Complaint

IN THE MATTER OF

LEONARD MARGOLIS ET AL. TRADING AS SILVO HARDWARE COMPANY

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

Docket 8561. Complaint, Mar. 14, 1963—Decision, Jan. 24, 1964

Order requiring Philadelphia mail-order distributors of hardware, housewares, typewriters, toys, and other general merchandise, to cease representing falsely in catalogs distributed to prospective purchasers that higher prices quoted in juxtaposition with lower stated code prices were the usual retail prices in all the trade areas in which the catalogs were distributed; and by such statements in catalogs as "wholesalers and distributors," "BUY AT WHOLESALE PRICES," that they sold all their merchandise at wholesale prices.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Leonard Margolis and Norton Berger, individually and as copartners trading as Silvo Hardware Company, hereinafter referred to as the respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondents Leonard Margolis and Norton Berger are individuals and copartners trading as Silvo Hardware Company, with their principal office and place of business located at 107-109 Walnut Street in the city of Philadelphia, State of Pennsylvania.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of hardware, housewares, typewriters, toys and other items of general merchandise 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 merchandise, when sold, to be shipped from their place of business in the State of Pennsylvania to purchasers thereof located in various other States of the United States and in the District of Columbia, and maintain and at all times mentioned herein have maintained, a substantial course of trade in said merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business the respondents have distributed catalogs through the United States mail to prospective purchasers located outside the State of Pennsylvania. The following statements from the catalogs are typical but not all inclusive:

No. 18900 Perm-Grit Hand Sander—20001-S37 P83	$1. 25
Skill Perma-Grit Hand Sander Sheets—18973-S37 P66	$. 99
No. 503 Skil ¼" Drill—503-S37 P1263-5 lbs	$18. 95
No. 549 Skil ¼" Drill—549-S37 P1997-5 lbs	$29. 95
No. H264 Stanley ⅜ H.P. Router—H264-S20 P4897	$69. 95
No. H85 Stanley 8" Heavy Duty Builders' Saw—H85-S20 H6615-20 lbs	$94. 50
No. 60½ Stanley Block Plane—60½-S19 P420	$6. 25
No. X 226 Stanley "100 Plus" "Zig Zag" Extension Rule—X226-S19 P186	$2. 80
No. 6800 Millers Falls Power Router—6800—M19 P3006	$42. 95
Model K700-11 Shopmate Logger Chain Saw—Power Saw—K700-11-P4 H5332	$79. 98
D-95 Disston Lightweight Straightback Hand Saw—D95-D6 P730	$10. 95
D-8 Disston Medium Weight Skew Back Hand Saw—D8-D6 P585	$8. 75
No. 602 Stanley Magnetic Upholsterer's Hammer—602-S19 P287	$4. 10
No. 20 Stanley Try Squares—20-6-S19 P197	$2. 82
Model 6T Smith-Corona "Galaxie" Portable Typewriter—6T-S12 H10498	$141. 50
Model 5A Smith-Corona "Sterling" Portable Typewriter—5A-S12 H7795	$104. 50
Model 4Y Smith-Corona "Skyriter" Portable Typewriter—4Y-S12 H6099	$74. 50

Page 2 of the respondents' catalog contains the statement that, "all prices shown in the catalog are retail and your cost is shown in code."

The code used throughout the catalog is explained on page 2 of the catalog with the following example for a Stanley plane adapter kit:

H170-S20 P3098 5 lbs	$44. 25

"H170-S20" is described as the catalog number; "P", or some other letter, is the shipping key; "3098" is the purchaser's cost, the decimal point to be added by counting off two places from the right: "5 lbs." is the approximate weight of the item; and "$44.25" is the "retail price established by manufacturer or recommended by us."

PAR 5. Through the use of the aforesaid statements the respondents have represented, directly or indirectly, that the higher stated

prices quoted in Paragraph 4 in juxtaposition with the lower stated code prices are the prices at which the merchandise described in Paragraph 4 is usually and customarily sold in all trade areas to which the catalogs are distributed and that a saving will be made of the difference between the two prices.

PAR. 6. In truth and in fact the higher amounts set out for the items listed in Paragraph 4 are not the prices at which said merchandise is usually and customarily sold in all trade areas to which the catalogs are distributed, but are in excess of the price or prices at which said merchandise is generally sold in some of said trade areas, and purchasers of respondents' merchandise in such trade areas would not realize a saving of the difference between the said higher and lower price amounts.

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

PAR. 7. Through the use of such statements as, "wholesalers and distributors", "you will be able to BUY AT WHOLESALE PRICES", "you write the orders, mail them to us with proper remittance (according to your *wholesale cost*) * * * " and "your confidential wholesale prices are printed in CODE" * * * appearing in their catalogs the respondents have represented directly or indirectly that they sell all of their merchandise at wholesale prices.

PAR. 8. In truth and in fact the respondents do not sell, nor do they offer to sell, all of their merchandise at wholesale prices but, to the contrary, the prices of some of their merchandise are in excess of wholesale prices. Therefore, the statements and representations referred to in Paragraph 7 are false, misleading and deceptive.

PAR. 9. 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 articles of merchandise of the same general kind and nature as that sold by respondents.

PAR. 10. 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' merchandise 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, in violation of Section 5 of the Federal Trade Commission Act.

Mr. Robert A. Mattina, *Mr. Morton Nesmith*, supporting the complaint.

Mr. Leonard Margolis, *in personam*, and by acquiescence and partnership authorization for *Silvo Hardware Company* and *Mr. Norton Berger*, as an individual.

INITIAL DECISION BY HERMAN TOCKER, HEARING EXAMINER

AUGUST 15, 1963

In a complaint issued March 14, 1963, the respondents Leonard Margolis and Norton Berger, individually and as copartners trading as Silvo Hardware Company, were charged with having engaged in unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce, all in violation of Section 5 of the Federal Trade Commission Act. The practices with which this complaint is concerned have to do with alleged representations to prospective customers that the goods or merchandise offered for sale by respondents were being sold at wholesale prices, lower than the retail prices usually and customarily paid for such goods or merchandise in the trade areas in which the customers solicited were located. These allegations resulted in two issues, (1) whether respondents' selling prices actually were *wholesale* prices and (2) whether the prices called "retail" by respondents actually were retail prices in the relevant areas of solicitation.

The respondents (hereafter described as Silvo) operate what has come to be known as a catalog house. Their place of business is 109 Walnut Street in Philadelphia, Pennsylvania. They distribute from 25,000 to 30,000 catalogs annually throughout the United States. In 1962, they did a gross business of approximately $342,000. During the current year, their business is running about 10% below that (Tr. 32, 35–36). Although, as the printed reproduction of portions of the catalog will show, respondents purport to sell to dealers, actually this is not so. There is nothing in this material which suggests that there is any condition attached to buying other than a minimum order of $10 and payment with the order. Respondents admit they sell to anybody who submits an order and pays for the goods (Tr. 192–193).

The following are extracts reproduced from Pages 2 and 3 of respondents' catalog (CX–4).*

Significant portions of the foregoing extracts point up both the manner in which the respondents conduct their business and the

* Pictorial extracts are omitted in printing.

practices with which this proceeding is concerned. The recipient of the catalog is referred to as a "dealer" and is welcomed to Silvo's "FAMILY OF DEALERS!". But, as mentioned before, one does not have to be a dealer to buy from Silvo or to buy at the prices at which it sells. This literature imposes no such condition and Margolis admitted as much in his testimony (Tr. p. 193). Respondents, in the material pictured, emphasize it by making clear that catalogs are free and that if the recipient or any of his "friends desire an extra copy of this catalog", all that is necessary to send a postcard to Silvo "and a copy will be sent free of charge". In this material, respondents tell their prospective customers that they are "able to BUY AT WHOLESALE PRICES" and that all that they have to do to buy and receive the merchandise is to "write the orders, mail them to (Silvo) with proper remittance (according to your *wholesale cost*)" and Silvo will "in turn * * * ship (the) order promptly".

These blurbs at the left of the first of the reproduced extracts are implemented by the material at its right. This again emphasizes "Confidential Wholesale Prices". Although the "dealer" pretense is repeated by the remark that the catalog can be shown freely to "Customers", this whole dealer angle, in view of the manner in which respondents conduct their business, is primarily an appeal to the guile of prospective customers. Everybody likes to get a bargain, and, if one can be led to believe that he is getting something cheaper from Silvo than he would have to pay elsewhere, he is more likely to purchase from it. In this manner, whether or not there is a deception, trade is diverted from competitors. If there is a deception, there is a violation of the Act.

To lend enchantment to this catalog method of doing business, a ridiculously simple code is portrayed in the right-hand side portion of the first reproduced extract. Thus, in addition to the text material describing the commodity offered for sale, there are the two blackface (in the body of the catalog) groups of arabic numbers here, "3098" and "$44.25". The $44.25 is described by respondents as "Retail Price Estab. by Mfr. or Recommended By Us", and the "3098" code figure discloses the price which the solicited customer is expected to pay. He is told, "Your Cost Point Off Two Decimal Places From the Right". In other words, the sum and substance of the whole business is that respondents represent to prospective customers that they can buy, in this instance, a plane adapter kit for $30.98 from them, whereas, if the kit were bought at retail, they would have to pay $44.25. If this were so, customers would be saving $13.27 by buying from Silvo. To repeat, it is charged that the represented retail price was fictitious in that this was not the

price at which the particular item involved usually was sold in the areas solicited and that the purported "wholesale" price in fact was not a wholesale price.

It is now established law "that the use of the term 'manufacturer's list price' represents to the public that that (is) the price at which the product (is) usually and customarily sold by other stores in the area". *Giant Food, Inc.* v. *Federal Trade Commission* 322 F. 2d 977, CA–DC, June 13, 1963 [7 S.&D. 710], and cases there cited.

Subject to the right of the respondents to disprove any fact of which official notice was taken, the hearing examiner issued, filed and there was served on respondents, a notice of intention to take official notice as follows:

1. "WHOLESALE" is a word generally used and understood to be used as an adjective to describe the business of a person or firm who, or which, normally sells to other persons or firms who are engaged in the business of buying such goods as are sold for purposes of resale, with the exception, however, that it is sometimes used to describe sales in quantity lots to industrial, commercial, institutional or professional users, although such users do not purchase for resale.

2. "WHOLESALER" is a noun generally used and understood to be used to describe the person or firm which engages in a wholesale business.

3. "RETAIL" is a word generally used and understood to be used as an adjective to describe the business of acquiring goods either by purchase, production or manufacture for the purpose of selling the same, generally, but not necessarily, in small quantities to the ultimate consumer or user thereof.

4. "RETAILER" is a noun generally used and understood to be used by a person or firm engaged in retail business.

5. The foregoing words, when used in any other grammatical form, such as verbs, participles, etc., retain the meanings above ascribed to them.

6. When any of the foregoing words are used in close context with words like "price", "cost", etc., they are understood to mean that the word "price" or "cost", or any such similar word, is the amount which governs or determines the money paid or to be paid in order to purchase or receive the article involved in the transaction or the amount usually demanded as a consideration for selling or delivering such article.

7. An offer for sale of a product to the consuming public which utilizes, in connection with the terms of the offer, an expression or word like or similar to the word "wholesale" is generally understood to mean that the price at which it is so represented is the same as the price regularly paid by retailers for such article; and, consequently, that if the purchaser buys the article at that price, he will save the difference between that price and the amount at which the article offered usually is sold at retail in the trade area, or areas, where the offer is made.

8. An offer for sale of a product to the consuming public which utilizes, in connection with the terms of the offer, an expression or word like or similar to the word "retail" is generally understood to mean that the price at which it is so represented is the same as the price regularly paid by purchasers of such articles at retail; and, consequently, that the difference between that price and any lower price at which the article is offered for sale is the amount that the purchaser will save if he makes the purchase from the

offerer and not in the usual and customary retail manner in the trade area, or areas, where the offer is made.

10. A "standard Metropolitan statistical area", as used in the 1958 Census of Business (of which the hearing examiner also takes official notice), is a trade area as the term "trade area" is used for the purpose of considering and ruling upon retail trade practices by the Federal Trade Commission.

11. The Washington, D.C.-Maryland-Virginia trade area consists of Washington, D.C.; Alexandria and Falls Church cities and Arlington and Fairfax counties, Virginia; and Montgomery and Prince Georges counties, Maryland.

12. The Baltimore, Maryland trade area consists of Baltimore City and Anne Arundel, Baltimore, Carroll and Howard Counties, Maryland.

13. The Richmond, Virginia trade area consists of Richmond city and Chesterfield and Henrico Counties, Virginia.

14. Amounts designated by the terms "Mfg. List", "Mfr. List", "Manufacturer's List Price", "Manufacturer's Suggested List Price", "Retail" and "Retail Price" and words of similar import, when used in conjunction with amounts of money or prices, are representations that the amounts of money are the prices at which the products offered or advertised were or are usually and customarily sold at retail in the recent, regular course of business in the trade area, or areas, in which the goods are being offered for sale.

Because of evidence adduced during the hearing, the hearing examiner now qualifies the definitions governing the use of the word "wholesale" in its various forms and connotations by limiting its *price* significance to single-unit or small quantity sales or purchases. This is because it was developed that in many instances manufacturers or distributors set different wholesale or dealer prices for single-unit or small quantity sales than they set for sales in greater quantities (Tr. pp. 192, 311, 502, 517, RX–2a, 2b). Since respondents' sales are primarily single-unit sales to their customers, the hearing examiner has concluded that, in those cases where a manufacturer or a distributor sets and abides by a single-unit or small quantity price for a particular commodity, that is the price to which reference must be made for the purpose of determining if, in fact, respondents' alleged wholesale or dealer price was fictitious. In all other respects the official notice taken by the hearing examiner has not been made to appear improvident or inapplicable to the facts of this case.

During the course of the hearing, respondents contended that the prices published by them in their catalog, whether referred to as wholesale or as retail, were determined by them primarily after reference to literature distributed by the manufacturers or distributors of the articles offered for sale by them. They said that in such literature, the manufacturers or distributors specified either or both the prices at which the commodities were to be sold to dealers and to the retail trade. They said that where they referred either to a dealer price or a manufacturer's list price, in most cases, they obtained such prices from the literature. There were some exceptions, however

(Tr. pp. 182–185, 252). Where the dealer price was such that they could not make a profit, they increased this somewhat in order to allow a profit, but say that such increase always was to a figure below the so-called "retail" or "manufacturer's list price". Also, they say that in cases where a manufacturer did not publish a suggested list price, they undertook to establish as the so-called "retail price" what they thought was a fair and proper price to be charged at "retail" (Answer and Pretrial Order, Tr. pp. 54–55). This is the background of the phrase, "Recommended By Us", quoted above from the reproduced extract. Counsel supporting the complaint expressly stated that in those cases where a manufacturer actually published a suggested retail price, it was not claimed on behalf of the Commission that in any instance respondents incorrectly quoted that figure (Tr. pp. 181, 561–567). No such issue appears in this proceeding.

It may be observed also that there is nothing in the evidence from which it can be concluded that respondents made any study of prices routinely or usually paid for particular merchandise in any particular trade area before "recommending" a so-called "retail price". As a practical matter, this probably would be impossible because of the number of areas in which they distributed their catalog. Consequently, as a matter of law, unless by accident this so-called "recommended" price happened to be the routine, regular retail price in a particular trade area, the very practice of establishing prices in this manner would have to be condemned.

For the purpose of establishing trade areas to prove the contentions set forth in the complaint (*Baltimore Luggage Company* v. *Federal Trade Commission*, 296 F. 2d 608, 611), Commission counsel offered in evidence a number of invoices showing actual sales made by respondents in Washington, D.C., Baltimore, Maryland, and Richmond, Virginia (CX–6 to 34, inclusive). While not necessarily controlling on the ultimate decision in this proceeding, these sales included various power and hand tools and household appliances and utensils, and toys. The proof extended beyond these to typewriters and fishing gear. Utilization was made of the testimony of manufacturers' representatives or employees, distributors and wholesalers and retailers showing prices in the Washington, D.C. and Baltimore trade areas, and, in a more general sense, elsewhere. This evidence will be discussed in somewhat greater detail below. It was substantial and sufficient to establish the conclusory allegations set forth in the complaint.

Before setting forth details of the evidence, arguments on behalf of the respondents and some other factors must be considered. When

it was made to appear that some prices actually were different from prices published by respondents, they suggested that the changes might have occurred following the publication of a particular catalog. This was discussed not only at the pretrial conference but also during the hearing (Tr. 318–320). The hearing examiner ruled, and adheres to his ruling, that when an advertiser undertakes to make a representation as to price, he does so at his peril. This is particularly the case in this catalog mail-order business. Respondents issue only one main catalog in a whole year, which is supplemented only by a smaller Spring distribution intended mainly to stimulate business. If the price should change during the year that this catalog is in circulation, such a representation becomes untruthful. The fact that it may be impractical, difficult or too expensive to change the catalog or to recall it is wholly immaterial to whether the representation is deceptive or untruthful.

In considering the issues in this case, the hearing examiner has based no finding of fact or determination on evidence of special sales or one-day sales (Tr. 327–329). On the other hand, the contention on the part of the respondents that the District of Columbia area, which was one of the areas involved in this proceeding, is an area in which "outrageous prices" prevail is ill-founded. Assuming that, from the viewpoint of a businessman, particularly a mail-order merchant, prices in the District of Columbia area are outrageously low, he is not compelled to solicit business in this area. However, if he does so solicit business, he may not adopt unrealistic, so-called "manufacturers' list prices" in a manner resulting in representations that they are the usual retail prices in this area. Similarly, the fact that an article is "footballed", *i.e.*, particularly vulnerable to price cutting for loss-leader or other purposes, is immaterial. Finally, as already indicated above, in determining what is a usual wholesale or dealer price or cost, since the business involved in this case was concerned primarily with single-unit purchases and sales, the hearing examiner has disregarded prices based on or resulting from special quantity discounts, distributorship discounts, advertising allowances, and rebates.

