Mcg.; Mixed Tocopherols—10 Mg.

*Directions*: Adult Dosage: 3 of each capsule daily as a dietary supplement.

III. *Designation*: Cal Plex F Vitamins.

*Formula*: Cal Plex F Vitamins consists of a combination of capsules and tablets, one designated "No. 1 capsule", the other "No. 2 tablet." The capsules and tablets are bottled separately.

A. Each No. 1 capsule contains: Free unsaturated fatty acids of Flaxseed Oil principally linolenic and linoleic—168 Mg.

B. Each No. 2 tablet contains: Vitamin B<sub>1</sub>—1.5 Mg.; Vitamin B<sub>2</sub>—3 Mg.; Vitamin B<sub>6</sub>—0.1 Mg.; Niacinamide—10 Mg.; Para-Amino Benzoic Acid—10 Mg.; Calcium Pantothenate—35 Mg.

*Directions*: One capsule each morning. One tablet each day after breakfast as a dietary supplement.

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

PAR. 4. In the course and conduct of their said business, respondents have disseminated, and caused the dissemination of, certain advertisements concerning the said preparations by the United States mails and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, including, but not limited to, advertisements inserted in newspapers and other advertising media, and by means of television and radio broadcasts transmitted by television and radio stations located in various States of the United States having sufficient power to carry such broadcast across State lines, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said preparations; and have disseminated, and caused the dissemination of, advertisements concerning said preparations by various means, including, but not limited to the aforesaid media, for the purpose of inducing, and which were likely to induce, directly or indirectly, the purchase of said preparations in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. Among and typical of the statements contained in said advertisements, disseminated as hereinabove set forth, with respect

874

## Complaint

to respondents' preparation designated "Guardian 12 Plus Vitamins", are the following:

Many authorities say that Guardian B<sub>12</sub> formula is the most important development in the Vitamin Field. It helps build new, rich blood; it helps give strength and energy from your food intake. Thousands of friends here in our listening area testify to the fact that the Guardian 12 Plus Vitamins formula gives them protection against colds, virus infections and certain types of flu. (Radio)

MORE PEP IN '60 \* \* \* RESIST INFECTIONS \* \* \* Perfect family protection \* \* \* America's foremost complete formula vitamin combination for the whole family \* \* \* PEP-ENERGY-VIGOR. (Newspapers)

PAR. 6. Through the use of said advertisements and others similar thereto, not specifically set out herein, respondents have represented and are now representing directly and by implication that "Guardian 12 Plus Vitamins" will be of benefit in the treatment or relief of a lack of pep, vigor and energy, and that said preparation will be of benefit in affording protection against colds, virus infections and certain types of influenza.

PAR. 7. In truth and in fact Guardian 12 Plus Vitamins will not be of benefit in the treatment or relief of a lack of pep, vigor or energy except in a small minority of persons whose lack of pep, vigor or energy is due to an established or existing deficiency of Vitamin B<sub>1</sub>, Vitamin B<sub>2</sub>, Vitamin C or Nicotinamide, nor will said preparation be of benefit in affording protection against, colds, virus infections, or any type of influenza.

Therefore, the advertisements set forth and referred to in Paragraph 5 above were and are misleading in material respects and constituted, and now constitute, false advertisements as that term is defined in the Federal Trade Commission Act.

Furthermore, the statements and representations have the capacity and tendency to suggest and do suggest, directly and by implication, to persons of both sexes and all ages who experience a lack of pep, vigor or energy that there is a reasonable probability that they have symptoms which will respond to treatment by the use of the aforementioned preparation. In the light of such statements and representations, said advertisements are misleading in material respects and therefore constitute false advertisements as that term is defined in the Federal Trade Commission Act, because they fail to reveal the material facts that in the great majority of persons, or of any age, sex or other group or class thereof, who experience a lack of pep, vigor or energy, such symptoms are not caused by an established or existing deficiency of one or more of the nutrients

Complaint

63 F.T.C.

provided by Guardian 12 Plus Vitamins, and that in such persons the said preparation will be of no benefit.

