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## Complaint

Federal Trade Commission has ordered ABC Consolidated Corporation, its subsidiaries and affiliates, including respondent Berlo Vending Company, and their respective officers, directors, representatives, agents and employees, directly or through any corporate or other device, forthwith to cease and desist from inducing and receiving or receiving any price, allowance, term, exclusive package, or other consideration, or thing of value, when, in either inducing and receiving or receiving, respondents know or should know that such price, allowance, term, exclusive package, or other consideration or thing of value is not affirmatively offered and made available on proportionally equal terms to all of respondents' competitors operating concessions in motion picture theaters.

## XI

Respondents shall periodically, within sixty (60) days from the date of service of this Order and every ninety (90) days thereafter until divestiture is fully effected, submit to the Commission a detailed written report of their actions, plans, and progress, in complying with the provisions of this Order and fulfilling its objectives.

## IN THE MATTER OF

## DOUBLE EAGLE LUBRICANTS, INC., ET AL.

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

*Docket 8589. Complaint, July 29, 1963—Decision, Oct. 22, 1964*

Order requiring Oklahoma City sellers of previously used lubricating motor oil which they purchased from filling stations and other sources and then "re-refined" in their refinery plant, to cease selling such reclaimed oil without disclosing the prior use in advertising and promotional material and by a conspicuous statement to that effect on the front panel of containers; and to cease representing that reclaimed oil was manufactured from oil that had not been previously used.

## 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 Double Eagle Lubricants, Inc., a corporation, and Frank A. Kerran and Cameron L. Kerran, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect

thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Double Eagle Lubricants, Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Oklahoma. Individual respondents Frank A. Kerran and Cameron L. Kerran are officers of said corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. All respondents have a principal office and place of business at 1900 N.E. 1st Street, Oklahoma City, Oklahoma.

PAR. 2. Respondents are now, and for more than three years last past have been, engaged in the sale and distribution of reclaimed, or reprocessed, used lubricating oil to dealers for resale to the purchasing public. Among brand names under which these said products are sold are "Double Eagle," "Gold Bond," "Heat Pruf," "Arrow," "Golden West," "Native State" and "C and G." Respondents cause and have caused said products when sold to be transported from their place of business in the State of Oklahoma 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 product in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 3. In the course and conduct of their business, respondents are now, and have been, in competition with individuals and with firms and other corporations engaged in the sale and distribution of lubricating oil in commerce between and among the various States of the United States.

PAR. 4. Respondents' oil consists in whole or in substantial part of used oil, obtained from drainings of motor crank cases and from other sources, which is thereafter reclaimed or reprocessed. Said oil is sold in containers of the same general size, kind and appearance as those used for new oil and has the appearance of new and unused oil. In some instances the containers bear no markings of any kind indicating that said product is reclaimed or reprocessed used oil. Respondents' disclosure, if and when made, are in such a manner and location on the container in which said lubricating oils are packaged that the disclosure is not clear and conspicuous to the purchaser or potential purchaser.

In the absence of a clear and conspicuous disclosure on the containers that the oil therein is used, reclaimed or reprocessed, the general understanding and belief on the part of dealers and of the purchasing public is that oil sold in containers such as are used by respondents is,

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in fact, new oil and not used, reclaimed or reprocessed oil. This belief is enhanced by the representations printed on the most conspicuous and prominent portion of respondents' oil containers as follows:

- (1) **DOUBLE EAGLE**  
(Drawing of a double headed eagle perched on ribbon on which is stated:  
"Guards Your Motor")  
**MOTOR OIL**  
Double Eagle Lubricants, Inc., Oklahoma City, Okla.
- (2) **GOLDEN WEST MOTOR OIL**  
Quality Clear thru Double Eagle Lubricants, Inc., Oklahoma City, Okla.
- (3) **HEAT PRUF**  
Motor Oil Resists Heat
- (4) **ARROW**  
Motor Oil
- (5) **NATIVE**  
State  
Motor Oil
- (6) **C and G**  
Motor Oil

This belief is further enhanced by respondents' use of the word "RE-REFINED" in large print on the containers in which said lubricating oils are packaged.

Therefore, the statements and representations and acts and practices set forth above, are false, misleading and deceptive.

PAR. 5. Respondents use the word "Guaranteed" on many of the brand name containers in which said lubricating oil is packaged thereby representing that said products are guaranteed in every respect.

PAR. 6. In truth and in fact, the guarantee provided did not disclose the terms, conditions or the extent of the application of the Guarantee. Therefore, said statement and representation was false, misleading and deceptive.

PAR. 7. Respondents' said acts and practices further serve to place in the hands of the uninformed or unscrupulous dealers a means and instrumentality whereby such persons may mislead the purchasing public with respect to the nature of respondents' product.

PAR. 8. The aforesaid acts and practices of the respondents, and the failure to clearly and conspicuously disclose that their oil is composed in whole or in part of used oil which has been reclaimed or reprocessed, has had and now has, the tendency and capacity to mislead and deceive a substantial number of retailers and members of the purchasing public into the erroneous and mistaken belief that said oil is refined by respondents from virgin crude oil, and to induce the

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purchasing public to purchase substantial quantities of respondents' product because of such erroneous and mistaken belief.

PAR. 9. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

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

*Mr. John B. Ogden* of Oklahoma City, Okla, for the respondents.

INITIAL DECISION BY JOHN B. POINDEXTER, HEARING EXAMINER

JANUARY 13, 1964

Double Eagle Lubricants, Inc., a corporation, and Frank A. Kerran and Cameron L. Kerran, individually, and as officers of said corporation, hereinafter called respondents, are charged in a complaint issued by the Federal Trade Commission on July 29, 1963, with deceptive practices in the sale of previously used engine lubricating oil, alleged to be in violation of Section 5 of the Federal Trade Commission Act.

The respondents answered and denied the charging allegations of the complaint. A hearing has been held at which oral testimony and documentary evidence was received in support of and in opposition to the allegations of the complaint. Proposed findings of fact, conclusions of law and order have been filed by respective counsel. These have been considered. All proposed findings of fact and conclusions of law not found or concluded herein are rejected. Upon the basis of the entire record, the undersigned hearing examiner makes the following findings of fact and conclusions of law, and issues the following order:

FINDINGS OF FACT

1. The respondent, Double Eagle Lubricants, Inc., is a corporation, incorporated and doing business under the laws of the State of Oklahoma. The individual respondents, Frank A. Kerran, and Cameron L. Kerran, are President and Secretary-Treasurer, respectively, of Double Eagle Lubricants, Inc. The office and place of business of all respondents is 1900 N.E. First Street, Oklahoma City, Oklahoma. The individual respondents formulate, direct and control the acts and practices of the corporate respondent.