Respondents argue also that no remedial action can be taken against them because there was no proof that substantial quantities of the goods with respect to which the evidence was submitted were sold, and, consequently, no proof of diversion of business from competitors. The Commission may infer that false representations induce customers to buy commodities so represented and thus divert business from competitors. But, more important, "Section 5 of the Federal Trade Commission Act declares such deceptive practices

unlawful without regard to their actual effect on competition." In re *Leeds Travelwear, Inc.*, Docket No. 8140 [61 F.T.C. 152]; *Giant Food, Inc.* v. *Federal Trade Commission*, 322 F. 2d 977, CA-DC, June 13, 1963 [7 S.&D. 710]; and cases there cited.

NARRATION OF EVIDENCE

Typewriters at Wholesale: A typewriter represented by respondents to be sold to its customers at a wholesale price of $104.98 or $108.7 was sold at wholesale in the District of Columbia, regularly and routinely, at prices varying from $86.10 to $92.77. Another typewriter represented by the respondents as being sold at wholesale at $75.21 or $77.95 was sold at wholesale in the District of Columbia, regularly and routinely, as low as $63.08 and as high as $67.83. A third typewriter represented by the respondents as being sold at wholesale at $58.86 or $60.99 was sold similarly in the District of Columbia and elsewhere as low as $48.94 and as high as $52.62. A fourth typewriter represented by the respondents as being sold at wholesale at $49.95 was sold similarly at $43.11 (CX-4, p. 85, CX-5, p. 86, RX-1, RX-2 (c); Tr. pp. 7-29, 286-302, 198-220).

Typewriters at Retail, Washington, D.C. Trade Area and Elsewhere: Respondents represented as the retail price one typewriter at $141.50 or $149.27, which typewriter sold, regularly and routinely, as low as $109.95 and no higher than $129.50; a second typewriter at $104.50 or $124.50, which sold, regularly and routinely, as low as $89.50 and as high as $98.88 (CX-4, p. 85, CX-5, p. 86; Tr. pp. 8-29, 198-200, 220, 294, 325-328); a third typewriter at $79.75, which sold, regularly and routinely, at as low as $49.95 and as high as $53.57 (RX-4, p. 85; Tr. 286, 287, 325-328 and CX-36). The manufacturer's distributor of all these typewriters testified that the majority of his dealers in the Washington, D.C. and the Baltimore retail trade areas retail their typewriters at less than the manufacturer's list price. (It is to be recalled that the manufacturer's list price was the price which respondents represented to be the usual or routine retail price.) (Tr. pp. 198-200, 220.) Respondent Margolis also conceded that throughout the United States these typewriters are sold around factory cost price and always lower than the manufacturer's suggested list price (pretrial statement, Tr. pp. 166-177).

Fishing Gear: Testimony as to fishing gear was given by the manufacturer's representative. The following table, together with citations to the record, shows respondents represented retail and wholesale prices and the actual retail and wholesale prices in Delaware, Maryland, Washington, D.C., Virginia, West Virginia, and portions of Ohio and Kentucky:

Item	CX No.	CX Page	Silvo code price (wholesale)	Alleged retail price	Record page	Actual wholesale price	Usual retail price
Reel No. 1797	4,	97	$14. 97	$24. 95	517, 524, 525, 534, 535	$12. 48	$18. 68–20. 06
Reel No. 1775	"	"	11. 40	18. 95	"	9. 48	14. 21–15. 16
Reel No. 1774	"	"	8. 99	14. 95	"	7. 48	11. 21–11. 96
Reel No. 1928	"	"	8. 10	13. 50	"	6. 75	10. 12–10. 80
Reel No. 1821	"	"	5. 70	9. 50	"	4. 75	7. 12–7. 60
Reel No. 1903	"	"	4. 20	6. 95	"	3. 48	5. 21–5. 56
Reel No. 2090	"	"	27. 00	45. 00	"	22. 50	33. 75–36. 00
Rod No. 1563L	"	"	8. 97	14. 95	"	7. 48	11. 21–11. 96
Rod No. 1451	"	"	11. 37	18. 95	"	9. 48	14. 21–15. 16
Rod No. 1416	"	"	8. 97	14. 95	"	7. 48	11. 21–11. 96
Rod No. 1234	"	"	13. 77	22. 95	"	12. 98	18. 71–19. 96
Rod No. 1010	"	"	6. 57	10. 95	"	5. 48	8. 21–8. 76

Respondents conceded that this fishing gear regularly sold below the list prices (Tr. pp. 166–178, pretrial statement). The manufacturer's representative stated that his personal observation was that retail selling prices ran from 20 to 25 percent below the published catalog prices (Tr. p. 525).

APPLIANCES IN THE WASHINGTON, D.C. TRADE AREA: A Rotisserie was represented to wholesale at $66.12, but it was bought generally at wholesale at about $57.68 or less. Two witnesses testified that their wholesale prices were $62.87 and $62.97 (CX–4, p. 82; Tr. pp. 309–310, 351–352, 360–362, 407–408, 416). Respondents represented this rotisserie to retail at $89.95, but it retailed generally at prices running from $62.87 to as high as $64.97 (CX–4, p. 82; Tr. pp. 351–352, 360–362, 407–408).

A Clock was represented to wholesale at $4.63, but its wholesale price appeared to be $3.13 in the District of Columbia. Although it was represented to retail at $6.95, it was sold in the District of Columbia at $5.45 (CX–4, p. 82, CX–5, p. 82; Tr. p. 352).

A Cake Mixing Appliance was represented to wholesale at $36.07, whereas, in the District of Columbia, its regular and routine wholesale cost was less than $32. One distributor did, however, testify that his five or less price was $35.67. The retail price was represented at $48.95, whereas, in the District of Columbia, it sold as low as $31.24 and as high as $36.97 (CX–4, p. 86; Tr. pp. 311, 352, 360–362, 408, 421–423, 428–433).

A Hair Dryer was represented by respondents to sell at wholesale at $22.37 and to retail at $31.95. Its routine wholesale cost in the District of Columbia was $19.95, although one distributor did testify that his five or less price was $22.37 and another testified that his single unit price was $21.57. This hair dryer generally sold at retail in the District of Columbia as low as $22.97 and as high as $23.47 (CX–4, p. 86; Tr. pp. 311, 353–354, 361–362, 408, 422–423, 428–433 and 502–503).

A Fruit Juicing Appliance: Respondents represented this to wholesale at $13.27 and to retail at $18.95. Its wholesale price fluctuated from $7.50 to $8.75. It retailed generally at $9.99 (CX–4, p. 86, CX–5, p. 83, CX–37; Tr. pp. 309, 354, 361–362, 408, 422–423).

As to these, the respondents also conceded that they are generally sold below the manufacturer's suggested list price (pretrial statement and Tr. pp. 169–173).

The foregoing sets forth specifically, as to particular items, the prices brought out by the evidence. A similar narration of the other evidence could be made, but this would only make this decision

unwieldy and tedious. Wholesale prices in the Washington, D.C. trade area for pressure pans, timers, can openers, another brand of juicing machine, an ice chopper and a thermometer were brought out in detail. As to these, Silvo's "wholesale" price generally was substantially higher than the usual or routine wholesale price at which the particular article was sold. This was with few exceptions. For instance, a timer represented by Silvo to "wholesale" at $2.63, while generally wholesaling at much less, was wholesaled by one distributor at $2.50. A can opener, juicing machine and ice crusher also generally sold at substantially less than Silvo's represented "wholesale" price, but one wholesaler did testify that his single-unit price was about the same as that represented by Silvo for these three items (CX–4, p. 84, CX–5, p. 84; Tr. pp. 376, 395–398, 422, 503–505, 540–541, 547).

Retail prices of block planes, rulers, levels, clamps, screwdrivers, propane torches, saws and drills also were brought out in specific amounts for the Washington, D.C. trade area. A representative chain and other dealers testified that their retail selling prices usually were either 10 percent or 20 percent off manufacturers' suggested list prices, which had been adopted by Silvo as "retail" prices. The chainstore representative testified that his company's prices ran from 6 to 12 percent off. However, two localized hardware stores maintained manufacturers' list prices with few exceptions (CX–4, pp. 11, 15 and 16, 26, 31, 32, 53, CX–5, pp. 11, 15 and 16, 26, 31, 32, 53; Tr. pp. 225–226, 240–244, 273–275, 338–343, 434–440).

There was evidence as to retail prices of similar tools in the Baltimore, Maryland trade area. Here again, the chains and larger stores regularly sold the articles at less than the manufacturers' suggested list prices. One of them testified that the practice was to cut these by 10 to 15 percent. On the other hand, there was some testimony to the effect that the list price is maintained generally with the exception of certain especially favored customers, such as known artisans in the trade, employees in the trade, and industrial accounts. An example of an industrial account is a real-estate operator or a company engaged in the building business (CX–4, pp. 10, 11, 25, 26, 28, 29, 31, 53, CX–5, pp. 10, 11, 25, 26, 28, 29, 31, 53; Tr. pp. 101–107, 124–144, 455–469, 487–493).

Thus, it appears in summary that, with few exceptions, with respect to goods upon which evidence was offered, in the trade areas selected, respondents' represented wholesale prices were higher than the usual wholesale prices and respondents' represented retail prices were higher than the usual retail prices. The few exceptions are not

sufficient to overcome the preponderance of the evidence to the contrary on the general issues.

The following are ultimate.

FINDINGS OF FACT

1. Respondents Leonard Margolis and Norton Berger are individuals and copartners trading as Silvo Hardware Company. Their principal office and place of business is located at 107-109 Walnut Street in Philadelphia, Pennsylvania.

2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution to the public of general merchandise, including, but not limited to, hardware, housewares, typewriters, fishing gear and toys. Their gross sales exceeded $340,000 in 1962 and approximated $390,000 in 1961.

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

4. The business of the respondents is a mail-order business developed with the aid of catalogs disseminated through the mails freely to any persons requesting the same. Approximately 25,000 to 30,000 such catalogs are distributed annually.

5. Merchandise is offered by the respondents in said catalogs to prospective customers and recipients thereof. It is set forth in the catalogs, most often pictorially, with descriptive material accompanying the pictures. Each article is identified generally by manufacturer or manufacturer's trade name or trade mark, and by manufacturer's identification number. In addition, each article offered for sale has a Silvo catalog number or stock number, a price in code and a price in dollars and cents, which last price is represented by the respondents to be the retail price established by the manufacturer or recommended by them. The coded price consists of several digits, depending on whether the price is in cents, dollars and cents or dollars even. This coded price is uncoded easily merely by marking off two decimal places from the right. The resulting figure is the amount or price, in dollars and cents, charged to the customer.

6. By utilizing and describing the price referred to as retail price, respondents represent to prospective customers that that is the price

at which the product to which it refers usually and customarily is sold by others in the trade area in which the catalog is circulated.

7. Respondents describe their coded price to prospective customers as being a wholesale price or a wholesale cost.

8. Typical of the method used by respondents for describing an article of merchandise offered for sale is:

No. H170, Stanley Plane Adapter Kit * * * H170-S20 P3098—5 lbs—$44.25

In this particular instance, the so-called "wholesale price" or "wholesale cost" is found in the group "P3098", which becomes $30.98 by marking off the two decimal points. The $44.25 is described as the retail price established by the manufacturer or recommended by Silvo. This is all as more specifically shown in the photographic reproduction from CX-4, which appears at page 2 of this decision.*

9. The purpose as well as the effect of the printing of the coded price in juxtaposition with the invariably higher price represented as a "retail price" is to represent to users of the catalog that and to lead such users to believe that the higher stated "retail" price is the price at which the item offered or pictured in the catalog usually and customarily is sold in the trade areas to which the catalog is distributed. It is further the purpose of the respondents to cause users of the catalog and prospective customers to believe that the difference between the two prices will result in a saving of the amount of that difference to such users and customers, if they should make purchases from the respondents of articles pictured in the catalogs.

10. In truth and in fact, the higher amounts set out for many of the items listed in the respondents' catalogs are not the prices at which the merchandise usually and customarily is sold in all trade areas to which the catalogs are distributed, but are in excess of the price or prices at which it generally is sold in some of, if not all, said trade areas.

11. Purchasers of respondents' merchandise in such trade areas do not and would not realize a saving of the difference between the stated retail and code prices.

12. Respondents have utilized in their advertising literature such statements as "wholesalers and distributors" (describing themselves), "you will be able to BUY AT WHOLESALE PRICES", "you write the orders, mail them to us with proper remittance, according to your *wholesale cost*) * * * " and "your confidential wholesale prices are printed in CODE" * * * By such advertising, they have represented, directly or indirectly, that they sell all their merchandise at the generally prevailing prices paid by retailers for such merchandise in each trade area to which their catalogs are distributed and that

* Pictorial exhibit is omitted in printing.

customers buying from them save an amount equal to the retailer's profit.

13. In truth and in fact, the respondents do not sell, nor do they offer to sell, all their merchandise at the generally prevailing prices paid by retailers for such merchandise in each trade area to which their catalogs are distributed. On the contrary, the prices of some of their merchandise in several of the trade areas to which their catalogs are distributed are in excess of the generally prevailing prices paid by retailers in such trade areas and purchasers of such merchandise will not and do not realize a saving equal to the retailer's profit.

14. The evidence in this proceeding, while touching upon other trade areas, was concerned mainly with the Washington, D.C.-Maryland-Virginia trade area and the Baltimore, Maryland trade area. The first consists of Washington, D.C., Alexandria and Falls Church cities and Arlington and Fairfax Counties, in Virginia; and Montgomery and Prince Georges Counties in Maryland. The latter consists of Baltimore city and Anne Arundel, Baltimore, Carroll and Howard Counties, Maryland.

15. Respondents have conducted their business in numerous trade areas throughout the United States as well as in the Washington, D.C.-Maryland-Virginia trade area and the Baltimore, Maryland trade area. In the conduct of such business, they have been in substantial competition in commerce in such trade areas with other corporations, firms and individuals engaged in the sale of articles of merchandise of the same general kind and nature as that sold by them.

And from the foregoing are made the following

CONCLUSIONS

A. The statements and representations made by the respondents, as more particularly set forth in the foregoing Findings, were and are false, misleading and deceptive.

B. The use by respondents of such 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' merchandise by reason thereof.

C. Substantial trade in commerce has been and is being unfairly diverted to respondents from their competitors, and substantial injury has been and is being done to competition in commerce.

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

E. The aforesaid acts and practices of respondents, as herein found and as described in the text of this decision preceding the Findings of Fact, were all to the prejudice and injury of the public and constituted unfair and deceptive acts and practices and unfair methods of competition in commerce in violation of Section 5 of the Federal Trade Commission Act.

Respondents make an impassioned plea that they should not be singled out for prosecution since they are only one of many firms engaged in the catalog business indulging in similar practices. They urge that all members of the catalog industry ought to be made parties to remedial proceedings of this nature and that all such proceedings should be conducted either simultaneously or in consolidation with each other. They pray either that no cease and desist order be entered against them until similar orders are entered against all members of the catalog industry or, in the alternative, that if any cease and desist order be entered against them, such order be held in abeyance and not made effective and operative unless and until similar orders are entered and made effective against all members of the industry. Such pleas are inevitable when the Commission attacks practices widely in use. The fact that the practices are prevalent or in wide use does not make them immune from correction if they are unfair within the meaning of the Federal Trade Commission Act. The Commission obviously cannot, nor is it required to, proceed against all violators at one time merely because they are engaged in the same kind of violation. In *National Candy Co.* v. *Federal Trade Commission*, 104 F. 2d 999, 1004 (7th Cir. 1939), *cert. denied*, 308 U.S. 610, the Court said:

> Petitioner further urges that it would be prejudicially discriminatory against it to permit the order to become operative because its competitors use the same methods. In other words, it argues that unless the Government proceeds against all such offenders at one time, it would be wrong to proceed against it alone. There is no merit in this contention. *Federal Trade Commission* v. *Winsted Hosiery*, 258 U.S. 483; *Federal Trade Commission* v. *Keppel & Bro.*, 291 U.S. 304.

In *Moog Industries, Inc.* v. *Federal Trade Commission*, 355 U.S. 411, 413, 414 (1958), the Supreme Court stated:

> The question, then, of whether orders such as those before us should be held in abeyance until the respondent's competitors are proceeded against is for the Commission to decide.
>
> * * * * * * *
>
> If the Commission has decided the question, its discretionary determination should not be overturned in the absence of a patent abuse of discretion.

See also *Clinton Watch Co.* v. *Federal Trade Commission*, 291 F. 2d 838, 841 (7th Cir. 1961), *cert. denied*, 368 U.S. 952 (1962).

It is not for the hearing examiner to deviate from a longstanding practice of the Commission, particularly one having consistent high court approval.

Now, therefore, being of the opinion that it is necessary to achieve effective enforcement of the law, the hearing examiner enters the following:

ORDER

It is ordered, That respondents Leonard Margolis and Norton Berger, individually and as copartners trading as Silvo Hardware Company, or under any other name or names, and their agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of hardware, housewares, appliances, typewriters, fishing gear, and other articles of merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that any amount is the usual and customary retail or wholesale price of merchandise in any trade area to which the respondents distribute their catalogs when it is in excess of the generally prevailing retail or wholesale price (as the case may be) at which such merchandise is sold in such trade area.

2. Representing in any manner that savings are made available to purchasers of respondents' merchandise when it is offered by them at prices which are identified with, or placed in juxtaposition with, or compared to, prices or figures which purport to be the prices at which the same or similar merchandise is customarily sold by competitors or other vendors in the usual course of business in the trade area or areas where the offerings are made unless such other prices or figures are, in truth and in fact, the actual prices or figures at which such merchandise is customarily sold in the usual course of business in such trade areas.

3. Using the word "wholesale" or any other word or term of similar import or meaning, in connection with the direct or indirect solicitation of sales to individual members of the public or other consumers, to describe a price which is higher than the generally prevailing price at which the merchandise is sold by wholesalers to retailers who purchase in the quantity range at which such merchandise is offered and who are engaged in business in the trade area or areas where such use is made.