PAR. 8. Among and typical of the statements and representations contained in the said advertisements disseminated as hereinabove set forth, with respect to respondents' "Guardian A/D/E Plex" are the following:

You friends who have symptoms of arthritis or rheumatism, and other aches and pains, and have tried so many methods and remedies to no avail, you are the ones who will bless the day you heard about the famous A/D/E Plex specially formulated vitamin compound. Nutritional problems have become serious through the years and if your arthritis or rheumatism stems from a vitamin deficiency, I urge you to try this formula \* \* \*. This formula is being taken by thousands of people who order and re-order, testifying to the effectiveness of these vitamins. (Radio)

The A/D/E Plex Vitamin formula is an all-vitamin, especially formulated compound designed specially to overcome vitamin deficiencies so often found in people suffering from arthritis and rheumatism \* \* \*. It contains no dangerous drugs or chemicals, and does not interfere or have anything to do with any other medicine. It has been tested by countless thousands of people who order and re-order and also recommend them to others. (Radio)

PAR. 9. Through the use of said advertisements and others similar thereto not specifically set out herein, respondents have represented and are now representing, directly and by implication that, inasmuch as arthritis and rheumatism may be caused by vitamin deficiency, the use of "Guardian A/D/E Plex" will be of benefit in the treatment and relief of arthritis and rheumatism, and their symptoms, and that the use of "Guardian A/D/E Plex" will be of benefit in the treatment and relief of other aches and pains.

PAR. 10. In truth and in fact "Guardian A/D/E Plex" will not be of benefit in the treatment or relief of arthritis, rheumatism, or their symptoms, or any other aches or pains, and further, neither arthritis nor rheumatism is caused by vitamin deficiency.

Therefore the advertisements set forth and referred to in Paragraph 8 above were and are misleading in material respects and constituted, and now constitute, false advertisements as that term is defined in the Federal Trade Commission Act.

PAR. 11. Among and typical of the statements and representations contained in said advertisements disseminated as hereinabove set forth, with respect to respondents' "Cal Plex F Vitamins" are the following:

You do not know whether or not you have developed nutritional disorders; but your hair, your skin and your nails can tell you if you will stand in front of a mirror and take a good look. Look for such things as brittle, dull fingernails, falling lifeless hair split ends; dry skin, leathery or coarse textured, excessive

S74

## Complaint

skin infections, lack of normal vigor or life. These things can be built up over a long period of time. Your body is made up of the things you eat and through the years you may not have been eating the foods that make good healthy glowing skin, good fingernails, and good bone and cell structure. The CAL PLEX F vitamin formula has important ingredients that are needed to overcome the specified deficiencies. This formula has been carefully worked out in one of the leading nutritional laboratories. (Radio)

PAR. 12. Through the use of said advertisements and others similar thereto not specifically set out herein, respondents have represented, and are now representing, directly and by implication:

(a) that "Cal Plex F Vitamins" will be of benefit in the treatment and relief of brittle and dull fingernails, falling hair, hair split at the ends, dry, leathery, and coarse textured skin, excessive skin infections and a lack of normal vigor and life;

(b) that a person, by looking in a mirror, can determine for himself whether he has a nutritional disorder and the symptoms thereof, and whether he has a need for "Cal Plex F Vitamins".

PAR. 13. In truth and in fact:

(a) "Cal Plex F Vitamins" will not be of benefit in the treatment or relief of brittle or dull fingernails, falling hair, hair split at the ends, dry, leathery, or coarse textured skin, any skin infections, nor will said preparation be of benefit in the treatment or relief of a lack of vigor or life, except in a small minority of persons whose lack of vigor or life is due to an established or existing deficiency of Vitamin B<sub>1</sub>, Vitamin B<sub>2</sub> or Niacinamide;

(b) A person, by looking in a mirror, cannot determine whether he has a nutritional disorder or whether he has a need for "Cal Plex F Vitamins", nor can he, by any means, determine for himself whether he has any symptoms of a deficiency of one or more of the nutrients provided in "Cal Plex F Vitamins".

Therefore the advertisements set forth and referred to in Paragraph 11 above were and are misleading in material respects and constituted, and now constitute, false advertisements as that term is defined in the Federal Trade Commission Act.