2. Respondents are now and for more than three years last past

have been engaged in the sale of petroleum products, principally previously used lubricating motor oil, which respondents obtain by purchase from filling stations and from various sources in other states, and then "re-refine" in their refinery plant located in Oklahoma City, Oklahoma. Respondents' "re-refining" process is somewhat similar to the refining process which the major integrated oil companies employ in refining virgin crude oil in their refineries. However, in refining virgin crude oil, several products are obtained from the crude in addition to lubricating oil, such as gasoline, diesel and fuel oil, along with many by-products; whereas, respondents, in their "re-refining" of previously used lubricating oil, only obtain engine lubricating oil and a low grade fuel oil. Lubricating oil does not necessarily wear out by its use in the crankcase of an automobile or aircraft engine. After continued use in the crankcase of an automobile, for instance, the oil often accumulates gum, carbon deposits and sludge, which are formed by the polymerization and oxidation of certain elements which are inherently present in crude oil. Also, water, dust and shavings from worn parts of the engine may find their way into the crankcase oil. Respondents' "re-refining" process cleans and chemically treats this used oil and removes the gum, carbon deposits, sludge, dirt or other impurities which may have accumulated in the oil. After the used oil has been through respondents' "re-refining" process, it is clear and clean, and resembles lubricating oil as originally refined from virgin crude oil. Respondents sought to offer testimony in support of their contention that their "re-refined" oil is at least equal to if not superior in quality to competing engine lubricating oil sold by the so-called "major" integrated oil companies which has been refined only the first or original time from virgin crude oil. Since the complaint does not question the quality of respondents' oil, the hearing examiner rejected such evidence. The evidence developed that respondents also sell an "automatic transmission fluid", identified as CX 8. However, since this automatic transmission fluid (CX 8) is not included in the complaint herein, it is not involved in this decision.

3. After respondents re-refine the used lubricating oil, respondents then place it in one-quart and gallon-size metal cans for sale and distribution to filling stations located in various States of the United States. These stations in turn resell the oil at retail to motorists and others who call at these filling stations for servicing of their automobiles. It is only the one-quart cans or containers sold by respondents which are involved in this proceeding, identified and received in evidence as CX 1-6, inclusive. The one-quart cans containing respondents' re-refined lubricating oil are of the same general size and appearance

as those generally used in the trade. The only difference being the labels on the cans. It is the labeling on respondents' one-quart cans (CX 1-6), which are complained about in this proceeding. This labeling will be discussed in detail hereafter in this decision.

4. The evidence shows, and it is found, that respondents' business in interstate commerce is substantial, amounting to approximately \$350,000 annually, or approximately one-half of respondents' gross annual sales. In the course of their business, respondents have been and are now in competition with individuals and other corporations engaged in the distribution and sale of lubricating oil in commerce between and among the States of the United States.

5. The individual respondents, prior to the incorporation of Double Eagle Lubricants, Inc., in 1958 or 1959, were doing business in Oklahoma City under the name of Double Eagle Refining Company, and were the respondents in a complaint, Docket No. 6432, issued by the Federal Trade Commission on October 29, 1955, alleging that respondents therein had violated the Federal Trade Commission Act by distributing and selling in commerce lubricating oil without indicating on the containers that the oil was previously used oil. After a formal hearing before a hearing examiner, the Commission, on February 14, 1958, issued a final order in which the respondents Frank A. Kerran and Cameron L. Kerran, individually and as copartners trading as Double Eagle Refining Company \* \* \* were ordered to forthwith cease and desist from:

(1) Representing, contrary to the fact, that their lubricating oil is refined or processed from other than previously used oil;

(2) Advertising, offering for sale or selling any lubricating oil which is composed in whole or in part of oil which has been reclaimed or in any manner processed from previously used oil, without disclosing such prior use to the purchaser or potential purchaser in advertising and in sales promotion material, and by a clear and conspicuous statement to that effect on the container.

6. The respondents appealed this decision to the United States Court of Appeals for the Tenth Circuit, and that Court affirmed the Commission's order. *Certiorari* from the United States Supreme Court was denied. Accordingly, the Commission's cease and desist order became final and binding on the respondents in that proceeding. Under the provisions of that cease and desist order, it became a deceptive practice within the intent and meaning of Section 5(a) of the Federal Trade Commission Act, as amended, for respondents in that proceeding to market and sell their re-refined lubricating oil in containers indistinguishable from those used generally to market lubricating oil refined from virgin crude, without "a clear and conspicuous statement" on the can that it was previously used oil.

7. Thereafter, in December, 1959, respondents began taking steps to comply with the cease and desist order issued by the Commission in Docket No. 6432 by revising the label on their cans so as to indicate thereon by a "clear and conspicuous statement" that the lubricating oil therein contained was processed from previously used oil. Prior to and at the time of the issuance of the complaint in Docket No. 6432, respondents were selling their re-refined engine lubricating oil under approximately seven different labels or brands—"Double Eagle," "Arrow," "Native State," "Golden West," "Heat Pruf," "C and G," and "Double Eagle Sup-R-Lub" motor oil. The labels on these cans are not the common paper labels such as those found on canned vegetables offered for sale in grocery stores, but are lithographed on the can by the can manufacturer. Therefore, before going to the expense of having new cans manufactured bearing revised labels which had not been approved by the Federal Trade Commission as being in compliance with the order issued in Docket No. 6432, respondents arranged with representatives of the Federal Trade Commission to first submit specimens of proposed changes in the wording on their labels to the Federal Trade Commission for approval before having new cans manufactured.

8. Accordingly, respondents began revising the labels on their cans so as to clearly state thereon that the oil had been previously used. Respondents had drawings made of each revised label which respondents proposed to use on each one-quart can for each brand of its re-refined oil. (Respondents appear to have marketed oil at one time in one-gallon and two-gallon cans, but it is only the labels on one-quart cans which are involved in this proceeding.) As each drawing was completed, respondents forwarded each drawing to American Can Company, a can manufacturer, for preparation of black and white proofs for each proposed label. After receipt of each black and white proof from the can manufacturer, respondents in turn submitted each black and white proof to the Federal Trade Commission<sup>1</sup> for its approval, along with a covering letter. These black and white proofs which had been submitted by respondents to the Commission were received in evidence at the hearing and were inadvertently marked by the reporter as RX 25(17), RX 25(27), RX 25(28), RX 25(30), RX 25(32), RX 25(33), and RX 25(36). (The exhibits should have been marked RX 25Q, RX 25Z<sup>1</sup>, RX 25Z<sup>2</sup>, RX 25Z<sup>4</sup>, RX 25Z<sup>6</sup>, RX 25Z<sup>7</sup>, and RX 25Z<sup>10</sup>, respectively.) The covering letters, together with

<sup>1</sup> Respondents' dealings and communications with the Federal Trade Commission with respect to compliance with the order in Docket No. 6432 were with the then Compliance Division, Office of the General Counsel, Federal Trade Commission, Washington, D.C., which at that time was the proper office for handling compliance matters on behalf of the Federal Trade Commission.

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the replies thereto which respondents received from the Federal Trade Commission, were also received in evidence at the hearing.