ORDER DENYING MOTION FOR POSTPONEMENT OF ORAL ARGUMENT, DISMISSING APPEAL, ADOPTING INITIAL DECISION, AND PROVIDING FOR REPORT OF COMPLIANCE

Upon consideration of respondents' request, received January 21, 1964, for postponement of oral argument on complaint counsel's appeal from the initial decision, scheduled for January 27, 1964, and of complaint counsel's opposition thereto filed January 23, 1964, and of the motion filed by complaint counsel on January 24, 1964, seeking leave to withdraw complaint counsel's appeal, filed October 3, 1963, from the initial decision of the hearing examiner; and

It appearing that respondents have not perfected an appeal from the initial decision as provided for in Section 3.22 of the Commission's Procedures and Rules of Practice (August 1, 1963); and

It further appearing that good and sufficient cause does not exist for the Commission's issuing an order staying the effective date of the initial decision or placing the case on its own docket for review, and that, therefore, the initial decision should forthwith be entered as the final decision of the Commission (see Section 3.21),

It is ordered, That: (1) Respondents' motion for postponement of oral argument is denied; (2) The appeal of complaint counsel from the initial decision is dismissed; (3) The initial decision of the hearing examiner is adopted as the final decision and order of the Commission.

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

By the Commission, Commissioner Anderson not participating.

IN THE MATTER OF

FILDERMAN CORPORATION ET AL.

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

Docket 7878. Complaint, May 3, 1960—Decision, Jan. 28, 1964*

Order requiring the operators of retail stores selling appliances and furniture under the trade name of Todd's in the District of Columbia, Maryland, and Virginia, to cease making deceptive pricing and savings claims in advertising; refusing to consummate the sale and deliver the merchandise unless an

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* As amended by order of Aug. 16, 1960.

added service charge was paid; and representing falsely that mattresses and box springs were fully guaranteed when the guarantees contained undisclosed limitations.

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 Filderman Corporation and F F & G Corporation, corporations, and Wolfe Filderman and Dorrel Goldman, individually and as officers of said corporations, and Toma Furniture Inc., a corporation, and Wolfe Filderman and Maynard E. Turow, individually and as officers of the 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 Filderman Corporation is a corporation existing and doing business under and by virtue of the laws of the State of Maryland, with its principal office and place of business at 3045 V Street, N.E., Washington, D.C.

Respondent F F & G Corporation is a corporation existing and doing business under and by virtue of the laws of the District of Columbia, with its principal office and place of business at 3045 V Street, N.E., Washington, D.C.

Said corporate respondents operate retail stores in the District of Columbia and in the States of Maryland and Virginia.

Respondent Toma Furniture Inc., is a corporation existing and doing business under and by virtue of the laws of the District of Columbia, with its principal office and place of business at 300 Hamilton Street, N.E., Washington, D.C.

Respondents Wolfe Filderman and Dorrel Goldman are officers of corporate respondents Filderman Corporation and F F & G Corporation. They formulate, direct and control the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondents.

Respondents Wolfe Filderman and Maynard E. Turow are officers of the corporate respondent Toma Furniture Inc. They formulate, direct and control the acts and practices of the said corporate respondent, hereinafter set forth. Their address is the same as that of the corporate respondent.

PAR. 2. Corporate respondents, under the name of "Todd's", are now, and for some time last past have been, engaged in advertising,

offering for sale, and sale, among other things, of various appliances and furniture 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 merchandise, when sold, to be shipped from their places of business in the States of Maryland and Virginia to purchasers thereof located in States other than the States in which the shipments originated and in the District of Columbia, and from the District of Columbia to adjacent States, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business as aforesaid, respondents have made certain statements in advertisements published in newspapers which are circulated in the District of Columbia and in the States of Virginia and Maryland. Among and typical, but not all inclusive, of such statements so made are the following:

Mfr. List—429.95 Westinghouse 14 Cu. Ft. Upright Freezer, lock, square look, shelves on door—$288

Mfr. List—669.95 Westinghouse 16 Cu. Ft. Upside Down Refrigerator, 2 door, 190 lb. bottom freezer, cold injector automatic defrost, 2 porcelain crispers, magnetic doors—$419

Mattresses & Box Springs $20 * * * all new and fully guaranteed.

PAR. 5. Through the use of the aforesaid statements, and others similar thereto not included herein, respondents represented, directly or by implication:

1. That the amounts designated as "Mfr. List" were the prices at which the merchandise advertised was usually and customarily sold at retail in the trade areas where the representations were made.

2. That purchasers of the products advertised were afforded savings of the differences between the amounts designated as "Mfgs. List Price" and the advertised sales prices.

3. That the mattresses and box springs offered for sale were "fully guaranteed", that is, were guaranteed without any limitations whatsoever.

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

1. The amounts designated as "Mfr. List" were substantially in excess of the prices at which the advertised products were usually and customarily sold at retail in the trade area where the representations were made.

2. Purchasers of the advertised products were not afforded savings of the differences between the amounts designated as "Mfgs. List Price" and the advertised sales prices.

3. The mattresses and box springs were not fully guaranteed as the guarantee furnished to purchasers was limited in certain respects, which limitations were not disclosed in the advertisement.

PAR. 7. Respondents advertise and offer to sell merchandise at certain prices but, after the sale is made at the advertised price, add a service charge to said price and frequently will not consummate the sale and deliver the merchandise to the purchaser unless said additional charge is paid.

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

PAR. 9. The use by respondents of the false, misleading and deceptive statements, representations and practices, as aforesaid, 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 amounts of respondents' merchandise by reason of said erroneous and mistaken belief. As a consequence thereof, substantial trade in commerce has been unfairly diverted to respondents from their competitors and substantial injury has thereby been and is being done to competition in commerce.

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

Mr. Anthony J. Kennedy, Jr., supporting the complaint.

Danzansky & Dickey, by *Mr. Raymond R. Dickey, Mr. Bernard Gordon* and *Mr. Robert F. Rolnick*, Washington, D.C., for respondents.

INITIAL DECISION BY WILLIAM K. JACKSON, HEARING EXAMINER

MAY 10, 1963

This proceeding was commenced by the issuance of a complaint on May 3, 1960, as amended August 16, 1960, charging the above-named corporate respondents and the individual respondents, their officers,

with unfair and deceptive acts and practices and unfair methods of competition, in commerce, in violation of the Federal Trade Commission Act by, (a) false and misleading representations as to the usual and customary prices of, and savings to be realized on certain merchandise advertised for sale, by use of the manufacturer's suggested retail price or list price in advertisements in juxtaposition with respondents' lower price, (b) misleading and deceptive statements in advertisements as to guarantees by using the words "fully guaranteed" when the guarantee given to purchasers was limited in certain respects not disclosed in the advertisements, and (c) false and misleading representations as to price by failing to include therein an additional charge for service without which sales frequently were not consummated.

After being served with the said complaint, respondents appeared by counsel and thereafter filed their joint answer denying, (a) that the use of a manufacturer's suggested retail price or list price is misleading, but is used solely to identify the particular product, (b) that the statements as to guarantees are false or deceptive, and (c) that sales at advertised prices would not be consummated without an additional service charge. Respondents also raised in their answer two affirmative defenses with respect to the charges relating to the use of a manufacturer's suggested retail price or list price in advertisements. The first affirmative defense seeks to bar and dismiss this complaint under the doctrine of *res judicata* or administrative estoppel predicated upon the fact that the respondents were charged with the same false, misleading and deceptive acts and practices in a prior proceeding, Docket No. 7572, and the Order in that proceeding as interpreted by respondents permitted the use of a manufacturer's suggested list price providing such figure was the correct list price supplied by the manufacturer. The second affirmative defense seeks to invoke the Congressional policy established by the Automobile Information Disclosure Act, Public Law 85-506, July 7, 1958, 72 Stat. 325, 15 U.S.C.A. 1231-1233, for the reason that the subject complaint runs counter to said policy and constitutes an unequal and discriminatory interpretation and enforcement of the law.

A prehearing conference was held in this matter on October 23, 1961, at which time, among other things, a stipulation was entered into relating to certain advertisements placed in the Washington Post and Times Herald and the Evening Star by respondents. Subsequently, on November 27, 1961, the hearing examiner entered a pretrial order setting forth certain agreements reached concerning the exchange of documents, submission of list of witnesses and other

related matters, as well as ruling on various motions made by both parties.

Hearings on the complaint were held at Washington, D.C. on January 8–10, 1962, at which testimony and other evidence were offered in support of the complaint and in opposition to the allegations set forth therein. Proposed findings of fact, conclusions of law and briefs were filed by counsel supporting the complaint and by counsel for respondents on February 26, 1962.

Thereafter, on March 23, 1962, the hearing examiner filed his initial decision ordering respondents to discontinue their deceptive pricing, savings and guarantee claims. Respondents appealed from the initial decision, and on October 1, 1962 the Commission vacated and set aside the initial decision and remanded this proceeding to the hearing examiner "for the purpose of having presented and received in the record, without restriction regarding its consideration and use by either the hearing examiner or the Commission, available evidence relative to the charges set forth in the complaint."

Pursuant to said order of remand, the hearing examiner held a prehearing conference on December 4, 1962, for the purpose of exchanging lists of documents and witnesses; considering any requests for admissions, proposed stipulations, matters of which official notice should be taken; and various other matters set forth in the notice of the prehearing conference. Complaint counsel in accordance with the hearing examiner's prehearing conference order informed the examiner that he intended to offer in evidence CX 29, CX 30A–E and CX 31A–Z98, previously marked for identification, but not received in evidence. Complaint counsel further notified the examiner that he did not intend to call any further witnesses. Counsel for respondents indicated he would also call no witnesses and submit no additional exhibits. During the course of the prehearing conference, complaint counsel requested and was granted additional time to consider the advisability of calling witnesses and the matter was set for a further prehearing conference on January 11, 1963. On January 4, 1963, complaint counsel advised the hearing examiner he intended to call two witnesses, Brackett Lewis and Louis Hanna, who would both testify as to delivery and installation charges. Thereafter, on January 8, 1963, complaint counsel advised the hearing examiner that through oversight he had failed to list Nicholas J. Liebert as a witness for the purpose of authenticating CX 29, CX 30A–E, and CX 31A–Z98. At the prehearing conference held on January 11, 1963, counsel for respondents requested and was granted an additional four days to decide whether or not he wished to make further requests. On January 14, 1963, counsel for respon-

dents filed a motion for discovery and a request for a subpoena duces tecum. By order of the hearing examiner dated January 25, 1963, the names of all witnesses and documents exchanged by the parties were finalized and respondents' motion for discovery was denied, but their request for a subpoena duces tecum was granted.

On February 13, 1963, a hearing in accordance with the remand was held at Washington, D.C., before the undersigned at which testimony and other evidence were offered in support of the complaint. No testimony or evidence either in rebuttal or otherwise was offered by respondents. Proposed findings of fact, conclusions of law and briefs were filed by counsel supporting the complaint and by counsel for respondents on March 29, 1963.

This proceeding is now before the hearing examiner for final consideration in accordance with the remand of the Commission ordering "the hearing examiner [to] make and file a new initial decision on the basis of the entire record herein." Consideration has been given to the proposed findings of fact, conclusions of law and briefs submitted by the parties, and all proposed findings of fact not hereinafter specifically adopted are rejected. Based upon the entire record and his observation of the witnesses, the hearing examiner makes the following findings as to the facts, conclusions drawn therefrom and order.

FINDINGS OF FACT

1. Respondent, Filderman Corporation, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland, with its principal office and place of business located at 11th and F Streets, N.W., Washington, D.C. It is engaged in the business of selling major appliances such as refrigerators, freezers, washers, dryers, etc.

Respondent, F F & G Corporation, is a corporation organized, existing and doing business under and by virtue of the laws of the District of Columbia, with its principal place of business located at 11th and F Streets, N.W., Washington, D.C. It is engaged in the business of selling small appliances such as toasters, mixers, etc.

Respondent, Toma Furniture Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the District of Columbia, with its principal office and place of business located at 300 Hamilton Street, N.E., Washington, D.C. It is engaged in the business of selling furniture.

2. Individual respondents, Wolfe Filderman and Dorrel Goldman, are officers of the corporate respondents, Filderman Corporation and

F F & G Corporation. They formulate, direct and control the acts and practices of the aforesaid corporate respondents.

3. Individual respondents, Wolfe Filderman and Maynard E. Turow, were officers of the corporate respondent, Toma Furniture Inc., at the time of its incorporation, prior to the issuance of the complaint and the amended complaint in this matter and after the issuance of the complaint and amended complaint until April 1, 1961, at which time the Filderman Corporation sold its controlling interest in Toma Furniture Inc., to individual respondent Maynard E. Turow and one Bernard Post.

During the aforesaid period, individual respondents, Wolfe Filderman and Maynard E. Turow, formulated, directed and controlled the acts and practices of the said corporate respondent.

4. The corporate respondents were owned in their entirety by the Filderman family and Dorrel Goldman, with the exception of twenty-five shares of stock in the Toma Furniture Inc., which were held by Maynard E. Turow, prior to and at the time of the issuance of the complaint in this matter. This same ownership obtains at the present time with the exception of the sale of the Filderman Corporation interest in Toma Furniture Inc., on April 1, 1961.

5. The corporate respondents operate retail stores under the trade name of *Todd's* in the District of Columbia and in the States of Maryland and Virginia.

6. Corporate respondents under the trade name of *Todd's* are now, and for some time last past have been, engaged in advertising, offering for sale, and sale, among other things, of various appliances and furniture to the public.

7. In the course and conduct of their business, respondents now cause, and for some time last past have caused their said merchandise, when sold, to be shipped from their places of business in the States of Maryland and Virginia to purchasers thereof located in States other than the States in which the shipments originated and in the District of Columbia and from the District of Columbia to adjacent States and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act.

8. The respondents placed the following advertisements in The Washington Post, Times Herald and The Evening Star, newspapers of general circulation in the Washington, D.C. metropolitan area on the dates indicated under the name of *Todd's:*

(1) "Mfr. list 429.95 Westinghouse 14 Cu. Ft. Upright Freezer, lock, square look, shelves on door—$288," was advertised in The Washington Post on July 29, 1959. (CX 1)

(2) "Mfr. list 429.95 Westinghouse 14 Cu. Ft. Upright Freezer * * * $266," was advertised in The Washington Post on August 2, (CX 2), 8 (CX 3), 12 (CX 4), 15 (CX 5) and 16 (CX 6), 1959 and in The Evening Star on August 5 (CX 7), 7 (CX 8), 12 (CX 9), and 14 (CX 10), 1959.

(3) "Mfr. list 429.95 Westinghouse 12.6 Cu. Ft. Upright Freezer * * * $218," was advertised in The Evening Star on September 16 (CX 11), and 18 (CX 12), 1959.

(4) Mfr. list 429.95 Westinghouse 12.6 Cu. Ft. Upright Freezer * * * $249," was advertised in The Evening Star on September 25, 1959. (CX 13)

(5) "Mfr. list 669.95 Westinghouse 16 Cu. Ft. Upside Down Refrigerator * * * 2 Doors, 190 lb. bottom freezer, cold injector, automatic defrost, 2 porcelain crispers, magnetic doors * * * $419," was advertised in The Evening Star on September 2, 1959. (CX 14)

(6) "Mfr. list 669.95 Westinghouse 16.1 Cu. Ft. 2 Door Upside Down Refrigerator * * * $397," was advertised in The Evening Star on September 25, 1959. (CX 15)

9. Frequently but not always, the aforesaid advertising included a statement, in fine print, concerning the use of the term "manufacturer's list price" or variations thereof. This statement, varying in size from approximately twenty to thirty column lines, contained the following language:

NOTICE!! All of the manufacturers' list prices shown in all of Todd's advertising are reproduced only for the purpose of identifying and clarifying the models of the nationally known branded merchandise. All merchandise at Todd's three locations is sold everyday at low discount prices * * * prices that are always lower than manufacturers' list prices. However, practically all of the sale prices shown in Todd's advertising are reduced BELOW our regular everyday discount prices. This message is printed as a public service —for the education and protection of the general public in order to clear up any misconception about manufacturers' list prices which are not normal selling prices, but are used only for purposes of quickly identifying the many models produced by the various manufacturers. List prices shown on furniture—which are not established by national manufacturers—are set by our comparison shopper and the merchandise is evaluated against comparable current merchandise now selling in this area. (CX 8)

10. The above-quoted "disclaimer" as indicated heretofore did not always appear in respondents' aforesaid advertising, and when it did appear, it was inconspicuously placed either at the bottom of a full page advertisement or buried somewhere in the lower half of the advertisement. In some instances, the so-called "disclaimer" bore in medium-size type the heading "Notice" and in other advertisements no such heading was carried, and the text of the statement was set in very fine type in contrast to larger type in most of the remaining portions of the advertisement. Although no consumer testimony was adduced at the hearing by counsel in support of the complaint demonstrating what, if any, notice persons reading respondents' advertising would take of such "disclaimer", the examiner

finds, as a fact, that (1) many persons reading the advertisement either would not notice or if they did notice would not take the trouble to read the so-called "disclaimer" and (2) of those persons who might have taken the trouble to read said "disclaimer" many would not fully understand its purport and meaning. Looking at the advertisement in its entirety, the "disclaimer" rather than clarifying the usage of the manufacturer's suggested list price in juxtaposition to the respondents' lower sales price serves merely to create further confusion in the minds of the purchasing public.

11. The aforesaid advertised Westinghouse appliances have been identified by the respondents with the following Westinghouse models:

	Model
(1) $429.95 Upright Freezer (either 14 cu. ft. or 12.6 cu. ft. capacity)	UM 14
(2) $669.95 2 Door Upside Down Refrigerator (either 16 cu. ft. or 16.1 cu. ft. capacity)	DCM 16

12. The use of a price designated "Mfr. List" in advertising in juxtaposition with a lower price represents and tends to lead readers of such advertising to believe that the higher price is the price at which the merchandise is usually and customarily sold in the Washington trade area and that a saving will be made of the difference between the two prices.