Furthermore, the statements and representations have the capacity to suggest and do suggest, directly and by implication, to persons of both sexes and all ages who experience a lack of vigor or life that there is a reasonable probability that they have symptoms which will respond to treatment by the use of the "Cal Plex F Vitamins". In the light of such statements and representations, said advertisements are misleading in material respects and therefore constitute false advertisements as that term is defined in the Federal Trade Commission Act, because they fail to reveal the material

Decision and Order

63 F.T.C.

facts that in the great majority of persons, or of any age, sex or other group or class thereof, who experience a lack of vigor or life, such symptoms are not caused by an established or existing deficiency of one or more of the nutrients provided by "Cal Plex F Vitamins", and that in such persons the said preparations will be of no benefit.

PAR. 14. The dissemination by the respondents of false advertisements, as aforesaid, constituted, and now constitutes, unfair acts and practices in commerce, in violation of Sections 5 and 12 of the Federal Trade Commission Act.

## DECISION AND ORDER

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

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

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

1. Respondent Vitamin Industries, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Nebraska, with its office and principal place of business located at 1511 Davenport Street, in the city of Omaha, State of Nebraska.

Respondent Joseph L. Zweiback 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 Vitamin Industries, Inc., a corporation, and its officers, and Joseph L. Zweiback, 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 "Guardian 12 Plus Vitamins", "Guardian A/D/E Plex", and "Cal Plex F Vitamins", or any other preparations of similar composition or possessing substantially similar properties whether sold under said names, or any other name, do forthwith cease and desist from directly or indirectly:

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

(a) That the preparation "Guardian 12 Plus Vitamins" will be of benefit in affording protection against colds, virus infections, or any type of influenza.

(b) That "Guardian 12 Plus Vitamins" will be of value in the treatment or relief of a lack of pep, vigor or energy, unless such advertisement expressly limits the effectiveness of the preparation to those persons whose symptoms are due to an established or existing deficiency of Vitamin B<sub>1</sub>, Vitamin B<sub>2</sub>, Vitamin C or Nicotinamide and further, unless the advertisement clearly and conspicuously reveals the facts that in a great majority of persons, or of any age, sex, or other class or group thereof who experience such symptoms, these symptoms are caused by conditions other than those which may respond to treatment by the use of the preparation, and that in such persons the preparation will not be of benefit.

(c) That "Guardian A/D/E Plex" will be of benefit in the treatment or relief of either arthritis or rheumatism, or the symptoms thereof, or any other aches or pains.

(d) That a person, by looking in a mirror, can determine whether he has a need for "Cal Plex F Vitamins", or that a person by any means, can determine for himself whether he has symptoms of a deficiency of one or more of the nutrients provided by "Cal Plex F Vitamins".

(e) That "Cal Plex F Vitamins" will be of benefit in the treatment or relief of brittle or dull fingernails, falling hair, hair split at the ends, dry, leathery or coarse textured skin, or skin infection.

(f) That "Cal Plex F Vitamins" will be of benefit in the treatment or relief of a lack of normal vigor or life, unless such advertisement expressly limits the effective-

Complaint

63 F.T.C.

ness of the product to those persons whose symptoms are due to an established or existing deficiency of Vitamin B<sub>1</sub>, Vitamin B<sub>2</sub>, or Niacinamide, and further unless such advertisement clearly and conspicuously reveals the facts that in the great majority of persons, or of any age, sex or other class or group thereof, who experience such symptoms, these symptoms are caused by conditions other than those which may respond to treatment by the use of the product, and that in such persons the product will not be of benefit.

2. Disseminating, or causing to be disseminated, by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of respondents' preparations, in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which contains any of the representations prohibited in or which fails to comply with any of the affirmative requirements of Paragraph 1 hereof.

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

---

IN THE MATTER OF

WESTERN RADIO CORPORATION ET AL.

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

*Docket 7468. Complaint, Apr. 2, 1959—Decision, Sept. 25, 1963*

Order requiring manufacturers of a "Walkie Talkie" portable radio transmitter in Kearney, Nebr., to cease representing falsely in newspaper and magazine advertising and otherwise that their said "Walkie Talkie" transmitter had a satisfactory operational range of up to one-half mile for a home receiver and up to 10 miles when transmitting from auto to auto; that the device carried a 1-year service guarantee; and that operation thereof required no license.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Western Radio Corporation, a corporation, and Paul S. Beshore and W. P. Beshore, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it