9. These revisions in respondents' labels, preparation of drawings and black and white proofs thereof, and their submission to the Commission for approval were completed in August 1960. Letters received by respondents from representatives of the Compliance Division, Office of the General Counsel, Federal Trade Commission, approving each of the revised labels on respondents' cans, CX 1-6, which had been submitted, were received in evidence at the hearing, and marked RX 1, 3, 7, and 9, respectively. RX 9 is the final letter from the General Counsel of the Federal Trade Commission formally approving respondents' revisions in their labels on CX 1-6, and notifying respondents that such revisions constituted compliance with the Commission's cease and desist order in Docket No. 6432. This letter is as follows:

[Federal Trade Commission, Docket No. 8589; Respondent Exhibit No. 9. In the Matter of: Double Eagle Lubricants, Inc. Date: 10-2-63; Witness: Kerran; Reporter: GS.]

## FEDERAL TRADE COMMISSION

WASHINGTON

Office of the General Counsel

SEPTEMBER 23, 1960.

DOUBLE EAGLE REFINING COMPANY,  
Post Office Box 6215,  
Oklahoma City, Oklahoma.

Attention: Mr. Cameron L. Kerran, Mr. Frank A. Kerran.

Re: Double Eagle Refining Company, Docket 6432.

GENTLEMEN: The Commission is in receipt of your communication of September 8, 1960, and earlier correspondence filed by you as a report showing the manner of compliance with the order to cease and desist issued on February 14, 1958, in the above case.

On the basis of the statements made therein and such accompanying data as have been presented, it appears that you are presently in compliance with the order, and your report accordingly has been received and filed.

Very truly yours,

DANIEL J. McCAULEY, Jr.,  
General Counsel.

cc: Josh Lee, Esq.,  
Bohanon, Barefoot & Lee,  
1405 Liberty Bank Building,  
Oklahoma City, Oklahoma.

10. Upon the basis of the approval by representatives of the Federal Trade Commission of respondents' revised labels and this official noti-



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fication that the revised labels constituted compliance with the terms of the cease and desist order in Docket No. 6432, respondents had new one-quart cans manufactured bearing the revised labels. After receipt of the new cans, respondents began marketing their oil in these cans (CX 1-6) in what they were led to believe was compliance with the Commission's order in Docket No. 6432.

11. However, after marketing their oil in the new cans for approximately nine months, respondents received a letter dated June 19, 1961, from Mr. P. B. Morehouse, Assistant General Counsel for Compliance, Federal Trade Commission, advising respondents that the statement on their cans to the effect that respondents' oil had been processed from previously used oil must be located on the "front panel" of the can (CX 12). Respondents replied to this letter by their letter dated June 26, 1961, which was received in evidence at the hearing as CX 13. Subsequently, respondents received a reply to this letter by a letter dated July 6, 1961, which was received in evidence at the hearing as CX 14. Copies of these letters, CX 12, 13, and 14 are as follows:

[Federal Trade Commission, Docket No. 8589; Commission Exhibit No. 12. In the Matter of: Double Eagle Lubricants, Inc., et al. Date: 10-2-63; Witness: Cameron Kerran; Reporter GS.]

JUNE 19, 1961.

Mr. CAMERON L. KERRAN and  
Mr. FRANK A. KERRAN,  
*Double Eagle Lubricants, Inc.,*  
*Post Office Box 6215,*  
*Oklahoma City, Oklahoma.*

Re: Double Eagle Refining Company, Docket 6432.

GENTLEMEN: On September 23, 1960, your compliance report was received and filed.

Paragraph 1 of the order prohibits advertising, offering for sale, or selling any lubricating oil which is composed in whole or in part of oil which has been reclaimed or in any manner processed from previously used oil, without disclosing such prior use to the purchaser or potential purchaser in advertising and in sales promotion material, and by a clear and conspicuous statement to that effect on the container.

The Commission has instructed me to advise you that it construes the phrase "by a clear and conspicuous statement to that effect on the container" as requiring that the disclosure be on the front panel of the container.

It is therefore requested that you submit a supplemental report showing the manner in which you are complying with the order.

Very truly yours,

P. B. MOREHOUSE,  
*Assistant General Counsel for Compliance.*

JDS:ecr

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[Federal Trade Commission, Docket No. 8589; Commission Exhibit No. 13. In the Matter of: Double Eagle Lubricants, Inc., et al. Date: 10-2-63; Witness: Cameron Kerran; Reporter GS.]

JUNE 26, 1961.

FEDERAL TRADE COMMISSION  
Washington, D.C.

Attn: Mr. P. B. Morehouse, Assistant General Counsel for Compliance

DEAR SIR: We have your letter of June 19, 1961 in which you request us to submit a supplemental report showing the manner of our complying with the order.

Please be advised that we submitted black and white proofs of each of the packages we market to the Federal Trade Commission, and received a letter of approval on each and every package we market of re-refined oil.

We went a step further in compliance and submitted a sample of the finished containers to the Commission so that we were sure the finished containers were exactly as were the black and white proofs.

This was done because we did not intend to have our container supplier to make proofs and lithograph plates until we were sure we were in compliance and had the approval of the commission. This transaction entails some great expense, and since our commitments for containers require orders six months to one year in advance. We felt it would be almost impossible for us to operate without first having the approval of the commission.

I hope this answers the question for the supplemental report.

Yours very truly

DOUBLE EAGLE LUBRICANTS, INC.,  
CAMERON L. KERRAN  
F. A. KERRAN

FAK:baw

[Federal Trade Commission, Docket No. 8589; Commission Exhibit No. 14. In the Matter of: Double Eagle Lubricants, Inc., et al. Date 10-2-63; Witness: Cameron Kerran; Reporter GS.]

FEDERAL TRADE COMMISSION  
WASHINGTON 25, D.C.

Bureau of Deceptive Practices

JULY 6, 1961.

Mr. CAMERON L. KERRAN,  
Mr. FRANK A. KERRAN,  
*Double Eagle Lubricants, Inc.,*  
*Post Office Box 6215,*  
*Oklahoma City, Oklahoma.*

Re: Double Eagle Refining Company, Docket 6432.

GENTLEMEN: Although you were advised on September 23, 1960, that your compliance report had been received and filed, the Commission recently has taken the position that a disclosure which is not made on the front panel of a container for reused oil is inadequate. I am not authorized to change the position taken by the Commission.

Please let me know whether you intend to revise any of your containers which do not show an adequate disclosure on the front panel. If you would submit copies

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of your labels and invoices, this office would be glad to advise you as to any changes which would be required, and to discuss with you the manner in which you will dispose of containers which do not have an adequate disclosure. If, however, you do not intend to revise your containers, the matter will be referred to the Commission for appropriate action.

Very truly yours,

BERRY W. STANLEY,  
Chief, Division of Compliance,  
Bureau of Deceptive Practices.