13. Theodore G. Proctor, trading as Proctor Appliance Service, 109 University Boulevard West, Silver Spring, Maryland; Robert Gell, general manager of Fulford's Colony Radio and Television, 6119 Georgia Avenue, N.W., Washington, D.C.; Oliver C. Dennis, inventory control officer of Dowd's, Inc., 4418 Connecticut Avenue, N.W., Washington, D.C.; Robert Leventhal, vice president of Star Radio TV Appliance, Inc., 421 Tenth Street, N.W., Washington, D.C.; Irving E. McConkey, owner of Irving's Sales, 935 H Street, N.W., Washington, D.C.; Leon Schwartz, president and owner of A & A Appliance Company, 7614 Georgia Avenue, N.W., Washington, D.C.; Ethel B. Kasten, president of Military Personnel Buying Service, 3409 Columbia Pike, Arlington, Va.; William T. Coe, a partner in Virginia Appliance Service Company, 4248 North Fairfax Drive, Arlington, Va.; John J. Slattery, executive vice president of Slattery Radio and TV, Inc., 1050 Ripley Street, Silver Spring, Maryland; Edward D. McGuire, owner of McGuire's Appliances, 5903 Lee Highway, Arlington, Va.; and Nicholas J. Liebert, operations manager of George's Radio & TV, 2850 New York Avenue, N.E., Washington, D.C. were called by complaint counsel and constitute a fair cross-section of the competition in the appliance field in

the Washington area. The testimony of these eleven competitors of respondents followed the same general pattern and may be summarized as follows: the witnesses testified that they all sold major appliances including Westinghouse appliances; that they were familiar with Westinghouse's suggested list price sheets (CX 18, CX 19); and that as a general rule they sold all their appliances, including Westinghouse products, at less than the manufacturer's suggested list price, although the method of arriving at their prices varied from dealer to dealer, that is, some used cost plus $50, others a cost plus a given percentage mark-up, etc.[1]

On cross-examination, Leon Schwartz testified that during the latter half of 1959 he had sold two or three Westinghouse freezers, Model Number UM–14 and a couple of Westinghouse refrigerators, Model Number DCM–16 at substantially less than the manufacturer's suggested list price. (Tr. pp. 142–143) In addition, an inspection of CX 29, CX 30A–E, and CX 31A–Z98, which constitute a complete record of major electric appliance sales of George's Radio and Television Company for the period April 1959 to December 1959, shows conclusively that George's selling prices of Westinghouse freezers, Model Number UM–14, and Westinghouse refrigerators, Model Number DCM–16, were substantially lower than the manufacturer's suggested list price.

Respondents, in their brief, seek to discredit the selling prices set forth in these exhibits by culling from CX 31A–Z98 figures which they say represent incredibly low selling prices of $121 for Model Number UM–14 and $242.50 for Model Number DCM–16, when the carload lot prices for these products were $244.32 and $439.08 respectively. (CX 18) At the outset, the hearing examiner wishes to point out that each page of CX 31A–Z98 is captioned salesman's "Commission Statement", and is headed in the upper left hand corner by the printed caption "Salesman", followed by a salesman's name which has been entered in handwriting. The hearing examiner also notes that on each page of CX 31A–Z98 there is a column headed "Assisting Salesman". The hearing examiner further notes that in those instances cited by respondents in their brief of incredibly low prices, the column headed "Assisting Salesman" has been filled in with the name of another salesman. Consequently, it is reasonable to infer therefrom and the hearing examiner does so infer therefrom that the salesman whose name appears at the top of the page has been credited

[1] This testimony was substantially the same as the testimony adduced in *George's Radio and Television Company, Inc.*, Docket 8134, upon which the Commission on January 19, 1962, [60 F.T.C. 179] predicated an order directed at the same practice of using "Mfr. Sugg. List Price" as alleged in this complaint.

with a split commission; *i.e.*, on the basis of one-half the selling price, thus making the selling price in those instances cited by respondents double that shown in the column headed "Amount of sale" or $242 and $485 for Model Nos. UM–14 and DCM–16 respectively. This position is fully supported by the fact that where the column "Assisting Salesman" has not been filled in, the price of a Model Number UM–14 is $288 (CX 31F, line 9); $309 (CX 31Z–1, lines 6 and 13); $242 (CX 31Z–22, line 2); $242 (CX 31Z–23, line 2); and $242 (CX 31Z–40, line 8).

To double check the correctness of his hypothesis, the hearing examiner compared CX 31D, line 23 of salesman Binder's commission statement with CX 31E, line 24 of salesman Simon's commission statement, both of these items having been cited by respondents in their brief in support of their argument to discredit these exhibits. The columns and entries on these exhibits read as follows:

	D/Date	S/Date	Account No.	Customer's name	Assisting salesman
CX 31D (Binder).	6/8	6/6	31453	Barnes_____	Simon.
CX 31E (Simon).	6/8	6/6	31453	Barnes_____	Binder.

	Make	Model	Amount of sale	Percent	Amount of commission
CX 31D (Binder).	West_____	UM 14____	$121	2	242
CX 31E (Simon).	West_____	UM 14____	121	2	242

A comparison of these entries establishes beyond a shadow of a doubt, that these two entries refer to the same sale and each salesman was credited with commissions on one-half the amount of the sale as indicated above. Consequently, the amount of the sale as reflected in the column so headed similarly reflects only one-half the selling price of the particular item referred to therein. A spot check of the remainder of respondents' citations indicates a similar correlation.

However, if respondents still have any lingering doubts, they need merely refer to the summaries of CX 31A–Z98 prepared by the

witness Liebert (CX 30A–E) and will find that CX 30A, line 5, reads as follows:

6/6 31453 Barnes---------- UM 14 $242 Simon Binder

This obviously reflects witness Liebert's summary of the transactions quoted above from CX 31D and CX 31E. Accordingly, the hearing examiner flatly rejects respondents' contention "that the documents could not possibly disclose or be representative of the selling prices of Westinghouse Models Nos. UM–14 and DCM–16" and specifically finds that they are.

Finally, respondent Dorrel Goldman's testimony indicates that it is also respondents' policy to sell at prices substantially below the manufacturer's suggested list price.[2]

14. The "Mfr. List" prices of Westinghouse appliances, including those contained in the advertisements set out in Finding No. 8 are substantially higher than the prices at which stores in the Washington, D.C. trade area usually and customarily sold the Westinghouse appliances to which they refer. Purchasers of the advertised products were not afforded savings of the differences between the higher stated prices, designated "Mfr. List" and the advertised lower sales prices.

15. Respondents' contention that the manufacturer's suggested list or retail price is only used for identification is not supported by the record as set forth in Finding No. 16 below.

16. The Electric Institute of Washington, a non-profit organization organized to promote the sale of products and services and to keep the public informed and educated on new developments in the industry and new uses of the products of the industry, maintains a display room on the ground floor of the Potomac Electric Power Building, 10th and E Streets, N.W., Washington, D.C. On display and demonstrated to the consuming public is a representative line of practically all types of electrical products for the home. Each item is tagged to show: the item, the name of the manufacturer, the model number, a description of the size, a price figure with no qualifying words, and a list of the association members' retailers where the item may be purchased. William G. Hills, executive director of the Electric Institute, testified that when a visitor expresses an interest in an item, the hostess demonstrates it and gives the visitor a tag showing a place or places in the visitor's vicinity where the item may be

[2] Although it is not part of the record of this proceeding and the hearing examiner has given it no weight whatsoever, he notes that respondents include in their current local newspaper advertisements the following: "NOTICE: Manufacturer's List Price Is Not the Usual and Customary Selling Price in This Area".

purchased and the model number of the item. In response to a question whether a price was put on the tag handed to the visitor, Hills testified he did not remember, and that the Institute was not interested in the price. Hills indicated that the price on the tag attached to the appliance might be submitted either by the manufacturer or a local distributor, depending on whose exhibit it was and that some distributors used prices other than the manufacturer's published suggested list prices. However, RX 8, RX 9 and RX 10A, which are representative of the price tags placed on the exhibits, contain no legend or qualifying words to show that the prices quoted thereon are manufacturer's list prices. Hills further testified that he had no knowledge of the actual selling price of any of the articles and that no study had been made of prices. Under these circumstances, the manufacturer's suggested list price seems to have little value for purpose of identifying an item at the Electric Institute and is not an effective or the usual manner of identifying a product which has other means of identification.

17. The respondents placed the following advertisements in The Washington Post, Times Herald and The Evening Star, newspapers of general circulation in the Washington, D.C. metropolitan area on the dates indicated under the name of Todd's:

(1) "Mattresses & Box Springs $20 * * * all new and fully guaranteed," was advertised in The Washington Post on January 6 (CX 20) and 10 (CX 21), 1960 and in The Evening Star on January 6, 1960. (CX 22)

(2) "Hollywood Bed with inner-spring mattress, box spring and legs, Brand new. Fully guaranteed $20," was advertised in The Evening Star on July 29, 1959. (CX 23)

(3) "Innerspring Mattresses $18 * * * all name brands fully guaranteed," was advertised in The Washington Post on August 12, 1959 (CX 4) and in The Evening Star on August 12, 1959. (CX 9)

(4) "3 PC Sectional Sofa-Sleepers * * * all brand new and fully guaranteed * * * $199," was advertised in The Evening Star on September 24, 1959. (CX 24)

(5) "Innerspring Mattresses and Box Springs * * * Serta. All brand new All guaranteed $20," was advertised in The Evening Star on December 11 (CX 25) and 13 (CX 26), 1959.

(6) "Ther-A-Pedic. Posture Board Mattress and Box Spring unconditionally guaranteed * * * $118," was advertised in The Evening Star on January 20, 1960. (CX 27)

(7) "80 in. Mattresses and Box Spring Sets $77 fully guaranteed," was advertised in The Washington Post on February 6, 1960. (CX 28)

18. The respondents represented, directly or by implication, through the use of the aforesaid advertisements that the said mattresses, box springs and sectional pieces were "fully guaranteed", that is, were guaranteed without any limitation whatsoever.

19. The advertisements of the aforesaid mattresses, box springs and sectional pieces were false, misleading and deceptive because the guarantee, furnished to the purchaser, was limited in certain respects, which limitations were not disclosed in the advertisements.

Maynard E. Turow, who was employed by Todd's as a furniture buyer prior to the incorporation of Toma Furniture Company in 1960 and thereafter became vice president of Toma, testified that the guarantees were for various time periods; that the guarantees did not cover fabrics; that because the mattresses were assorted, the guarantees would differ; that the guarantee could be a "money back" guarantee under certain conditions; that the purchasers did not always receive a written guarantee, and that initially the guarantees were factory guarantees.

20. Respondents do not contend that the use of the term "fully guaranteed" under the circumstances set forth above was not misleading or deceptive, but urge that an officer of F F & G and Filderman gave orders to its advertising agency on or about April or May 1960 never to utilize the word "guarantee" in any fashion in any advertising under the trade name "Todd's" and respondents have no present intention to renew the use of the term "guaranteed" in any form or except in conformity with the Guides Against Deceptive Advertising of Guarantees issued by the Federal Trade Commission on April 26, 1960. In short, respondents urge that since the practices set forth in Findings 17, 18 and 19 hereinabove were discontinued immediately prior to the issuance of the complaint on May 3, 1960, and the issuance of the Guides Against Deceptive Advertising of Guarantees on April 26, 1960, and that they do not intend to resume them, no order is necessary.

The record indicates that an investigator of the Commission visited Mr. Turow in February 1960 concerning respondents' practices of advertising their mattresses as "fully guaranteed". Shortly thereafter, respondents discontinued these practices and they do not intend to resume them. This action on the part of respondents is commendable.

It is well settled that a discontinuance of the practices which the Commission may find to constitute a violation of the law does not render the controversy moot. *F.T.C.* v. *Goodyear Tire and Rubber Company*, 304 U.S. 257 (1938). It is also well established that even though a respondent has discontinued an unlawful practice, even prior to the issuance of a complaint, that this, in and of itself, does not prevent the Commission from issuing a cease and desist order. *Marlene's, Inc. v. F.T.C.*, 216 F. 2d 556 (C.A. 7 1954); see also Initial

Decision, *Swanee Paper Corporation*, Docket No. 6927,[3] (1959), where the abandonment defense was rejected, although it took place ten months prior to the issuance of the complaint. The Commission may, however, in its broad discretion dismiss a complaint because of discontinuance if unusual circumstances arise warranting dismissal. *Ward Baking Co.*, 54 F.T.C. 1919 (1958); *Argus Cameras, Inc.*, 51 F.T.C. 405 (1954).

In *Art National Manufacturers Distributing Co., Inc., et al*, Docket No. 7286, the Chairman speaking for the Commission recently stated,

* * * One such plea is respondents' claim that they have discontinued or abandoned several of the practices indicted by the complaint and have no intention to again engage in them. To resolve such questions we generally look to the timing and circumstances surrounding the alleged discontinuance. In this case it is admitted that the practices were not discontinued until the Commission attorney investigating this matter informed respondents of their questionable nature. Such discontinuance after the commencement of proceedings will not support a conclusion or give assurance that the practices will not be resumed and under such circumstances we have consistently refused to dismiss complaints, e.g., *Ward Baking Company*, 54 F.T.C. 1919 (1958); *Arnold Constable Corporation*, Docket No. 7657 (January 12, 1961) [58 F.T.C. 49]. Respondents here have presented no grounds which would justify our departure from past holdings and we accordingly reject their plea of abandonment.

The facts and circumstances which exist in this case do not justify dismissal of the charges contained in Paragraphs 5(3) and 6(3) of the complaint on the ground that respondents have discontinued these practices. The respondents did not discontinue these acts and practices until after the Commission began its investigation and after the Commission's "hand was on respondents' shoulder". *Snap-On Tools Corporation*, Docket No. 7116 (November 1, 1961) [59 F.T.C. 1035]. No unusual circumstances are shown to exist in this proceeding which would justify dismissal of this portion of the complaint on the grounds of abandonment.

21. Paragraph 7 of the complaint charges that respondents advertise and offer to sell merchandise at certain prices, but after the sale is made at the advertised price add a service charge to said price and frequently will not consummate the sale and deliver the merchandise to the purchaser unless said additional charge is paid. In support of this paragraph of the complaint, Stanley W. Jameson testified that in September 1959 he purchased an Admiral Imperial Dual Temp Refrigerator at Todd's store in Silver Spring and that the salesman in writing up the sales slip automatically added a service charge of $7 to the sales price. Mr. Jameson further testified that

[3] Adopted by Commission March 1960 [56 F.T.C. 1077] *aff'd.* on this point *sub silentio* 291 F. 2d 833 (C.A. 2 June 1961)

when he indicated he did not want to pay the service charge, the salesman stated, "Well, I'm sorry, but we can't sell you the refrigerator without the service charge." Under these circumstances and after checking to see if respondents serviced as far as Waldorf, Maryland, Jameson paid the service charge.

Another witness, Louis Hanna, a vending machine operator and maintenance man, testified that he went to Todd's Alexandria store in the spring of 1959 in response to an ad in The Evening Star to purchase a Westinghouse washing machine priced at $144. Hanna further testified that after he agreed to purchase the machine and had the $144 in cash in his hand ready to pay, he noticed that the sales slip made out by the clerk had an additional $15 for a service charge. When he informed the clerk he didn't want the service, Hanna stated, the clerk informed him that they couldn't sell the machine unless he bought the service. Although he didn't want the service, Hanna finally agreed to pay it, but when they insisted on an additional $5 delivery charge, he refused and no sale was made.

Still another witness, Brackett Lewis, a senior research analyst in the Reference Department of the Library of Congress, testified that in response to a newspaper advertisement featuring a Westinghouse refrigerator at $169, he and his wife went to respondents' sale at Uline's Arena. Lewis also stated he was unaware of the service charge until after the sale was consummated, when he noticed an item for $12.50 on the sales slip called a service and delivery charge. After he protested, Lewis testified, the salesman, C. R. Jones, stated that that was "the only way we sell them". When Lewis further protested, the salesman got the manager who repeated that that was the only way respondents sold them. Lewis finally paid the service charge under protest.

Respondent Goldman sat in the hearing room throughout the testimony of these witnesses and actively assisted his counsel in cross-examination of the witnesses. However, Goldman was not called as a rebuttal witness nor was the salesman, C. R. Jones. The unimpeached testimony of these three witnesses is clear, convincing and reliable and the hearing examiner finds therefrom that respondents advertise and offer to sell merchandise at certain prices, but, after the sale is made at the advertised price, they add a service charge to said price and frequently will not consummate the sale and deliver the merchandise to the purchaser unless said additional charge is paid.

Further corroborating evidence would be merely cumulative. As Judge Schnackenberg, in his concurring opinion in *Niresk Indus-*

tries, Inc. v. *F.T.C.*, 278 F. 2d 337, 343 (C.A. 7 March 1960), *cert. denied* 364 U.S. 883, said:

If it [the Commission] adduces enough evidence to sustain its action and decision I see no reason why it should spend public funds by enlarging its investigation for the purpose of gathering additional evidence.

22. 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 merchandise of the same general kind and nature as that sold by respondents.

23. The use by respondents of the false, misleading and deceptive statements, representations and practices, as aforesaid, 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 amounts of respondents' merchandise by reason of said erroneous and mistaken belief. As a consequence thereof, substantial trade in commerce has been unfairly diverted to respondents from their competitors and substantial injury has thereby been and is being done to competition in commerce.

24. On August 24, 1959, the Federal Trade Commission, in Docket No. 7572, filed a complaint against Filderman Corporation, F F & G Corporation, Wolfe Filderman, Dorrel Goldman and others, charging them with false, deceptive and misleading advertising. The gravamen of the complaint in Docket No. 7572 was against the use: (1) of a higher stated price, either unaccompanied by any descriptive language or accompanied by the language "Reg." or "Orig.", when in fact such higher prices were fictitious and in excess of the usual and customary retail prices charged by respondents in the normal course of business and (2) of the descriptive language "Mfr. List" together with a price figure when in fact such amount represented as manufacturer's list was substantially higher than the manufacturer's current list prices.

25. On October 22, 1959, respondents in Docket No. 7572 entered into an agreement containing a consent order to cease and desist which was accepted by the examiner and set forth in an initial decision dated October 27, 1959, and adopted by the Commission on December 30, 1959 [56 F.T.C. 685]. The Order in Docket No. 7572 provided in pertinent part as follows:

IT IS ORDERED THAT respondents * * * FILDERMAN CORPORATION, a corporation, F F & G CORPORATION, a corporation, and their officers, and WOLFE FILDERMAN and DORREL GOLDMAN, individually and as officers of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offer-

ing for sale or sale of any merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing directly or by implication:

(a) That a certain price is respondents' usual and customary price for merchandise when it is in excess of the price at which said merchandise is usually and customarily sold by respondents in the normal course of business in the area or areas where the representations are made.

(b) That any saving is afforded in the purchase of merchandise unless the selling price constitutes a reduction from the price at which said merchandise is usually and customarily sold by respondents in the normal course of their business in the area or areas where the representations are made.

(c) That a stated price is the "Manufacturer's List Price" for any merchandise unless it is the current list price of the manufacturer for the identical merchandise to which such price is applied.

26. The substantive issues in the present proceeding are not the same as in Docket No. 7572. There is nothing in Docket No. 7572 which relates to the use of false and deceptive guarantees or hidden service charges. The only violation in Docket No. 7572 remotely similar to those charged herein involved the use of a false "Mfr. List" price. However, the complaint in this proceeding does not challenge the bona fides of the "Mfr. List" prices used in the advertisements relied upon in this proceeding, but raises an entirely new question of the propriety under the Federal Trade Commission Act of using accurate manufacturer's suggested list prices in juxtaposition with respondents' lower prices. It should also be pointed out that the proceedings in this matter deal with a different period of time at least in part, since many of the advertisements relied upon in support of the violations alleged in the complaint were published subsequent to August 27, 1959, the date when the complaint in Docket No. 7572 was issued.

CONCLUSIONS

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

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

3. The use of a manufacturer's suggested retail price, so designated, in advertising in commerce when such price is placed in juxtaposition with a lower price, constitutes an unfair or deceptive act or practice where such suggested retail price is not in fact the price at which the merchandise is usually and customarily sold in the trade area. A written advertisement requires no consumer testimony as to its meaning and the examiner in the first instance, and the Commission, should it disagree, are capable of interpreting the meaning

or effect of the advertisement.[4] This proposition was aptly expressed in *Zenith Radio Corp.* v. *F.T.C.*, 143 F. 2d 29, 31 (C.A. 7, 1944).[5]

> The Commission had a right to look at the advertisement in question, consider the relevant evidence in the record that would aid it in interpreting the advertisements, and then decide for itself whether the practices engaged in by the petitioner were unfair or deceptive, as charged in the complaint.

Recently in *Grand Union* v. *F.T.C.*, 300 F. 2d 92 (C.A. 2, 1962) the court stated:

> Congress established the Federal Trade Commission as an expert body to apply the imprecise standards of Section 5 and "[i]ts expert opinion is entitled to great weight in the reviewing courts" *Jacob Siegel Co.* v. *F.T.C.*, 327 U.S. 608, 614; *F.T.C.* v. *Cement Institute, Inc*, 333 U.S. 683, 720.

Particularly relevant to this case is what the court stated some years ago in *Brown Fence & Wire Co.* v. *F.T.C.*, 64 F. 2d 934, 936 (C.A. 6, 1933):

> In the instant case the Commission produced no direct testimony tending to show that any of the petitioner's customers were imposed upon or deceived by the presentations made in its catalogue, and it is claimed that such omission is fatal to the case against it. We know of no reason why reasonable factual inference may not be the basis for the fact findings of the Commission as well as direct evidence. Price is so fundamental a factor in merchandising and so persuasive in drawing customers to one competitor and from others, that it seems superfluous to demand direct proof of the efficacy of methods, frankly relied upon, to accomplish the results now denied.

4. The Commission has repeatedly held that using the term "List Price" or any other term of similar import or meaning to refer to prices not bona fide regular established selling prices constitutes an unfair or deceptive act or practice. *The Firestone Tire & Rubber Co., et al*, 33 *F.T.C.* 282 (1941); *The Goodyear Tire & Rubber Co., et al*, 33 F.T.C. 298 (1941); *The B. F. Goodrich Company*, 33 F.T.C. 312 (1941); *Sears, Roebuck & Co.*, 33 F.T.C. 334 (1941); *Maxwell Distributing Co., Inc., et al*, 54 F.T.C. 260 (1957); *Hutchinson Chemical Corp., et al*, 55 F.T.C. 1942 (1959); *Bond Stores, Inc.*, Docket No. 6789 (January 7, 1960) [56 F.T.C. 716]; *Arnold Constable Corporation*, Docket No. 7657 (January 12, 1961) [58 F.T.C. 49]; *Art National Manufacturers Distributing Co., Inc., et al*, Docket No. 7286 (May 10, 1961) [58 F.T.C. 719], and *George's Radio and Television Company, Inc., a corporation, et al*, Docket No. 8134 (January 19, 1962) [60 F.T.C. 179].

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[4] This not only applies to the use of the term "Mfr. List" in respondents' advertisements, but to the use of the "disclaimer".

[5] See also *Charles of the Ritz Dist. Corp.* v. *F.T.C.*, 143 F. 2d 676 (C.A. 2, 1944); *Exposition Press, Inc., et al*, v. *F.T.C.*, 295 F. 2d 869 (C.A. 2, 1961); *Bankers Securities Corp.*, v. *F.T.C.*, 297 F. 2d 869 (C.A. 3, 1961).

The courts have upheld Commission Orders banning fictitious pricing practices and the making of false saving claims. *L. & C. Mayers Co., Inc.* v. *F.T.C.*, 97 F. 2d 365 (C.A. 2, 1938); *Consumers Home Equipment Co., et al* v. *F.T.C.*, 164 F. 2d 972 (C.A. 6, 1947); *Niresk Industries, Inc., et al* v. *F.T.C.*, 278 F. 2d 337 (C.A. 7, 1960), *cert. denied* 364 U.S. 883 (1960); *Kalwajtys, et al* v. *F.T.C.*, 237 F. 2d 654 (C.A. 7, 1956), *cert. denied* 352 U.S. 1025 (1957); *Progress Tailoring Co.* v. *F.T.C.*, 153 F. 2d 103 (C.A. 7, 1946); *Clinton Watch Company* v. *F.T.C.*, 291 F. 2d 838 (C.A. 7, 1961), and *Baltimore Luggage Co.* v. *F.T.C.*, 296 F. 2d 608 (C.A. 4, 1961). The use by the respondents in this case of manufacturer's suggested list prices in juxtaposition with lower advertised sales prices was a misrepresentation as to usual and customary prices and as to savings afforded purchasers and was an unfair act or practice and unfair method of competition in violation of Section 5 of the Federal Trade Commission Act. *Clinton Watch Company, et al.* v. *F.T.C. supra.*

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

6. Respondents seek to justify their use of the manufacturer's suggested list price by reference to the Automobile Information Disclosure Act, Public Law 85-506, July 7, 1958, 72 Stat. 325, 15 U.S.C.A. 1231-33, which requires manufacturers of automobiles to place a label upon each new car delivered to a retailer showing "the retail price of such automobile suggested by the manufacturer", together with the suggested retail price of accessories and other items of optional equipment attached to the automobile. The courts have held that this Act is "not a statute of general application, but applies solely and specifically to the sale of new automobiles" and has no application to cases outside that industry. See *The Baltimore Luggage Company, Inc., et al*, v. *F.T.C. supra.*

7. Respondents also seek to bar and dismiss this complaint under the doctrine of *res judicata* setting forth that the issues herein have previously been adjudicated in their favor in Docket No. 7572 and the Commission is now foreclosed from bringing any further action against respondents on the same issues. As set forth above in Findings 24, 25 and 26 of the issues in the present proceedings are not the same as those in the earlier proceeding and consequently the plea of *res judicata* is not available. *F.T.C.* v. *Motion Picture Advertis-*

ing Service Co., Inc., 344 U.S. 392, 398 (1953). As the court said in *Exposition Press, Inc.* v. *F.T.C.*, 295 F. 2d 869 (C.A. 2, 1961), "In any event, new violations will support new proceedings dealing with different periods of time, at least where there is no indication of harassment by the Commission. See *F.T.C.* v. *Raladam Co.*, 316 U.S. 149 (1942); 2 Davis Administrative Law Treatise 570–71 (1958); *cf. Grandview Dairy, Inc.* v. *Jones*, 157 F. 2d 5 (2 Cir.) *cert. denied*, 329 U.S. 787 (1946)."

Even assuming that the instant proceeding constitutes a relitigation of the same issues, it is clear that, when we consider the respective functions of courts and of administrative agencies, the doctrine of *res judicata* should not be applicable to decisions of administrative bodies, particularly those administrative agencies charged with the protection of the public interest. *F.C.C.* v. *Pottsville Broadcasting Co.*, 309 U.S. 134, 145 (1940); *N.L.R.B.* v. *Thompson Products*, 130 F. 2d 363, 366 (C.A. 6, 1942); *N.L.R.B.* v. *T. W. Phillips Gas & Oil Co.*, 141 F. 2d 304 (C.A. 3, 1944); *N.L.R.B.* v. *Baltimore Transit Co.*, 140 F. 2d 51, 55 (C.A. 4, 1944); *Panhandle Eastern Pipeline Co.* v. *F.P.C.*, 236 F. 2d 289, 292 (C.A. 3, 1956). See also Initial Decision in *Matter of Manco Watch Strap Co., Inc.*, Docket No. 7785, and Opinion of the Commission, March 13, 1962 [60 F.T.C. 495]. The doctrine of *res judicata* is particularly inappropriate in Federal Trade Commission proceedings since that body's responsibility under the Federal Trade Commission Act is at all times to measure various acts and practices by the standard of "public interest". This is also in accord with the underlying philosophy of the Act as expressed in Section 5(b) which requires the Commission to reopen, alter, modify or set aside its orders whenever in its opinion conditions of fact or of law have so changed or the public interest so requires.

Finally, respondents argue that the previous order "sanctioned the use of manufacturer's list price where the manufacturer's list price used was the correct list price supplied by the manufacturer." It is pertinent to point out that there is a distinction between the prohibition of unlawful conduct and the affirmative regulation of lawful conduct. *F.T.C.* v. *Sinclair Refining Co.*, 261 U.S. 463, 475–6 (1923). The legislative history of the Federal Trade Commission Act supports the view that its purpose is primarily to prohibit unlawful conduct. Senator Cummins, a leading advocate of the Federal Trade Commission Act, said: "* * * if I thought that the commission which we hope to create would sit down and attempt to write out an instruction to the business men of this country as to the things they could lawfully do and the things which it would be unlawful

for them to do, there is no power that could induce me to favor it." 51 Cong. Rec. 12917 (1914). Senator Walsh, another leading proponent of the Act said: "We are not going to give to the trade commission the general power to regulate and prescribe rules under which the business of this country shall in the future be conducted; we propose simply to give it the power to denounce as unlawful a particular practice that is pursued by that business." 51 Cong. Rec. 13317 (1914).

In this connection, the examiner in his Initial Decision in the *Matter of Carnation Company, et al*, Docket 6172 etc. [60 F.T.C. 1274, 1410] at page 123, stated: "It [the Commission] does not 'presume to run the economic railroad.' Its function is to prohibit practices demonstrated to be 'unfair', not to prescribe 'fair' ones." It is clear, therefore, that the previous order did not presume to sanction the acts and practices sought to be prohibited in this proceeding.

8. In his initial decision of March 22, 1962, the hearing examiner dismissed the complaint as to respondent F F & G Corporation. Upon reconsideration of the record, he changes that determination for the following reasons:

(a) All of the respondent corporations, including F F & G Corporation, operate under a single trade name, *Todd's*, and Filderman Corporation and F F & G Corporation operate through the same physical retail outlets.

(b) All of the advertising of the respondent corporations, including F F & G Corporation, is handled by a single advertising agency. (Tr. 61)

(c) Respondent corporations' advertisements commingled products sold by F F & G Corporation with products sold by the other corporations. (CX 1–15)

(d) Products of F F & G Corporation appearing in such advertisements also carried comparative prices, *i.e.*, the higher price designated as "Mfr. sugg. list," or words of similar import and a lower selling price.

(e) The same two men, Wolfe Filderman and Dorrel Goldman, formulate, control and direct the advertising and selling policies of Filderman Corporation, F F & G Corporation and Toma Furniture, Inc., (in the case of Toma Furniture up to April 1, 1961) and these corporations are closely held family corporations.

9. In view of the common ownership, control and management, consolidated business addresses, joint advertising practices and single trade name under which the respondent corporations do business, the hearing examiner is of the opinion that the legal technicalities of the corporate devices must be disregarded in order to fully protect

the public interest in this matter. *Matter of Alscap, Inc.*, Docket No. 8292, Initial Decision of the Hearing Examiner adopted by the Commission February 14, 1962 [60 F.T.C. 275].

Accordingly, the hearing examiner hereinafter issues one consolidated order against the corporate and individual respondents.

ORDER

It is ordered, That respondents Filderman Corporation, a corporation, and its officers, F F & G Corporation, a corporation, and its officers, and Wolfe Filderman and Dorrel Goldman, individually and as officers of the said corporations, Toma Furniture Inc., a corporation, and Wolfe Filderman and Maynard E. Turow, individually and as officers of the said corporation, and respondents' agents, representatives and employees, directly or through any corporate device, in connection with the advertising, offering for sale, or sale of electrical appliances, furniture or any other merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication,

(a) Through the use of the term "Manufacturer's List Price" or any other term of the same import, or representing in any other manner, that any amount is the price of merchandise in respondents' trade area when it is in excess of the price at which said merchandise is usually and customarily sold at retail in said trade area.

(b) That any saving is offered in the purchase of merchandise from the price in respondents' trade area unless the price at which the merchandise is offered constitutes a reduction from the price at which said merchandise is usually and customarily sold at retail in said trade area.

(c) That merchandise is guaranteed unless the extent and nature of the guarantee and the manner in which the guarantor will perform are clearly set forth.

(d) That any amount is the price of merchandise when an additional amount is required to be paid before the merchandise will be sold.

2. Misrepresenting in any manner, the amount of savings available to purchasers of respondents' merchandise or the amount by which the price of said merchandise has been reduced from the price at which it is usually and customarily sold in the trade area or areas where the representation is made.

OPINION OF THE COMMISSION

The complaint charged respondents with violating Section 5 of the Federal Trade Commission Act by the fictitious use of the term "manufacturers' list price," misrepresenting the extent of guarantees, and unfairly adding hidden charges to their advertised sales prices. Respondents, who do business under the trade name of Todd's, one of the more prominent discount houses in the Washington, D.C., metropolitan area, sell a variety of products, including large and small appliances and furniture, to the consumer at a number of locations in the District of Columbia, Maryland, and Virginia.

This matter is now before us on respondents' appeal from the second initial decision of the hearing examiner. On respondents' appeal from the first initial decision, that decision was vacated and remanded to the examiner by our order of October 1, 1962, for further evidence on the issues, since the record as then constituted was not sufficient to permit the Commission to make an informed disposition of this case in its entirety.[1] The examiner, in accordance with the remand order, held further hearings and issued the second initial decision, filed May 10, 1963, on the basis of the entire record and the proceeding is now before us for a review of his determination that all the charges made in the complaint have been sustained.

Respondents' use of the term "manufacturers' list price" must be viewed in the light of the Guides Against Deceptive Pricing issued January 8, 1964. The evidence adduced in support of the fictitious pricing charge does not meet the new standard promulgated by the Commission and this allegation will, therefore, be dismissed.

In the case of the deceptive guarantee charge, the admissions of the individual respondent Turow fully substantiate the allegations of the complaint on that point, and respondents do not seriously dispute the examiner's finding on this score. The real issue with which we are confronted is whether the complaint should be dismissed on the basis of evidence indicating the practice had been discontinued. We have reviewed the record and initial decision on this issue and agree with the examiner that mere discontinuance of the challenged guarantee advertising subsequent to the time the Commission's investigation was initiated will not justify dismissal of the charge in this instance. We will adopt the findings and conclusions of the examiner on this point.

Complaint counsel adduced additional testimony from two Todd customers subsequent to the remand to supplement that of the wit-

[1] While the evidence on the guarantee issue was clear prior to the remand, the record at that time did not permit disposition of the other charges.

ness testifying in support of the hidden charges allegation in the first round of hearings. The testimony of the witnesses establishes that respondents have advertised their appliances at certain prices but refused to consummate sales unless the customer agrees to pay an additional amount in the form of a service charge. The examiner who observed these witnesses expressly found their testimony was clear, convincing, and reliable. Respondents object, in effect, that the testimony is insufficient evidence on which to base the finding. We see no merit in this contention; the examiner who saw and heard the witnesses is in the best position to determine whether additional corroborative testimony would be merely cumulative or is necessary to help him come to a conclusion.[2] In this instance he specifically found that additional evidence along the same lines would be merely cumulative. A review of the record convinces us that he has not abused his discretion in making that determination.

The remaining issue is the scope of the order to be directed against the several corporate and individual respondents. The examiner issued a consolidated order applicable in its entirety to all respondents, even though the record did not show that certain respondents had participated in or were responsible for all the practices challenged in the complaint. Under the circumstances of this case a more selective order will provide the necessary relief. Accordingly, the provision in the order applicable to the hidden charges practice will be directed to the Filderman Corporation and to Wolfe Filderman and Dorrell Goldman in their individual and official capacities, while the guarantee provision will be directed against Toma Furniture Inc., and to Wolfe Filderman and Maynard Turow in their official as well as their individual capacities. The complaint will be dismissed as to the F F & G Corporation.

The initial decision and order of the hearing examiner, as modified to conform to the views expressed in this opinion, will be adopted as the decision of the Commission.

Commissioner Anderson did not participate.

Final Order

This matter has been heard by the Commission upon the appeal of respondents from the initial decision of the hearing examiner, filed May 10, 1963, and the answer of counsel in support of the complaint in opposition thereto. The Commission has now determined that the appeal should be denied in part and granted in part. Accordingly,

[2] See *Brown Shoe Company*, Docket No. 7606, February 20, 1963 [62 F.T.C. 679].

It is ordered, That the initial decision be modified by striking therefrom that section beginning on page 436 with the phrase "Theodore G. Proctor, trading as" and ending on page 440 with the phrase "which has other means of identification" and substituting therefor the following:

The evidence on respondents' use of the term "manufacturers' list price" does not meet the standards set forth under the Guides Against Deceptive Pricing issued January 8, 1964.