12. Ultimately the present complaint was issued on July 29, 1963, alleging, among other things, that the labels on respondents' cans are false and deceptive because :

(a) In some instances, the cans bear no markings of any kind indicating that said product is reclaimed or reprocessed oil ;

(b) Respondents' disclosure, if and when made, is in such a manner and location on the container in which said lubricating oils are packaged that the disclosure is not clear and conspicuous to the purchaser or potential customer ;

(c) In the absence of a clear and conspicuous disclosure on the container that the oil therein is used, the general understanding and belief on the part of dealers and of the purchasing public is that oil sold in containers such as are used by respondents is, in fact, new oil and not used, reclaimed or reprocessed oil. This belief is enhanced by the representations printed on the most conspicuous and prominent portion of respondents' oil containers as follows :

- (1) DOUBLE EAGLE  
(Drawing of a double headed eagle perched on ribbon on which is stated "Guard Your Motor")  
Motor Oil  
Double Eagle Lubricants, Inc., Oklahoma City, Okla. (CX 1)
- (2) GOLDEN WEST MOTOR OIL  
Quality Clear thru Double Eagle Lubricants, Inc., Oklahoma City, Okla.  
(CX 4)
- (3) HEAT PRUF  
Motor Oil  
Resists Heat (CX 5)
- (4) ARROW  
Motor Oil (CX 2)
- (5) NATIVE STATE  
Motor Oil (CX 3)
- (6) C and G  
Motor Oil (CX 6)

(d) This belief is further enhanced by respondents' use of the word "RE-REFINED" in large print on the containers in which said lubricating oils are packaged.

These allegations will be discussed *seriatim*.

13. With respect to (a) above, that in some instances the cans bear no markings of any kind indicating that the oil is reclaimed or reprocessed oil, there is no evidence in the record to support this allegation. A duplicate of each of respondents' cans which are complained about in the instant complaint were received in evidence at the hearing, CX 1-6, inclusive. Respondents' lubricating oil is sold in these cans, each bearing a different brand name or label, "Double Eagle," "Arrow," "Native State," "Golden West," "Heat Pruf," and "C and G" motor oil, respectively.<sup>2</sup> The oil contained in each of the cans marked CX 1-6, inclusive, is the same oil, only the brand names or labels are different. The markings on each label of these cans (CX 1-6) plainly state that the oil contained therein is "Re-Refined from Previously Used Oil." It is found, therefore, that this allegation of the complaint has not been established.

14. The next allegation under (b) above, is that the disclosure on the cans, if and when made, (that the oil is processed from previously used oil), is not clear and conspicuous to the purchaser or potential customer. As stated in Paragraph 13 above, respondents' cans which are complained about in the complaint as being deceptive in their labels were received in evidence as CX 1-6, inclusive. The corresponding black and white proofs of the labels on each of these cans which respondents had submitted to the Federal Trade Commission and which were approved by its Compliance Division and General Counsel, were received in evidence at the hearing and marked RX 25(17) (Double Eagle), RX 25(36) (Arrow), RX 25(28) (Native State), RX 25(33) (Golden West), RX 25(32) (Heat Pruf), and RX 25(27) (C and G), respectively. Reproductions of these labels are attached hereto as Appendices 1-6, respectively. The labels on each of these cans plainly state that the oil contained therein is "Re-Refined from Previously Used Oil." So, from a reading of these labels in connection with the allegations of the complaint, it would appear that the statements on each can that the oil is "Re-Refined from Previously Used Oil" is "clear" and "conspicuous" and complies in every particular with the

<sup>2</sup> Additional cans were also received in evidence, including CX 7, 8, and 15. CX 7 is a can bearing the label "Double Eagle Sup-R-Lub. Heavy Duty Motor Oil" which, the evidence shows (Tr. 34), is not sold by respondents in interstate commerce or otherwise. CX 7 is one of a number of old cans remaining on hand bearing this label and respondents use the oil contained therein in respondents' own trucks. The can marked CX 8 contains an automatic transmission fluid and is not involved in the complaint herein. CX 15 is a duplicate of CX 1, the only difference being that CX 15 contains respondents' used oil, whereas CX 1 and the other cans in evidence are empty, with open tops, and do not contain oil. Commission counsel purchased CX 15, a can of respondents' "Double Eagle" motor oil at a filling station in Oklahoma City at the Station's regular price of 15 cents. (Tr. 145)

order of the Commission in Docket No. 6432. However, from documentary evidence received at the hearing (CX 12-14, inclusive, and RX 15), it would appear that the Commission may have "changed its position with respect to the type of disclosure which will be required." The letter from Mr. Morehouse, Assistant General Counsel of the Federal Trade Commission, to the respondents (CX 12) states, among other things, that the Commission, construes the phrase "by a clear and conspicuous statement to that effect on the container" as requiring that the disclosure be on the front panel of the container.

15. It would appear that the "front panel" of CX 1, for example, the black-and-white proof thereof, RX 25(17) (Double Eagle) being attached hereto as an Appendix, would be that part of the can where the trade name is shown, *i.e.*, "Double Eagle," below which is a picture of two eagles, under which are the words "Guards Your Motor," and underneath that, "Motor Oil, Double Eagle Lubricants, Inc., Oklahoma City, Okla." A glance at the so-called "front panel" of CX 1 shows that the trade name, *i.e.*, the words "Double Eagle," the picture of two eagles, "Guards Your Motor, Motor Oil, Double Eagle Lubricants' Inc., Oklahoma City, Okla." occupy the entire "front panel" of the can. The so-called disclaimer "Double Eagle Motor Oil is scientifically Re-Refined from previously used oil to meet the varied requirements of all type motors" is located immediately to the side of the trade name. As Mr. Cameron Kerran testified, since the trade name occupies the entire so-called "front panel" of the can from top to bottom, there is no room for additional letters or wording unless the so-called disclaimer is substituted for respondents' trade name. If this should be done, respondents would probably lose the value of their trade name.

16. Also, if that part of the can where the words "Double Eagle," the picture of the two eagles, and the words, "Guards Your Motor, Motor Oil, Double Eagle Lubricants, Inc., Oklahoma City, Okla." appear is called the "front panel," then there are two front panels on each of respondents' cans except CX 4, the can bearing the trade name "Golden West." On each of the other cans, CX 1 (Double Eagle), CX 2 (Arrow), CX 3 (Native State), CX 5 (Heat Pruf), and CX 6 (C and G), the brand name appears twice, but on CX 4 (Golden West), the brand name appears only one time. On CX 1, 2, 3, 5, and 6, the so-called disclaimer "RE-FINED From Previously Used Oil" is immediately to the side of or between the two "front panels." With respect to CX 4 (Golden West), the disclaimer "Golden West Motor Oil Has Been Refined from Previously Used Oil \* \* \* RE-REFINED" is to the side of the "front panel."