It is further ordered, That the initial decision be modified by striking therefrom that section beginning on page 444 with the phrase "On August 24th, 1959, the Federal Trade Commission" and ending on page 445 with the phrase "when the complaint in Docket No. 7572 was issued" and that section beginning on page 445 with the phrase "The use of a manufacturer's suggested retail price," and ending on page 450 with the phrase "one consolidated order against the corporate and individual respondents."

It is further ordered, That the order to cease and desist in the initial decision is modified to read as follows:

It is ordered, That respondents Filderman Corporation, a corporation, and its officers, and Wolfe Filderman and Dorrel Goldman, individually and as officers of the said corporation, and respondents' agents, representatives and employees, directly or through any corporate device, in connection with the advertising, offering for sale, or sale of electrical appliances, or any other merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Representing, directly or by implication:

That any amount is the price of merchandise when an additional amount is required to be paid before the merchandise will be sold.

It is further ordered, That respondents Toma Furniture Inc., a corporation, and its officers, and Maynard E. Turow and Wolfe Filderman, individually and as officers of the said corporation, and respondents' agents, representatives and employees, directly or through any corporate device, in connection with the advertising, offering for sale, or sale of furniture, or any other merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Representing, directly or by implication:

That merchandise is guaranteed unless the extent and nature of the guarantee and the manner in which the guarantor will perform are clearly set forth.

It is further ordered, That the complaint be, and it hereby is, dismissed as to the F F & G Corporation, a corporation.

It is further ordered, That the initial decision, as modified to conform to the views expressed in the accompanying opinion, be, and it hereby is, adopted as the decision of the Commission.

It is further ordered, That respondents named in the order to cease and desist shall, within sixty (60) days after service upon them of this order, file with the Commission a report, in writing, signed by such respondents, setting forth in detail the manner and form of their compliance with the order to cease and desist.

By the Commission, Commissioner Anderson not participating.

IN THE MATTER OF

WINDSOR PEN CORPORATION ET AL.

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

Docket 8521. Complaint, July 20, 1962—Decision, Jan. 28, 1964

Order requiring a Brooklyn, N. Y., distributor of pen and desk sets to jobbers and distributors, to cease misrepresenting its products as domestic when they contain parts made in Japan, by such phrase as "Made in U.S.A.," and conspicuously disclose the country of foreign origin on the product, package or display card.

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 Windsor Pen Corporation, a corporation, and Morris Fink, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows:

PARAGRAPH 1. Respondent Windsor Pen Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its principal office and place of business at 88-3rd Avenue, Brooklyn, New York. Respondent Morris Fink is an officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respond-

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

PAR. 2. Respondents are now, and for some time last past have been, engaged in the offering for sale and sale of pen and desk sets, consisting of pens, staplers, staples and telephone indexes, attached to paper cards, to jobbers and retailers.

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

PAR. 4. The pen and desk sets sold by respondents consist of two principal items, one being known as "Pen and Stapler Set" and one as a "5-Piece Desk Set and Telephone Index". The first named set consists of a small metal stapler, a box of staples and three pens, attached to a paper card by individual cellophane covers. The stapler and staples are imported from Japan, the pens being of domestic origin. The word "Japan" is contained in small letters on one side of the stapler but, as packaged, this mark is not readily apparent to a casual purchaser. The box of staples bears no visible mark of foreign origin. The card itself contains the words "Windsor Pen Corp., Made in U.S.A." The second named set consists of a penholder, four pens and a telephone index. The penholder and pens are of domestic manufacture but the telephone index is made in Japan. This index bears the word "Japan" on the bottom but is attached to the card in such a manner that this mark is hidden from view. The card itself contains the words "Windsor Pen Corp., Printed in U.S.A.".

PAR. 5. The practice of respondents in placing the words "Made in U.S.A." and "Printed in U.S.A." on the cards, as aforesaid, has had and now has the tendency and capacity to mislead and deceive purchasers, including members of the consuming public, into the false and erroneous belief that said pen and desk sets are wholly of domestic origin.

PAR. 6. In truth and in fact, the said pen and desk sets are not wholly of domestic origin but in fact contain substantial items made in Japan. The aforesaid representations are therefore false, misleading and deceptive.

PAR. 7. In the absence of an adequate disclosure that a product, including pen and desk sets, is of foreign origin, the public believes and understands that it is of domestic origin, a fact of which the Commission takes official notice.

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

PAR. 8. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices, including the failure to disclose the foreign origin of substantial parts of said merchandise, as aforesaid, has 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 were and are true and into the purchase of substantial quantities of respondents' merchandise because of such erroneous and mistaken belief.

PAR. 9. In the conduct of its business, at all times mentioned herein, respondents have been in substantial competition in commerce with corporations, firms and individuals in the sale of merchandise of the same general kind and nature as that sold by the respondents.

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

Mr. Anthony J. Kennedy, Jr., and *Mr. James A. Ryan* for the Commission.

Mr. Martin J. Forgang, New York, N.Y., for the respondents.

INITIAL DECISION BY RAYMOND J. LYNCH, HEARING EXAMINER

APRIL 10, 1963

By complaint issued July 20, 1962, the Federal Trade Commission charged Windsor Pen Corporation, a New York corporation, and Morris Fink, individually and as an officer of said corporation, with violation of the Federal Trade Commission Act resulting from their sale and distribution of pen and desk sets, consisting of pens, staplers, staples, and telephone indexes, attached to paper cards, in commerce without disclosing that said pen and desk sets are not wholly of domestic origin but in fact contain substantial items made in Japan.

On November 30, 1962, a stipulation [1] was executed by the respondents and counsel for all parties, setting forth certain facts and waiving hearing. Argument was reserved on the scope of the cease and desist order to be entered. Proposed findings and order were submitted by both parties and on January 22, 1963, oral argument was allowed thereon.

The hearing examiner has considered the proposed findings of fact and conclusions submitted by counsel representing the parties, and all findings of fact and conclusions of law not hereinafter specifically found or concluded are herewith rejected. The hearing examiner having considered the entire record makes the following findings as to the facts, conclusions drawn therefrom, and order:

FINDINGS OF FACT

1. Respondent Windsor Pen Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its principal office and place of business at 88-3rd Avenue, Brooklyn, New York. Respondent Morris Fink is an officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

2. Respondents are now, and for some time last past have been, engaged in the offering for sale and sale of pen and desk sets, consisting of pens, staplers, staples, and telephone indexes, attached tc paper cards, to jobbers and retailers.

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

4. The pen and desk sets sold by respondents consist of two principal items, one being known as "Pen and Stapler Set" and one as a "5-Piece Desk Set and Telephone Index." The first-named set consists of a small metal stapler, a box of staples, and three pens attached to a paper card by individual cellophane covers. The stapler and staples are imported from Japan, the pens being of domestic origin. The word "Japan" is contained in small letters on one side of the stapler but, as packaged, this mark is not readily

[1] CX 3.

apparent to a casual purchaser. The box of staples bears no visible mark of foreign origin. The card itself contains the words "Windsor Pen Corp., Made in U.S.A." The second-named set consists of a penholder, four pens and a telephone index. The penholder and pens are of domestic manufacture but the telephone index is made in Japan. This index bears the word "Japan" on the bottom but is attached to the card in such a manner that this mark is hidden from view. The card itself contains the words "Windsor Pen Corp., Printed in U.S.A."

5. The practice of respondents in placing the words "Made in U.S.A." and "Printed in U.S.A." on the cards, as aforesaid, has had and now has the tendency and capacity to mislead and deceive purchasers, including members of the consuming public, into the false and erroneous belief that said pen and desk sets are wholly of domestic origin.

6. In truth and in fact, the said pen and desk sets are not wholly of domestic origin but in fact contain substantial items made in Japan. The aforesaid representations are therefore false, misleading, and deceptive.

7. In the absence of an adequate disclosure that a product, including pen and desk sets, is of foreign origin, the public believes and understands that it is of domestic origin, a fact of which the Commission takes official notice.

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

8. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices, including the failure to disclose the foreign origin of substantial parts of said merchandise, as aforesaid, has 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 were and are true and into the purchase of substantial quantities of respondents' merchandise because of such erroneous and mistaken belief.

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

CONCLUSIONS

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.

The only matter to be determined by the examiner is the scope of the order to be issued. Counsel supporting the complaint recommends an order tailored to the scope of the order in the matter of *Manco Watch Strap Co., Inc., et al.*, Docket No. 7785, as amended July 26, 1962 [61 F.T.C. 298]. However, counsel for the respondents argues that an order such as that issued in *Manco* would be unnecessarily broad, and under the circumstances of their business, punitive in nature. The primary argument is premised upon the fact that respondents might have to dispose of a large number of display cards that have already been printed with the words "Windsor Pen Corp., Made in U.S.A." and "Windsor Pen Corp., Printed in U.S.A." It is the contention of the respondents that to dispose of these display cards would be a great loss to the company, and that if they had the country of origin stamped on the side of the stapler and on the lever of the telephone index, or the foreign origin of any other product stamped on the product so that it could be seen clearly, this would be sufficient notice to the purchasing public of the fact that these items were of foreign origin and that, therefore, they would not be deceiving the public even though the above-quoted words were printed on the display card to which the items were affixed.

The examiner is not impressed by the argument of the respondents because, in effect, the respondents on the one hand admit a violation of the act and now merely seek to use a scheme or device which would, in effect, still be a deception of the purchasing public. The most impressive part, of what respondents' counsel admits is a "merchandising gimmick," is the display card to which the items are affixed, and this respondents seek to continue using, while attempting in an evasive manner to comply with the law as it has been interpreted by the Commission. The words "Windsor Pen Corp., Made in U.S.A." and "Windsor Pen Corp., Printed in U.S.A." have been used by the respondents for but one purpose and that is to deceive the purchasing public, and this practice must be stopped.

Considering the conclusions reached by the Commission in the matters of *Manco Watch Strap Co., Inc., et al.*, Docket No. 7785 [61 F.T.C. 298], *Baldwin Bracelet Corp. et al.*, Docket No. 8316

[61 F.T.C. 1345], and *Rieser Company, Inc., et al.*, Docket No. 8471 [61 F.T.C. 1378], the examiner is of the opinion that the order recommended by counsel supporting the complaint should be issued in this proceeding.

ORDER

It is ordered, That respondents, Windsor Pen Corporation, a corporation, and its officers, and Morris Fink, 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 pen and desk sets, or any other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the words "Made in U.S.A." or "Printed in U.S.A." or any other word or words of similar import or meaning, in connection with any such set or product which contains a substantial item or part made in Japan or in any other foreign country.

2. Representing in any other manner that any such set or product which contains a substantial item or part made in Japan or any other foreign country, is made in the United States.

3. Offering for sale, selling, or distributing any such product packaged, or mounted in a container, or on a display card, without disclosing the country or place of foreign origin of the product, or substantial part thereof, on the front or face of such packaging, container, or display card, so positioned as to clearly have application to the product so packaged or mounted, and of such degree of permanency as to remain thereon until consummation of consumer sale of the product, and of such conspicuousness as to be likely observed and read by purchasers and prospective purchasers making casual inspection of the product as so packaged or mounted.

FINAL ORDER

Upon consideration of respondents' appeal from the initial decision of the hearing examiner, and it appearing that the order contained in the initial decision would be both in the public interest and acceptable to respondents if it were so modified as to permit the required disclosure of foreign origin to be made on the product itself and not necessarily on the package, container or display card, provided that such disclosure is of such conspicuousness as to be likely observed and read by purchasers and prospective purchasers

making casual inspection of the product as so packaged and mounted,

It is ordered, That paragraph 3 of the order contained in the initial decision be, and it hereby is, modified to read as follows:

"Offering for sale, selling, or distributing any such product packaged, or mounted in a container, or on a display card, without disclosing the country or place of foreign origin of the product, or substantial part thereof, on the front or face of such packaging, container, or display card, or on the product itself, so positioned as to clearly have application to the product so packaged or mounted, and of such degree of permanency as to remain thereon until consummation of consumer sale of the product, and of such conspicuousness as to be likely observed and read by purchasers and prospective purchasers making casual inspection of the product, as so packaged and mounted, without opening the package, container or display card, as the case may be."

It is further ordered, That the initial decision, as modified herein, be, and it hereby is, adopted as the final decision and order of the Commission.

It is further ordered, That respondents shall, within sixty (60) days of the service of this order upon them, file with the Commission a written report setting forth the manner and form of their compliance with this order.

IN THE MATTER OF

NIRESK INDUSTRIES, INC., ET AL.

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

Docket C-696. Complaint, Jan. 28, 1964—Decision, Jan. 28, 1964

Consent order requiring Chicago sellers of chrome-plated steel flatware to the public, to cease representing falsely in advertising in magazines that the flatware has a coating of silver, and a permanent finish that will not rust or stain, when in fact, it is coated with chromium which is not permanent and may rust or stain.

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 Niresk Industries,

Inc., a corporation, and Bernice Stone Kahn and Robert Kahn, individually and as officers of said corporation, and Robert Kahn & Associates, 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 Niresk Industries, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois with its principal office and place of business located at 589 East Illinois Street in the city of Chicago, State of Illinois.

Respondents Bernice Stone Kahn and Robert Kahn are officers of Niresk Industries, Inc. They formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent.

Respondent Robert Kahn & Associates, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois with its principal office and place of business located at 445 North Lake Shore Drive, in the city of Chicago, State of Illinois.

The aforesaid respondents cooperate and act together in carrying out the acts and practices hereinafter referred to.

PAR. 2. Respondent Niresk Industries, Inc., and respondents Bernice Stone Kahn and Robert Kahn, individually and as officers of said corporation, are now, and for some time last past have been, engaged in the offering for sale, sale and distribution of chrome-plated steel flatware such as knives, forks and spoons to the public.

Respondent Robert Kahn & Associates, Inc., is now, and for some time last past has been, the advertising agency of the respondent Niresk Industries, Inc., and now prepares and places, and for some time last past has prepared and placed for publication, advertisements, including advertisements containing the statements hereinafter set forth, to promote the sale of the aforesaid flatware.

PAR. 3. In the course and conduct of their business, respondent Niresk Industries, Inc., and respondents Bernice Stone Kahn and Robert Kahn, officers of said corporation, now cause, and for some time last past have caused, their said flatware, when sold, to be shipped from their place of business in the State of Illinois to purchasers thereof located in various other States of the United States, and maintain, and at all times mentioned herein have maintained, a course of trade in said product in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their businesses, and for the purpose of inducing the purchase of the aforesaid product, respondents have made certain statements in advertisements published in magazines of interstate circulation, distributed to members of the purchasing public. Typical, but not all inclusive, of such statements are the following:

Silver Rose

* * * * * * *

Permanent Mirror Finish Won't Rust or Stain

* * * * * * *

The * * * pattern has been created for you by world famous silversmiths. Each piece glows with a luxurious rich silverware finish * * *.

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

(1) That said flatware has a coating or plating of silver.

(2) That said flatware has a permanent finish and will not rust or stain.

PAR. 6. In truth and in fact:

(1) Silver is not used to coat or plate said flatware, but rather the flatware is coated or plated with chromium.

(2) The coating or plating is not permanent in that it may wear or be scratched off, exposing the steel underneath which may rust or stain.

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

PAR. 7. In the conduct of their business, at all times mentioned herein, respondent Niresk Industries, Inc., and Bernice Stone Kahn and Robert Kahn, officers of said corporation, have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of flatware of the same general kind and nature as that sold by respondents.

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

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

1. Respondent Niresk Industries, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 589 East Illinois Street, in the city of Chicago, State of Illinois.

Respondents Bernice Stone Kahn and Robert Kahn are officers of Niresk Industries, Inc., and their address is the same as that of the corporate respondent.

Respondent Robert Kahn & Associates, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 445 North Lake Shore Drive, in the city of Chicago, State of Illinois.

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 Niresk Industries, Inc., a corporation, and its officers, and Bernice Stone Kahn and Robert Kahn, individually and as officers of said corporation, and Robert Kahn &

Associates, Inc., a corporation, and its officers, 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 chrome-plated flatware, or any other product, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(1) Representing, directly or by implication:

a. That chrome-plated flatware, or any other product of similar composition, has a coating or plating of silver.

b. That the coating or plating of chrome-plated flatware, or any other product of similar composition, is permanent.

c. That chrome-plated flatware, or any other product of similar composition, will not rust or stain.

(2) Misrepresenting, in any manner, the quality composition, method of construction, durability, corrosion resistance, or performance characteristics of any product.

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

CROWN 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-697. Complaint, Jan. 28, 1964—Decision, Jan. 28, 1964

Consent order requiring retail furriers in New York City to cease violating the Fur Products Labeling Act by misbranding, falsely invoicing and advertising their fur products, and substituting nonconforming labels for the labels affixed to fur products by manufacturers.

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 rea-

son to believe that Crown Furs Inc., a corporation, and David M. Weiss, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Fur Products Labeling Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Crown Furs Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois.

Respondent David M. Weiss 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.

Proposed Respondents are retailers of fur products with their office and principal place of business located at 130 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 sale, advertising, and offering for sale in commerce, and in the transportation and distribution in commerce, of fur products; and have sold, advertised, offered for sale, transported and distributed fur products which have been made in whole or in part of furs which have been shipped and received in commerce, as the terms "commerce", "fur", and "fur product" are defined in the Fur Products Labeling Act.

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

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

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

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

PAR. 4. Certain of said fur products were misbranded in violation of the Fur Products Labeling Act in that they were not labeled in

accordance with the Rules and Regulations promulgated thereunder in the following respects:

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

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

(c) Labels affixed to fur products did not comply with the minimum size requirements of one and three-quarter inches by two and three-quarter inches, in violation of Rule 27 of said Rules and Regulations.

(d) Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was mingled with nonrequired information, in violation of Rule 29(a) of said Rules and Regulations.

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

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

(g) 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.

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

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

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

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

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

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

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

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

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

PAR. 7. Certain of said fur products were falsely and deceptively invoiced with respect to the name of the country of origin of imported furs used in such fur products, 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 invoiced to show the name of the country of origin of furs contained in such fur products as the United States when in truth and in fact the furs used in such fur products were imported.

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

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

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

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

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

PAR. 9. 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 Chicago Tribune, a newspaper published in the city of Chicago, State of Illinois.

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

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

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

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

PAR. 10. 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 Lamb" when in truth and in fact they were not entitled to such designation.