17. What does the testimony show with respect to whether respondents' disclosure on the can is *clear* and *conspicuous* to the purchaser or potential customer? (Italic mine.) Commission counsel offered the testimony of three witnesses to support the allegations of the complaint. The first was the individual respondent, Cameron L. Kerran. The others were Messrs. William T. Rycroft and Harold D. Stoll, operators of filling stations in Oklahoma City. Mr. Rycroft operates a filling station in Oklahoma City under the name Star Oil Company, and sells various brands of lubricating oil refined and produced by the major oil companies, in addition to "Double Eagle" motor oil. The major brands of lubricating oil sold by Mr. Rycroft's station sell at prices ranging from 45 cents to 55 cents per quart, whereas, "Double Eagle" sells for 15 cents per quart. On a day immediately prior to the hearing in this proceeding which began on October 2, 1963, counsel supporting the complaint called at the filling station operated by Mr. Rycroft and purchased a can of "Double Eagle" motor oil at the station's regular price of 15 cents. At the hearing, Mr. Rycroft identified a can exhibited to him by counsel supporting the complaint as being similar to a can containing "Double Eagle" motor oil purchased by counsel at his filling station a day or two prior to the hearing. This can was marked CX 15 and received in evidence at the hearing. Mr. Rycroft testified, among other things, as follows: Cans of various brands of lubricating oil are kept on shelves inside his filling station with the trade name facing "out" on the shelf; that, if a person could not see the word "Re-Refined" on the can, most people would know it is re-refined oil because they ask for "Re-Refined" oil, knowing it is much cheaper than unused lubricating oil. As an example, on Page 148 of the transcript of the testimony taken at the hearing, counsel supporting the complaint questioned Mr. Rycroft as follows:

Q. Now, the oil can here marked Exhibit, Commissions Exhibit #15, if a person comes in the way it is facing you there, would he be able to see the word refined?

A. He wouldn't be able to see it but most people knows it is re-refined oil. When they even buy it, they say give us a can of re-refined oil. They know it is re-refined being so cheap.

HEARING EXAMINER POINDEXTER. Do they particularly ask for re-refined oil?

The WITNESS. Most of them say, "What is your cheapest, bulk oil?" I say, "I have a can for 15¢." They say, "That's a rerun?" and I say, "Why, sure, it couldn't be nothing else for 15¢."

HEARING EXAMINER POINDEXTER. They know what they are buying?

The WITNESS. They know what they are buying.

By Mr. Cox:

Q. If a filling station man held it up that way, a person still wouldn't see the word "re-refined"?

A. No, he wouldn't.

Q. And please state how far away you can see the word re-refined on this can if you turn it around where the word re-refined faces you?

A. I can see it from there. I don't know how much farther I can see it. (Tr. 148)

18. Mr. Rycroft further testified that the average customer does not walk into the filling station and examine the different cans of oil displayed for sale on the shelf and then select and purchase a can or cans from that shelf, but rather, the customer asks the filling station attendant, "Do you have D-X or Double Eagle, or they will generally ask for what kind they want." In answer to a question as to what was the general approach of a customer when he drives into Mr. Rycroft's station, Mr. Rycroft replied :

A. Well, most of them, most of them that use it are just in an old car that just drinks oil and they say "Give me some of that Double Eagle, that 15¢ Double Eagle, or re-run." They don't always call it Double Eagle or re-run but most of them know what it is. Just something to get their old car by that uses a lot of oil, they use it. I have sold it to new cars but most of them it is just an old car, see.

Q. Now, relative to these customers that come in on the general approach you said, the various approaches, is that correct, that come in to buy?

A. Yes, sir.

Q. And does the average person really know anything about oils as such?

A. Well, I don't think the average person knows anything about oil in the first place.

Q. And is that also true relative to what the word "re-refined" means or the word "refined"?

A. Well, they surely know what it is. (Tr. 153)

19. The other witness, Mr. Harold D. Stoll, is a distributor and consignee in Oklahoma City for Phillips Petroleum Company, one of the so-called "major" integrated oil companies in the United States. Mr. Stoll also operates a Phillips Petroleum Company filling station in Oklahoma City. Phillips' stations sell only Phillips Petroleum Company products. Therefore, Mr. Stoll's station does not sell "Double Eagle" re-refined lubricating oil. Phillips Petroleum Company operates filling stations in 46 of the 50 States of the United States. Mr. Stoll is now and has been an employee of Phillips Petroleum Company for 32 years. During that time, he has served as a Phillips salesman, supervisor, district man, wholesale oil jobber, and representative calling on jobbers. Mr. Stoll was a witness and testified on behalf of the Commission at the previous hearing held in Docket No. 6432 in Oklahoma City. At the hearing held in the instant proceeding on October 2 and 3, 1963, Mr. Stoll testified, among other things, that: When he goes into a filling station and sees a can of lubricating oil with no marking thereon to the contrary, he assumes that the oil contained therein has not been previously used; that, in his opinion, the label

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on CX 15 containing the statement "Double Eagle Motor Oil is scientifically Re-Refined from previously used oil \* \* \*" would not be misleading to anyone reading this statement; that "it means just what it says, sir, that it is taken from used oil and then re-refined". (Tr. 180)

20. Next to be considered are the allegations in the complaint and (c) in Paragraph 12, above, that, in the absence of a clear and conspicuous disclosure on the can that the oil contained therein has been used, the general understanding and belief on the part of dealers and of the purchasing public is that the oil contained in respondents' cans is new, not used oil, and that this belief is enhanced by respondents' trade name on each can. It is undisputed that, in the absence of a clear and conspicuous statement on the can or container, the purchasing public, in the absence of information to the contrary, would believe that lubricating oil contained in an unmarked can had not been previously used. However, each of respondents' can (CX 1-6) were marked. The label on each can (CX 1-6) stated, in so many words, that the oil contained therein had been "Re-Refined From Previously Used Oil." So, the question to be decided is not whether respondents' cans were marked, but whether the marking on the can to the effect that the oil had been previously used is so located on the can that the marking is "clear" and "conspicuous" in compliance with the Commission's order in Docket No. 6432. The Compliance Division and General Counsel of the Commission had previously passed on these "markings" and approved them as being "clear" and "conspicuous" in compliance with the order in Docket No. 6432. However, the Commission later reconsidered this view, issued the instant complaint, and evidence has been received at a formal hearing on the question whether the revised markings on respondents' labels are "clear" and "conspicuous."

21. The testimony of the two principal Commission witnesses on this question has been previously summarized in Paragraphs 17-19 herein. Counsel supporting the compliant questioned these witnesses at considerable length as to the distance from the can they were able to read the markings on the cans that the oil contained therein is "Re-Refined From Previously Used Oil." The question is not the distance from the can that a person is able to read the marking "Re-Refined From Previously Used Oil," but whether the marking is "clear" and "conspicuous." On most of the cans the word "Re-Refined" is in approximately one-half or seven-sixteenth inch letters, and the statement "From Previously Used Oil" is in approximately one-quarter inch letters. The wording is "clear" and "conspicuous" to anyone interested sufficiently to examine and read the label on the can. True,



the statement "Re-Refined From Previously Used Oil" is not on the so-called "front" of the can, where the label is located. There is not room at this location. The label takes up this space from the top to the bottom of the can. The words "Re-Refined From Previously Used Oil" are located to the side of the label, and are easily noticeable and readable to anyone who may be interested in examining the label on the can. Naturally, the label on the can should stand out, and all of the writing contained on the label cannot be placed under the trade name. The marking "Refined From Previously Used Oil" is immediately adjacent and to the side of the trade name. The can is round, and the label extends around the entire can. One portion of the label is as conspicuous as the other. In the opinion of the Commission witnesses, Messrs. Rycroft and Stoll, these markings are clear and conspicuous. There is no evidence in the record of any deception in the past and no reasonable likelihood that any dealer or purchaser will be deceived by any of said labels in the future. Upon the basis of all the evidence adduced at the hearing, the hearing examiner finds that the labels on respondents' cans (CX 1-6) are "clear" and "conspicuous" within the intent and meaning of the Commission's order in Docket No. 6432.