PAR. 11. In advertising fur products for sale as aforesaid respondents represented through such statements as "Wonderful, Wonderful January Buys at Jubilant Savings of ⅓ to ½ and More" 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. 12. In advertising fur products for sale, as aforesaid, respondents made pricing claims and representations of the types

covered by subsections (a), (b), (c) and (d) of Rule 44 of the Regulations under the Fur Products Labeling Act. Respondents in making such claims and representations failed to maintain full and adequate records disclosing the facts upon which such pricing claims and representations were based, in violation of Rule 44(e) of the said Rules and Regulations.

PAR. 13. 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. 14. Respondents in introducing, selling, advertising, and offering for sale, in commerce, and in processing for commerce, fur products; and in selling, advertising, offering for sale and processing fur products which have been shipped and received in commerce, have misbranded such fur products by substituting thereon, labels which did not conform to the requirements of Section 4 of the Fur Products Labeling Act, for the labels affixed to said fur products by the manufacturer or distributor pursuant to Section 4 of said Act, in violation of Section 3(e) of said Act.

PAR. 15. 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 Crown Furs, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at 130 West 30th Street, New York, New York.

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

A. Misbranding fur products by:

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

2. Setting forth information required under Section 4(2) of the Fur Products Labeling Act and the Rules and

Regulations promulgated thereunder in abbreviated form on labels affixed to fur products.

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

4. Affixing to fur products labels that do not comply with the minimum size requirements of one and three-quarters inches by two and three-quarters inches.

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

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

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

8. 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.

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

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

B. Falsely or deceptively invoicing fur products by:

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

2. Falsely or deceptively invoicing any fur product with respect to the name or designation of the animal or animals that produced the fur contained in such fur product.

3. Misrepresenting in any manner, directly or by implication, the country of origin of the fur contained in the fur products.

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

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

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

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

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

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

2. 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.

3. 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".

4. 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 prod-

ucts which are not pointed, bleached, dyed, tip-dyed or otherwise artificially colored.

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

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

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

D. 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 respondents Crown Furs, Inc., a corporation, and its officers, and David M. Weiss, 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, sale, advertising or offering for sale, in commerce, or the processing for commerce, of fur products; or in connection with the selling, advertising, offering for sale, or processing of fur products which have been shipped and received in commerce, do forthwith cease and desist from:

A. Misbranding fur products by substituting for the labels affixed to such fur products pursuant to Section 4 of the Fur Products Labeling Act labels which do not conform to the requirements of the aforesaid Act and the Rules and Regulations promulgated thereunder.

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

Complaint

IN THE MATTER OF

JACK SOMMERS

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

Docket C-698. Complaint, Jan. 28, 1964—Decision, Jan. 28, 1964

Consent order requiring a retailer of fur products, former president of a dissolved corporation, in New York City, to cease violating the Fur Products Labeling Act by failing in invoicing and advertising to show the true animal name of fur and to use the term "Natural" for furs that were not bleached or dyed; failing to show, on invoices, when furs were artificially colored and the country of origin of imported furs, and using the term "Broadtail" improperly; invoicing furs falsely with regard to the name of the producing animal and naming the United States as the country of origin of imported furs; in newspaper advertising, falsely representing fur products on sale as part of the regular stock of Jay-Thorpe and as "OVER $500,000 WORTH"; and failing to keep adequate records as a basis for pricing claims.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act and by virtue of the authority vested in it by said Acts, the Federal Trade Commission having reason to believe that Jack Sommers, individually and as a former officer of Jay-Thorpe Inc., a dissolved corporation hereinafter referred to as respondent has violated the provisions of said Acts and the Rules and Regulations promulgated under the Fur Products Labeling Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Jack Sommers was president of Jay-Thorpe Inc., a dissolved corporation and participated in the formulation, direction and control of the acts, practices and policies of the said corporation including those hereinafter set forth.

Jay-Thorpe Inc., a dissolved corporation was a retailer of fur products with its office and principal place of business located at 24 West 57th Street, New York, New York. The address of respondent Jack Sommers was the same as that of Jay-Thorpe Inc., a dissolved corporation.

PAR. 2. Subsequent to the effective date of the Fur Products Labeling Act on August 9, 1952, respondent has been engaged in the introduction into commerce, and in the sale, advertising, and offering for sale in commerce, of fur products; and has sold, advertised,

offered for sale, transported and distributed fur products which have been made in whole or in part of 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 Sections 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. 4. 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. 5. Certain of said fur products were falsely and deceptively invoiced with respect to the name of the country of origin of imported furs used in such fur products, 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 invoiced to show the name of the country of origin of furs contained in such fur products as the United States when in truth and in fact the furs used in such fur products were imported.

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

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

(d) Required item numbers were not set forth on invoices, in violation of Rule 40 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.

Among and included in the aforesaid advertisements but not limited thereto, were advertisements of respondent which appeared in issues of the New York Times, a newspaper published in the city of New York, State of New York.

Among such false and deceptive advertisements, but not limited thereto, were advertisements which failed to show the true animal name of the fur used in the fur product.

PAR. 8. By means of the aforesaid advertisements and others of similar import and meaning not specifically referred to herein, respondent 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 inasmuch as 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. 9. By means of the aforesaid advertisements and others of similar import and meaning not specifically referred to herein, respondent falsely and deceptively advertised fur products in that said advertisements through such statements as "JAY-THORPE MUST SELL OVER $500,000 WORTH OF TRADITIONAL JAY-THORPE QUALITY FURS" represented that the fur products listed were a part of the regular stock of furs owned by Jay-Thorpe and were being offered for sale as a part of the Jay-Thorpe collection when in truth and in fact a substantial number of the fur products thus listed, advertised and offered for sale were not part

of the regular stock of furs owned by Jay-Thorpe and were not a part of the Jay-Thorpe Collection, in violation of Section 5(a)(5) of the Fur Products Labeling Act.

PAR. 10. By means of the aforesaid advertisements and others of similar import and meaning not specifically referred to herein, respondent falsely and deceptively advertised fur products in that said advertisements represented through such statements as "JAY-THORPE MUST SELL OVER $500,000 WORTH OF TRADITIONAL JAY-THORPE QUALITY FURS" that the aggregate quantity of fur products in stock offered for sale would retail at $500,000 when in truth and in fact the fur products offered for sale would retail for substantially less than that amount, in violation of Section 5(a)(5) of the Fur Products Labeling Act.

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

DECISION AND ORDER

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

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondent of all the jurisdictional facts set forth in the complaint 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 Jack Sommers was president of Jay-Thorpe Inc., a dissolved corporation whose office and principal place of business was located at 24 West 57th Street, New York, New York. The address of respondent Jack Sommers was the same as that of said Jay-Thorpe Inc.

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 Jack Sommers individually and as a former officer of Jay-Thorpe Inc., a dissolved corporation 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:

A. 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. Falsely or deceptively invoicing any fur product with respect to the name or designation of the animal or animals that produced the fur contained in such fur product.

3. Misrepresenting in any manner, directly or by implication, the country of origin of the fur contained in fur products.

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

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

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

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

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

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

2. Fails to set forth the term "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.

3. Misrepresents in any manner that any fur product is a part of the stock or collection of any person or firm.

4. Misrepresents in any manner, the quantity of fur products or the retail price of any fur product or aggregate price of fur products offered for sale.

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 is maintained by respondent full and adequate records disclosing the facts upon which such claims and representations are based.

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.

Complaint

IN THE MATTER OF

ALLIED STORES CORPORATION ET AL.

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

Docket C-699. Complaint, Jan. 28, 1964—Decision, Jan. 28, 1964

Consent order requiring three New York and two Tennessee concerns to cease representing falsely in newspaper advertisements that certain shoes they sold were manufactured for the United States Navy and in accordance with Navy specifications, were inspected and approved by Navy inspectors and were regulation Navy "officers' shoes"; and requiring the manufacturers of said shoes to cease making the aforesaid misrepresentations by stamping on the shoes purported Navy specification and inspection numbers, the name of the purported Navy inspector and such statements as "U.S. Navy Last"; and to cease making similar misrepresentations in advertising mats and proofs furnished to retailers.

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 Allied Stores Corporation, Allied Stores of New York, Inc., Stern Brothers, Inc., Genesco, Inc., and W. L. Douglas Shoe Company, corporations, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Allied Stores Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its principal office and place of business located at 401 Fifth Avenue, New York, New York.

Respondent Stern Brothers, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York. It is a department store in the Allied Stores Corporation chain and is located at 41 West 42nd Street, New York, New York, with branch stores in Paramus, New Jersey and Paterson, New Jersey. It does business under the name of Stern Brothers and Stern's.

Prior to January 1, 1963, and during the period covered by the acts and practices hereinafter referred to, respondent Stern Brothers, Inc., was wholly owned and operated by respondent Allied Stores Corporation. Since January 1, 1963 respondent Stern Brothers, Inc., has been owned and operated by Allied Stores of New York, Inc., a

New York corporation which is a wholly owned subsidiary of respondent Allied Stores Corporation, and whose address is 162–10 Jamaica Avenue, Jamaica, Long Island, New York.

Respondent Genesco, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Tennessee, with its principal office and place of business located at 111 Seventh Avenue, North, Nashville 3, Tennessee.

Respondent W. L. Douglas Shoe Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Massachusetts. It is a wholly owned subsidiary corporation of Genesco, Inc., and an operating division thereof. Its principal office and place of business is the same as that of Genesco, Inc.

PAR. 2. Respondent Allied Stores Corporation, now through the operating corporation, Allied Stores of New York, Inc., and formerly through Stern Brothers, Inc., and its other retail stores, is now, and for some time last past has been, engaged in the advertising, offering for sale, sale and distribution to the public of various articles of merchandise, including men's shoes which closely resemble in appearance shoes issued to members of the United States Navy.

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

Respondent Allied Stores Corporation and Allied Stores of New York, Inc., from their headquarters in New York, ship, and cause to be shipped, merchandise to stores located in States other than New York for sale to the purchasing public. They further engage in commercial intercourse, in commerce, consisting of the transmission and receipt of letters, checks, reports, contracts and other documents of a commercial nature between headquarters and stores in the various States.

PAR. 4. Respondent Genesco, Inc., through its said subsidiary, W. L. Douglas Shoe Company, is now, and for some time last past has been, engaged in the manufacturing, advertising, offering for sale, sale and distribution of shoes, including shoes of the type described in Paragraph 2, to retailers for resale to the public.

PAR 5. In the course and conduct of its business, respondent Genesco, Inc., through respondent W. L. Douglas Shoe Company, now causes and for some time last past has caused said shoes, when sold, to be shipped from its place of business in the State of Tennessee 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. 6. In the course and conduct of their business, and for the purpose of inducing the purchase of their shoes, respondents Allied Stores Corporation and Stern Brothers, Inc., have made numerous statements in advertisements placed in newspapers in respect to the kind, type, manufacture, construction and quality of said shoes.

Typical, but not all inclusive of such statements, are the following:

[Illustration of shoe]

By W. L. DOUGLAS

OFFICERS' SHOES BUILT ON AUTHENTIC U.S. NAVY LASTS

U.S. NAVY INSPECTION AND SPECIFICATION NUMBER STAMPED ON OUTSOLE

AUTHENTIC BLACK LEATHER U.S. NAVY SHOE GOVERNMENT SPECIFICATION LASTS

PAR. 7. By and through the use of said illustration and the above-quoted statements said respondents Allied Stores Corporation and Stern Brothers, Inc., represent, directly or indirectly:

1. That said shoes were manufactured for the United States Navy and in accordance with Navy specifications.

2. That said shoes were inspected by United States Navy inspectors and approved as meeting United States Navy specifications.

3. That said shoes were official or regulation United States Navy "officers' shoes."

PAR. 8. In truth and in fact:

1. Said shoes were neither manufactured for the United States Navy nor were they made in accordance with Navy specifications.

2. Said shoes were neither inspected by United States Navy inspectors nor approved as meeting United States Navy specifications.

3. Said shoes were not official or regulation United States Navy "officers' shoes."

Therefore the statements and representations as set forth in Paragraphs 6 and 7 hereof were and are false, misleading and deceptive.

PAR. 9. Through their cooperative advertising program respondents Genesco, Inc., and W. L. Douglas Shoe Company shared the

cost of publication of the advertisements referred to in Paragraph 6 hereof with respondents Allied Stores Corporation and Stern Brothers, Inc. Respondents Genesco, Inc., and W. L. Douglas Shoe Company paid their share of the publication charge upon receipt from time to time of tear sheets of the advertisements as proof of their publication. Thus, respondents Genesco, Inc., and W. L. Douglas Shoe Company knew that said false and deceptive statements and representations were being made in said advertisements. By the continued payment of their share of the cost of publication, respondents Genesco, Inc., and W. L. Douglas Shoe Company thereby approved and sponsored publication of said advertisements for the purpose of furthering the sale of their said shoes to the public, so as thereby to become equally responsible for such misleading advertisements along with respondents Allied Stores Corporation and Stern Brothers, Inc.

Furthermore, and in the manner hereinafter described, respondents Genesco, Inc., and W. L. Douglas Shoe Company furnish the means and instrumentalities to Allied Stores Corporation and Stern Brothers, Inc., which provide the basis for certain of the aforesaid false, misleading statements and representations.

PAR. 10. In the course and conduct of their business as aforesaid respondents Genesco, Inc., and W. L. Douglas Shoe Company imprint or stamp on said shoes purported specification and inspection numbers of the United States Navy, the name of the purported Navy inspector, and various other statements such as "U.S. Navy Last", implying that said shoes have been made for the Navy and in accordance with Navy specifications. In the advertising mats and proofs furnished to retailers these said respondents make numerous statements and representations respecting the kind, type, manufacture, construction and quality of their said shoes.

Typical, but not all inclusive of such statements, are the following:

[Illustration of shoe]

NAVY SHOES
built over U. S. Navy lasts
This authentic Navy Oxford * * *
* * * Takes a good shine, gives extra comfort and support and wears well. You former Navy men remember how your shoes met those requirements. This shoe, built on official Navy lasts, does the same.

PAR. 11. Through the use of the aforesaid statements in advertising and the markings on said product respondents Genesco, Inc., and W. L. Douglas Shoe Company represent, directly or indirectly:

1. That said shoes are official United States Navy shoes and are manufactured in accordance with Navy specifications.

2. That said shoes are inspected by United States Navy inspectors and approved as meeting United States Navy specifications.

PAR. 12. In truth and in fact:

1. Said shoes are not official United States Navy shoes and are not manufactured in accordance with Navy specifications.

2. Said shoes are not inspected by United States Navy inspectors and are not approved as meeting United States Navy specifications.

Therefore the statements and representations as set forth in Paragraphs 10 and 11 hereof were and are false, misleading and deceptive.

PAR. 13. Respondents Genesco, Inc., and W. L. Douglas Shoe Company, by furnishing dealers with shoes upon which are stamped purported United States Navy specification and inspection numbers and various other legends implying that said shoes had been manufactured for the Navy, and by supplying them with advertising mats and proofs containing the illustration and statements referred to in Paragraph 10 hereof, have placed in the hands of retailers the means and instrumentalities through and by which the purchasing public may be misled as to the kind, type, manufacture, quality and construction of said shoes in the respects set forth in Paragraphs 11 and 12 hereof.

PAR. 14. In the the conduct of their business, at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of men's shoes of the same general kind and nature as those sold by respondents.

PAR. 15. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of respondents' product by reason of said erroneous and mistaken belief.

PAR. 16. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

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

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

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

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

1. Respondent Allied Stores Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 401 Fifth Avenue, in the city of New York, State of New York.

Respondent Allied Stores of New York, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York. Its office and place of business is located at 162–10 Jamaica Avenue, in the city of Jamaica, Long Island, State of New York.

Respondent Stern Brothers, 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 41 West 42nd Street, in the city of New York, State of New York.

Respondent Genesco, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Tennessee with its office and principal place of business located at 111 Seventh Avenue, in the city of Nashville, State of Tennessee.

Respondent W. L. Douglas Shoe Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Massachusetts. Its office and place of business is the same as that of Genesco, Inc.

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 Allied Stores Corporation, Allied Stores of New York, Inc., Stern Brothers, Inc., Genesco, Inc., and W. L. Douglas Shoe Company, corporations, and their officers, representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of footwear in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or indirectly, that said products are manufactured for the United States Navy, or for any other branch of the Armed Forces of the United States, or in accordance with the specifications of the said Navy or any other branch of the said armed forces unless said products have been manufactured for and in accordance with specifications of such branch of service.

2. Representing, directly or indirectly, that said products have been manufactured for or are in any other manner identified or connected with a designated organization or person which is not primarily engaged in commercial merchandising unless such products have been so manufactured and are in fact connected with such organization or person in the manner represented; or misrepresenting in any manner the specifications employed in the manufacture of such products so designated.

3. Representing, directly or indirectly, that such products have been inspected by United States Navy inspectors or that they have been approved as meeting United States Navy specifications when said products have not been so inspected or approved, or misrepresenting, in any manner, the kind or extent of the inspections or the approval accorded said products.

It is further ordered, That respondents Genesco, Inc., and W. L. Douglas Shoe Company, corporations, and their officers, representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of footwear in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from furnishing or otherwise placing in the hands of retailers of said products, or others, any means or instrumentalities by or through which they may mislead and deceive the public in the manner or as to the things hereinabove prohibited.

It is further ordered, That respondents Allied Stores Corporation, Allied Stores of New York, Inc., and Stern Brothers, Inc., corpora-

tions, and their officers, representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of footwear in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or indirectly, that said products are official or regulation United States Navy officers' shoes when said products have not been manufactured pursuant to and in accordance with terms of a contract with the United States Navy; or misrepresenting, in any manner the type, design or style of footwear which resembles in appearance or is identified or described as footwear manufactured for the Armed Forces of the United States.

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

S. KLEIN DEPARTMENT STORES, 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-700. Complaint, Jan. 28, 1964—Decision, Jan. 28, 1964

Consent order requiring four associated retailers of fur products to cease violating the Fur Products Labeling Act by failing in labeling and invoicing to show the true name of animals producing certain furs, to disclose when furs were dyed or bleached, to show the country of origin of imported furs, and to use the term "Persian Lamb" as required; falsely labeling the country of origin of furs as the United States and domestic furs as imported; substituting nonconforming labels for those originally attached to fur products; and failing in other respects to comply with requirements of the Act.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act and by virtue of the authority vested in it by said Acts, the Federal Trade Commission having reason to believe that S. Klein Department Stores, Inc., a corporation, S. Klein on the Square, Inc., a corporation, S. Klein Fur Corpo-

ration, a corporation, and Jay-Robert Fur Corporation, a 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. Respondents S. Klein Department Stores, Inc., S. Klein on the Square, Inc., S. Klein Fur Corporation, and Jay-Robert Fur Corporation are corporations organized, existing and doing business under and by virtue of the laws of the State of New York. Respondents are engaged in purchasing, retailing and distributing fur products with their office and principal place of business located at 14th Street and Union Square, 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 misbranded in that they were falsely and deceptively labeled or otherwise falsely or deceptively identified with respect to the name of the country of origin of furs contained in such fur products, in violation of Section 4(1) of the Fur Products Labeling Act.

Among such misbranded fur products, but not limited thereto, were fur products labeled to show the country of origin of furs used in such fur products as the United States when the country of origin of such furs was not the United States.

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

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

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

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

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

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

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

2. The term Persian Lamb was not set forth on labels in the manner required by law, in violation of Rule 8 of said Rules and Regulations.

3. Labels contained representations that the furs incorporated in fur products were imported when, in fact, such furs were domestic, in violation of Rule 18 of said Rules and Regulations.

4. 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.

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

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

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

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

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

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

PAR. 7. Certain of said fur products were falsely and deceptively invoiced 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 designation.

PAR. 8. Certain of said fur products were falsely and deceptively invoiced in that said fur products were invoiced to show that the fur contained therein was natural, when in fact such fur was pointed, bleached, dyed, tip-dyed or otherwise artificially colored, in violation of Section 5(b)(2) of the Fur Products Labeling Act.

PAR. 9. Certain of said fur products were falsely and deceptively invoiced in violation of the Fur Products Labeling Act in that they were not invoiced in accordance with the Rules and Regulations promulgated thereunder in the following respects:

1. 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.

2. 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.

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

PAR. 10. Respondents in introducing, selling, advertising and offering for sale in commerce and in processing for commerce, fur products, and in selling, advertising, offering for sale and processing fur products which have been shipped and received in commerce, have misbranded such fur products by substituting thereon, labels which did not conform to the requirements of Section 4 of the Fur Products Labeling Act, for the labels affixed to said fur products by the manufacturer or distributor pursuant to Section 4(2) of said Act, in violation of Section 3(e) of said Act.

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

DECISION AND ORDER

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

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

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

1. Respondents S. Klein Department Stores, Inc., S. Klein on the Square, Inc., S. Klein Fur Corporation, and Jay-Robert Fur Corporation are corporations organized, existing and doing business under and by virtue of the laws of the State of New York, with their office and principal place of business located at 14th Street and Union Square, 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 respondents, and the proceeding is in the public interest.

ORDER

It is ordered, That respondents S. Klein Department Stores, Inc., a corporation, and its officers, S. Klein on the Square, Inc., a corporation, and its officers, S. Klein Fur Corporation, a corporation, and its officers, and Jay-Robert Fur Corporation, a corporation and its officers, 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, of any fur product or in connection with the sale, advertising, offering for sale, transportation or distribution, of any fur product which is made in whole or in part of fur which has

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

A. Misbranding fur products by:

1. Falsely or deceptively labeling or otherwise identifying any such fur product as to the country of origin of furs contained in such fur product.

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

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

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

5. 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.

6. Representing, directly or by implication on labels that the furs contained in fur products are domestic when such furs are imported.

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

B. Falsely or deceptively invoicing fur products by:

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

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

3. Representing directly or by implication on invoices that the fur contained in fur products is natural when such

fur is pointed, bleached, dyed or otherwise artificially colored.

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

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

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

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

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

IN THE MATTER OF

YUDOFSKY FURRIERS 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-702. Complaint, Jan. 28, 1964—Decision, Jan. 28, 1964

Consent order requiring retail furriers in Louisville, Ky., to cease violating the Fur Products Labeling Act by affixing labels to fur products which contained fictitious prices; by invoicing which failed to comply with require-

ments; by advertising in circulars distributed to prospective customers which misrepresented prices of fur products as "Below Our Cost"; 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 Yudofsky Furriers Inc., a corporation, and Morris Yudofsky, Joseph Yudofsky, Ruth Yudofsky and Dorothy Yudofsky, 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 Yudofsky Furriers Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Kentucky with its office and principal place of business located at 709 South Fourth Street, Louisville, Kentucky.

Individual respondents Morris Yudofsky, Joseph Yudofsky, Ruth Yudofsky and Dorothy Yudofsky are officers of the said corporation and control, direct and formulate the acts, practices and policies of the said corporation. Their office and principal place of business is the same as that of the said corporation.

Respondents retail fur products.

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

PAR. 3. Certain of said fur products were misbranded in that they were falsely and deceptively labeled or otherwise falsely and deceptively identified in that labels containing fictitious prices were affixed to such fur products in violation of Section 4(1) of the Fur Products Labeling Act.

Among such misbranded fur products, but not limited thereto, were fur products with labels which contained prices which were in

excess of the prices at which the said fur products were actually sold in the regular course of business.

PAR 4. 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.

PAR. 5. 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. 6. Certain of said fur products were falsely and deceptively advertised in that said fur products were not advertised as required under the provisions of Section 5(a) of the Fur Products Labeling Act and in the manner and form prescribed by the Rules and Regulations promulgated thereunder.

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

Among and included in the advertisements as aforesaid, but not limited thereto, were advertising circulars of respondents which were distributed to prospective customers.

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 said advertisements misrepresented prices as being "Below Our Cost" and thereby also misrepresented the savings available to purchasers of said products, in violation of Section 5(a)(5) of the Fur Products Labeling Act and Rule 44(e) of the Rules and Regulations promulgated under the aforesaid Act.

PAR. 7. 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. 8. 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. 9. 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 Yudofsky Furriers Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Kentucky, with its office and principal place of business located at 709 South Fourth Street, Louisville, Kentucky.

Respondents Morris Yudofsky, Joseph Yudofsky, Ruth Yudofsky and Dorothy Yudofsky 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, Yudofsky Furriers Inc., a corporation, and its officers, and Morris Yudofsky, Joseph Yudofsky, Ruth Yudofsky and Dorothy Yudofsky, 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 "commerce", "fur", and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

A. Misbranding fur products by 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 at such price in the recent past.

B. Falsely or deceptively invoicing fur products by 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.

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

D. 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. Falsely or deceptively represents directly or by implication that the prices of fur products are "Below Our Cost".

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

3. Represents, directly or by implication, that the 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.

E. 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

TIMELY CLOTHES, INC., ET AL.

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

Docket C-701. Complaint, Jan. 31, 1964—Decision, Jan. 31, 1964

Consent order requiring Rochester, N.Y., manufacturers to cease violating the Wool Products Labeling Act and the Federal Trade Commission Act by falsely representing the fabric in men's suits as imported from England by such statements on labels as "Imported Fabric Pound Sterling" together with a depiction of the symbol for the British pound sterling; and by making similar representations in magazine and other advertising.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939 and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Timely Clothes Inc., a corporation and John P. Keane, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Wool Products Labeling Act of 1939 and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

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

laws of the State of New York, with its principal office and place of business located at 1415 North Clinton Avenue, in the city of Rochester, State of New York.

Respondent John P. Keane is an individual and an officer of respondent corporation. He formulates, directs and controls the acts and practices of the respondent corporation hereinafter set forth. His address is the same as that of the respondent corporation.

PAR. 2. Subsequent to the effective date of the Wool Products Labeling Act of 1939 and more especially since 1961, respondents have introduced into commerce, manufactured for introduction into commerce, sold, transported, distributed, delivered for shipment, shipped and offered for sale, in commerce, wool products, as the terms "commerce" and "wool product" are defined in said Act.

PAR. 3. Certain of said wool products were misbranded by the respondents within the intent and meaning of Section 4(a)(1) of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, in that they were tagged or labeled with tags which represented, directly or by implication, that the fabrics were imported from Great Britain whereas in truth and in fact said fabrics were not of British origin.

Among such misbranded wool products, but not limited thereto, were men's suits with labels on which the words "Imported Fabric Pound Sterling" appeared in conjunction with the name of the corporate respondent Timely Clothes together with the depiction of a symbol (£) commonly recognized as the symbol of the British pound sterling.

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

PAR. 5. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of men's suits to retailers who in turn sell to the general public.

PAR. 6. 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 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. 7. In the course and conduct of their business respondents have engaged in disseminating and causing to be disseminated in magazines and newspapers of interstate circulation, advertising designed and intended to induce the sale of certain of their men's suits.

PAR. 8. In the course and conduct of their business and for the purpose of inducing the sale of men's suits offered for sale and sold by them, respondents have made and are now making statements and representations directly or by implication with respect to the origin of the fabric in said men's suits. Said statements and representations have been made in magazine and newspaper advertisements of interstate circulation and other kinds of advertising promotional material distributed to customers. Among and typical of the statements and representations contained in the aforesaid newspaper and magazine advertisements, but not all inclusive thereof, are the following:

* * * Wear a Pound Sterling suit by Timely Clothes from an exclusive group of wool fabrics. * * *

Pound Sterling Timely Clothes the pure wool suit with permanently creased trousers.

* * * Timely Clothes' Pound Sterling pure wool suit that's blessed with The Permanent Trouser Crease. * * *

WOOL ACHIEVES NEW GREATNESS IN SUITS BY "TIMELY CLOTHES" OF * * *.

IMPORTED FABRICS * * *.

* * * * * * *

Among the typical of the statements and representations made in the aforesaid advertising promotional material are the following:

* * * Pound Sterling By TIMELY CLOTHES.

* * * And no fiber matches the comfort of today's new wool-light, superb in absorbency, texture color * * *.

* * * Come In And See This Luxuriant Pound Sterling * * *.

PAR. 9. By and through the use of the aforementioned statements and representations of respondents and by other written statements of similar import and meaning not specifically set out herein, respondents represented, directly or by implication, that the aforesaid suits were made of British woolen fabric, whereas in truth and in fact the fabric used in the aforesaid suits is not of British origin.

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

PAR. 10. In the course and conduct of their business respondents have advertised woolen products, namely men's suits by means of labels or tags attached to the outer side of the sleeve of said suits. On said labels the words "Imported Fabric Pound Sterling" appeared in conjunction with the name of the corporate respondent

Timely Clothes together with the depiction of a symbol commonly recognized as the symbol of the British pound sterling.

PAR. 11. By and through the use of the aforementioned statements, representations and symbols on the aforesaid labels respondents have represented directly or by implication, that said suits were made of British woolen fabric, whereas in truth and in fact the fabric used in said suits is not of British origin.

Therefore, the representations and depictions on labels are false, misleading and deceptive.

PAR. 12. By and through the use of the aforesaid misrepresentations in advertising promotional materials and on labels respondents placed in the hands of others the means and instrumentalities by and through which they may mislead and deceive the public as to the origin of said fabrics.

PAR. 13. There is a preference by a substantial segment of the purchasing public for British woolen fabrics over woolen fabrics imported from other foreign countries.

PAR. 14. 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' products by reason of said erroneous and mistaken belief.

PAR. 15. 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 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 Textiles and Furs 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 Wool Products Labeling Act of 1939; 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 afore-

said 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 the Wool Products Labeling Act of 1939, 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 Timely Clothes, 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 1415 North Clinton Avenue, in the city of Rochester, State of New York.

Respondent John P. Keane 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 Timely Clothes, Inc., a corporation, and its officers, and John P. Keane, 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, sale, transportation, distribution, delivery for shipment, shipment or offering for sale in commerce of wool products, as the terms "commerce" and "wool product" are defined in the Wool Products Labeling Act of 1939 do forthwith cease and desist from:

Misbranding such wool products by:

A. Falsely or deceptively stamping, tagging, labeling or otherwise identifying any such woolen product by representing contrary to fact that such products or the fabrics contained therein are of British origin.

B. Representing on labels affixed to wool products through the use of the term "Pound Sterling" or the symbol of the British Pound Sterling or any words, terms, depictions, or symbols of similar import that the fabric contained in such products are of British origin when such fabric was not woven and manufactured in Great Britain.

It is further ordered, That respondents Timely Clothes, Inc., a corporation, and its officers, and John P. Keane, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device in connection with the offering for sale, sale, or distribution of men's suits or any other product, in commerce, as "commerce" is defined in the Federal Trade Commission Act do forthwith cease and desist from:

A. Representing contrary to fact that any of such products or the fabrics contained therein are of British origin.

B. Representing through the use of the term "Pound Sterling" or the symbol of the British Pound Sterling or through the use of any words, terms, depictions or symbols of similar import that the fabrics contained in its men's suits or other products are of British origin when such fabrics were not woven and manufactured in Great Britain.

C. Furnishing means and instrumentalities to others by and through which they may mislead the public in the manner or through the practices prohibited by this order.

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

IN THE MATTER OF

FEUER FUR COMPANY ET AL.

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

Docket C-703. Complaint, Feb. 4, 1964—Decision, Feb. 4, 1964

Consent order requiring manufacturing and retailing furriers in Chicago to cease violating the Fur Products Labeling Act by falsely representing prices of fur products as reduced in labeling and advertising; failing to give the true name of the animal producing certain furs and the country of origin of imported furs and to use the term "Natural" for furs that were not artificially colored on invoices and in advertising; invoicing furs deceptively as to the name of the producing animal and invoicing imported furs as products of the United States; failing to maintain adequate records as a basis for pricing claims; and failing in other respects 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 Feuer Fur Company, a corporation and Sue Feuer, Harry Feuer and Igor Soble, individually and as officers of the said corporation, hereinafter referred to as respondents have violated the provisions of said Acts and the Rules and Regulations promulgated under the Fur Products Labeling Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Feuer Fur Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois.

Respondents Sue Feuer, Harry Feuer and Igor Soble 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 manufacturers and retailers of fur products with their office and principal place of business located at Seven West Madison Street, Chicago, Illinois.

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 violation of Section 4(1) of the Fur Products Labeling Act in that they were falsely and deceptively labeled or otherwise falsely and deceptively identified in that labels affixed to fur products, contained representations, either directly or by implication that the prices of such fur products were reduced from the prices at which 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 purchasers of respondents' products when in fact such fur products were not reduced in price from the prices at which respondents regularly and usually sold such fur products and savings were not afforded purchasers of respondents' products as represented.

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

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 "Mink" when in fact the fur contained in such products was "Japanese Mink".

Also 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 designation.

PAR. 6. Certain of said fur products were falsely and deceptively invoiced in that respondents set forth on invoices pertaining to fur products the name of an animal other than the name of the animal that produced the fur 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 invoiced as "rabbit chinchilla".

PAR. 7. Certain of said fur products were falsely and deceptively invoiced with respect to the name of the country of origin of imported furs used in such fur products, 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 invoiced to show the name of the country of origin of furs contained in such products as the United States when the furs contained in such fur products were imported.

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

PAR. 9. 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 Chicago Sun Times, a newspaper published in the city of Chicago, State of Illinois.

Among such false and deceptive advertisements but not limited thereto were advertisements which failed to show the true animal name of the fur used in the fur product.

PAR. 10. 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. 11. By means of the aforesaid advertisements and others of similar import and meaning not specifically referred to herein respondents falsely and deceptively advertised fur products in 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 inasmuch as 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. 12. 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 Section 5(a)(5) of the Fur Products Labeling Act in that the said advertisements represented through statements such as "If you ever wanted to give her Mink save now—as never before" either directly or by implication, that the prices of such fur products were reduced from the prices at which the respondents regularly and usually sold such fur products in the recent regular course of business and the amount of such purported reduction constituted savings to the purchasers of respondents' products, when in fact such fur products were not reduced in price from the price at which the respondents regularly and usually sold such fur products and savings were not afforded purchasers of respondents' products as represented.

PAR. 13. Certain of said fur products were falsely and deceptively advertised in violation of Section 5(a)(5) of the Fur Products Labeling Act in that labels affixed to fur products, contained representations, either directly or by implication that the prices of such fur products were reduced from the prices at which 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 purchasers of respondents' products when in fact such fur products were not reduced in price from the prices at which respondents regularly and usually sold such fur products and savings were not afforded purchasers of respondents' products as represented.

PAR. 14. 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. 15. 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 Feuer Fur Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at Seven West Madison Street, Chicago, Illinois.

Respondents Sue Feuer, Harry Feuer and Igor Soble 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 Feuer Fur Company, a corporation and its officers and Sue Feuer, Harry Feuer and Igor Soble, individually and as officers of said corporation and respondents' representatives, agents and employees directly or through any corporate or other device, in connection with the introduction, or manufacture for introduction into commerce or the sale, advertising or offering for sale in commerce, or the transportation and 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 the terms "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. Misrepresenting in any manner on labels or other means of identification the savings available to purchasers of respondents' products.

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

4. Misrepresenting in any manner, directly or by implication, the country of origin of the fur contained in fur products.

5. 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 the Rules and Regulations promulgated thereunder to describe fur products which were not pointed, bleached, dyed, tip-dyed or otherwise artificially colored.

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

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

2. 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.

3. Fails to set forth the term "Natural" as part of the information required to be disclosed in advertisements under

the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder to describe fur products which are not pointed, bleached, dyed, tip-dyed or otherwise artificially colored.

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

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

D. 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

WATCHBANDS, INC., ET AL.

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

*Docket 8596. Complaint, Sept. 20, 1963—Decision, Feb. 5, 1964**

Order requiring North Attleboro, Mass., distributors of metal expansion watchbands to manufacturers and distributors of watches and to retailers for resale, to cease selling watchbands manufactured in whole or in part in Hong Kong or Japan with no disclosure of their foreign origin or with such statements imprinted on the packages as "Made in USA"; and to cease preticketing their watchbands with fictitious prices.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Watchbands, Inc., a corporation, and Charles H. Dolansky and John I. Mushey, 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

* Order of May 21, 1964, denied respondents' motion to vacate default and reinstate case for trial on the merits.