22. With respect to the allegation in the complaint and set out in (d) of Paragraph 12 above, that respondents' use of the word "Re-Refined" in large print on the label tends to enhance the belief that the oil contained in respondents' cans is "new" oil and has not been previously used, the evidence does not sustain this allegation. The witnesses who testified at the hearing, including the Commission witnesses Rycroft and Stoll, filling station operators, each testified that the word "Re-Refined" conveys the impression that the oil contained in the can is oil that has originally been refined from virgin or crude oil, then used, and refined again. (Kerran, Tr. 19-136; Rycroft, Tr. 144-149; Stoll, Tr. 163-196) The New Standard Dictionary of the English Language, by Funk & Wagnalls, defined the word "Refined" as:

Freed from impurity or extraneous substances; parted, as from other metals or substances; also clarified; as *refined* gold \* \* \*.

Said dictionary also defines the prefix "re-" as follows:

\* \* \* again; again and again; against; anew; over; opposite. The following words, in which *re* has its unmodified meaning of *again*, *anew*, are practically self-explaining in connection with the definitions of their root-words. Words not found in this list are in vocabulary place. reabridge \* \* \* rerefined \* \* \*.

This authoritative definition comports with the meaning given to the word "Re-Refined" by the witnesses who testified at the hearing, in-

cluding the Commission witnesses. Accordingly, it is found that the allegation of the complaint to the effect that respondents' use of the word "Re-Refined" enhances the belief on the part of dealers and the purchasing public that the oil sold in respondents' cans is "new" oil and has not been previously used, has not been established by the evidence.

23. In further support of the allegations of the complaint, Commission counsel offered in evidence what appear to be photostatic copies of three invoices, dated September, 1961. These were marked CX 9, 10, and 11, respectively, and received in evidence. Each purports to cover shipments of lubricating oil to three-named consignees with addresses outside the State of Oklahoma. The name "Double Eagle Refining Company, Oklahoma City, Oklahoma," appears at the top of each invoice, and at no place on the invoice is there a statement that the lubricating oil covered by the invoice has been previously used. Mr. Cameron L. Kerran explained these invoices (Tr. 40-42) as follows: That CX 9, 10, and 11 are office copies kept by the corporate respondent, Double Eagle Lubricants, Inc., of original invoices on lubricating oil sales; the original invoices which are mailed to customers bear the name Double Eagle Lubricants, Inc., and a statement near the bottom of the invoice "Refined From Previously Used Oil"; that Double Eagle Lubricants, Inc., was using some of the old Double Eagle Refining Company invoice forms for its own file copies when a Federal Trade Commission investigator called at the office of corporate respondent and requested copies of some of corporate respondent's invoices; these office file copies of the three invoices bore the heading "Double Eagle Refining Company" and did not, like the original invoice mailed to the customer, bear the statement "Refined From Previously Used Oil"; that, unfortunately, these office file copies of the three invoices were given to the investigator; and CX 9, 10, and 11 are duplicates of these office file copies.

24. Commission counsel did not offer any evidence to contradict the explanation given by Mr. Kerran with respect to CX 9, 10, and 11. This being so, the hearing examiner accepts the explanation given by Mr. Kerran. Since the evidence shows that the original invoice mailed to the three consignees by the corporate respondent, Double Eagle Lubricants, Inc., bore the printed notation "Refined From Previously Used Oil," the consignee customers could not possibly have been deceived by CX 9, 10, and 11. The consignee did not see CX 9, 10, and 11. The office file copies from which CX 9, 10, and 11 were made were kept in the corporate respondent's files. Accordingly, the hearing examiner does not give CX 9, 10, and 11 any corroborative weight to establish the allegations of the complaint.

25. Paragraph Five of the complaint alleges that respondents' use of the word "guaranteed" on some of their cans thereby represented that their products are guaranteed in every respect, whereas, the wording of the guarantee did not disclose the terms, conditions, or the extent of the application of the guarantee, thereby making said so-called guarantee false, misleading and deceptive. Respondents do not deny use of the word "guaranteed" on the labels of some of their cans, but say that the word was approved by the Federal Trade Commission when the labels here in question were approved, and further, that prior to the hearing in this proceeding, respondents discontinued use of the word "guaranteed" on their cans. It should be pointed out that respondents have not been using the word "guaranteed" on all of their cans. They formerly used the word "guaranteed" on CX 2, 3, 5, and 6, but not on CX 1, and 4. At some time prior to the hearing, they discontinued use of the word "guaranteed" on CX 2, 3, 5, and 6. Mr. Kerran testified, and it is found, that prior to the hearing, respondents instructed the manufacturer to delete the word "guaranteed" from all of respondents' cans, CX 2, 3, 5, and 6, and the manufacturer complied with this instruction: that respondents had received delivery on some new cans and the word "guaranteed" did not appear thereon; and respondents do not intend to resume the use of the word "guaranteed" on their cans at any time in the future. (Tr. 35-36) (Counsel supporting the complaint did not offer any evidence to contradict this testimony.)


26. Since respondents have voluntarily discontinued use of the word "guaranteed," have had it removed from their cans and do not intend to resume its use at any time in the future, everything which could be accomplished by a cease and desist order with respect to respondents' former use of the word "guaranteed" has already been accomplished by the voluntary action of respondents. Under the circumstances, a cease and desist order is not necessary. *Bell & Howell Co.*, Docket 6729; *Argus Cameras, Inc.*, Docket 6199; *Wildroot Company, Inc.*, Docket 5928. Under all the other unusual circumstances which exist in this case, as found herein, the hearing examiner is of the opinion that the public interest does not require the further prosecution of this proceeding, and the complaint herein should be dismissed.

## ORDER

*It is ordered,* That the complaint herein be, and the same hereby is, dismissed, without prejudice to the right of the Commission to take such action in the future as the facts and circumstances may warrant.

1 U. S. QUART

**DOUBLE EAGLE**




**MOTOR OIL**

DOUBLE EAGLE LUBRICANTS, INC.  
OKLAHOMA CITY, OKLA.

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1 U. S. QUART

**DOUBLE EAGLE**



**MOTOR OIL**

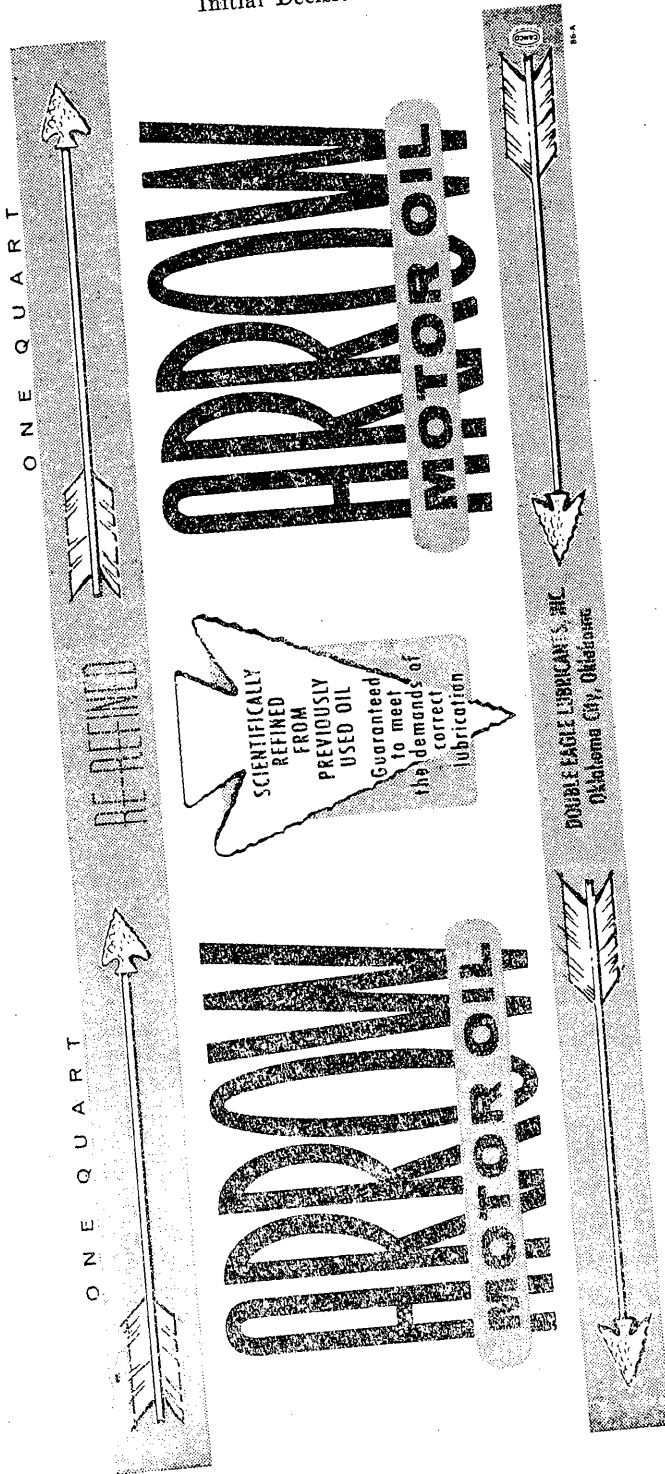
DOUBLE EAGLE LUBRICANTS, INC.  
OKLAHOMA CITY, OKLA.

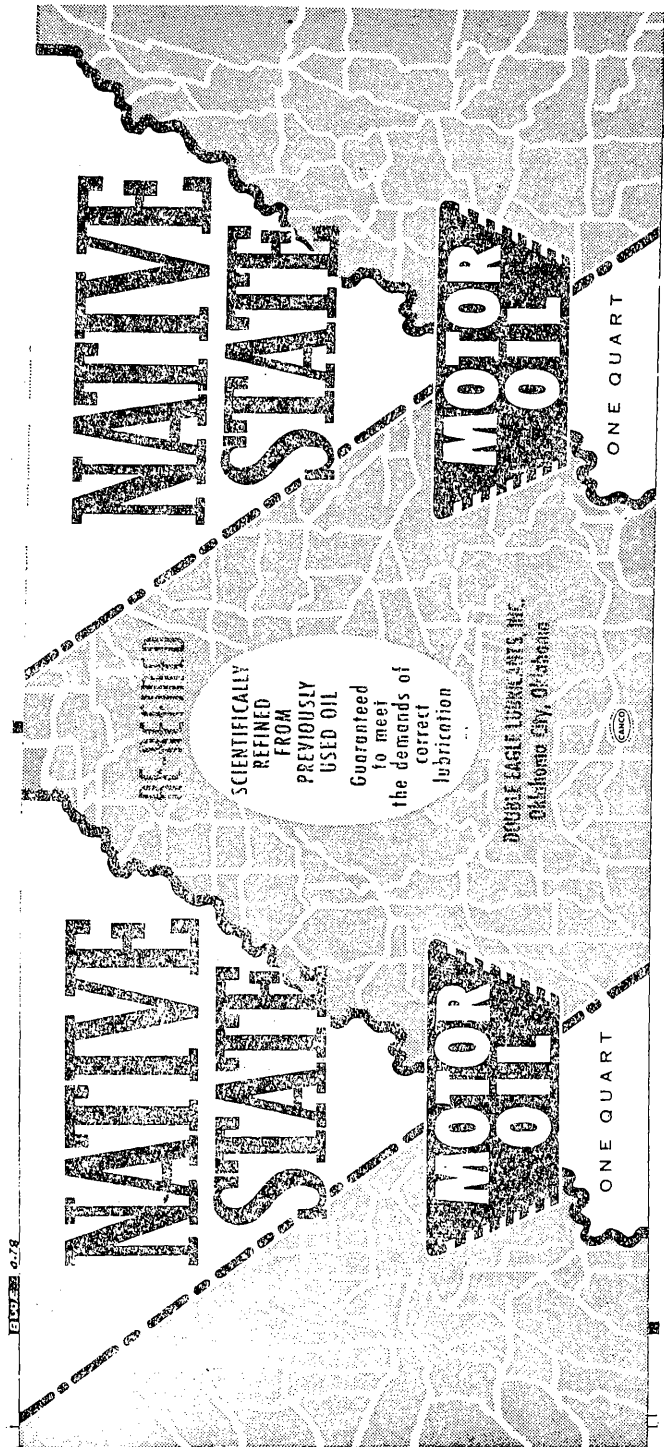
DOUBLE EAGLE Motor Oil is scientifically RE-REFINED from previously used oil to meet the varied requirements of all type motors.

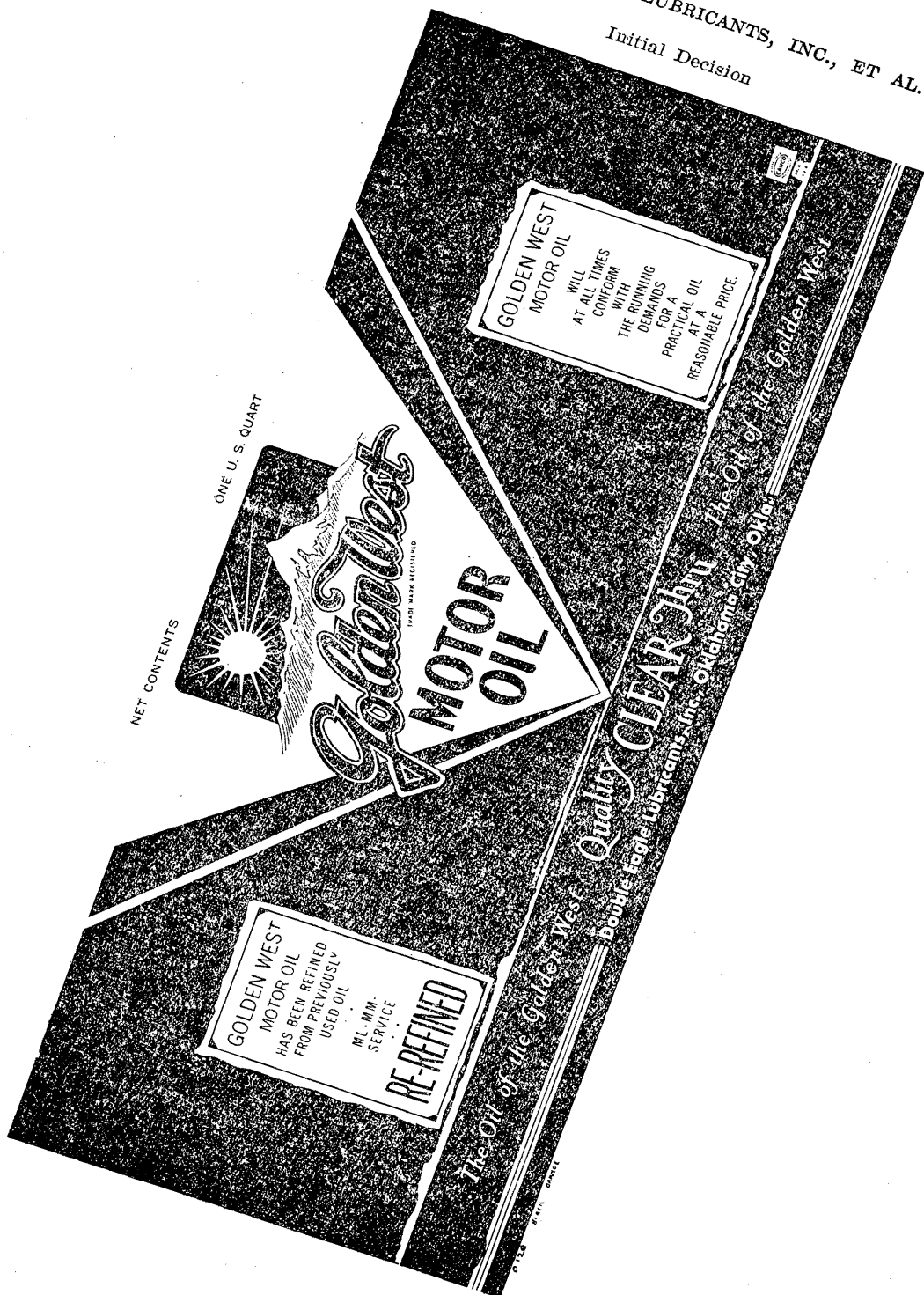
ML-MM SERVICE

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ONE U.S. QUART

# HEADLINE

HEAT MOTOR OIL

RESISTS HEAT

ONE U.S. QUART

# HEADLINE

HEAT MOTOR OIL

RESISTS HEAT

HEAT MOTOR OIL  
RESISTS HEAT

— is a special high  
temperature oil  
designed for  
operation at  
1000  
degrees  
Fahrenheit  
and  
higher  
temperatures  
and  
resists  
oxidation  
and  
acid  
formation  
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IT  
CONTAINS  
SPECIAL  
ADDITIVES  
WHICH  
IMPROVE  
LUBRICITY  
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FROM  
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AND  
OVERHEATING

RE-EMERGENCY  
LUBRICANT

AMERICAN  
EAGLE  
OIL  
CORPORATION

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Initial Decision

ONE QUART

pub

RE-REFINED

SCIENTIFICALLY REFINED FROM PREVIOUSLY USED OIL

Guaranteed to meet the demands of correct lubrication

DOUBLE EAGLE LUBRICANTS, INC.  
Oklahoma City, Oklahoma

ANCHOR

MOTOR OIL

Opinion

66 F.T.C.

## OPINION OF THE COMMISSION

OCTOBER 22, 1964

By MACINTYRE, *Commissioner*:

Respondents are charged with violating Section 5 of the Federal Trade Commission Act in their sales of lubricating oil by failing to make adequate disclosure of the fact that this product had been previously used. Specifically, the complaint alleges that in some instances respondents' containers bore no marking of any kind indicating the oil had been used and that in other instances, when the disclosure was made, it was neither clear nor conspicuous. In addition, the complaint attacks respondents' use of the word "guaranteed" as deceptive on the ground that the limitations of the guarantee were not disclosed. The hearing examiner dismissed the complaint, finding that respondents had not misrepresented the nature of their product and that they had in good faith abandoned the challenged guarantee claims. The case is now before us on the appeal of complaint counsel from the initial decision.

We agree with the examiner's finding that the record does not contain substantial evidence to support the charge that respondents, on occasion, failed to make any disclosure on the containers of lubricating oil sold in commerce that this product had been previously used. The primary issue now confronting us is therefore whether the disclosures actually made by respondents are sufficiently clear and conspicuous to adequately put the public on notice as to the origin of respondents' product. Specifically, the resolution of this question hinges on the determination of whether the legend "re-refined from previously used oil" and similar descriptions on the side or back panel rather than on the front panel of respondents' cans are sufficient to alert the prospective purchaser to the nature of respondents' product.<sup>1</sup>

In this connection, respondents assert in effect that the Commission is estopped from attacking respondents' labeling on the ground that the same labels had already been approved by the Commission through its Compliance Division and its General Counsel when the individual respondents were advised of their obligations under the cease and desist order previously issued against them for practices similar, if not identical, to those under consideration here, in Docket 6432.<sup>2</sup> Since that order was issued in 1958, respondents' organization and business

<sup>1</sup> By the front panel, for the purposes of this proceeding, is meant that portion or portions of the can featuring the trade or brand names used by respondents, designed to present a more attractive appearance than other parts of the can for display purposes.

<sup>2</sup> *Frank A. Kerran, et al., doing business as Double Eagle Refining Co.*, 54 F.T.C. 1035 (1958), *aff'd*, 265 F. 2d 246 (10th Cir. 1959), *cert. denied*, 361 U.S. 818 (1959).

has not markedly changed, except that the individual respondents subsequently incorporated part of their business under the name Double Eagle Lubricants, Inc.,<sup>3</sup> which is also named as a party in this proceeding.

The previous order directed against the individual respondents prohibits them from representing, contrary to fact, that their oil is refined or processed from other than previously used oil and from selling previously used oil without disclosure of such fact in their promotional materials and without a clear and conspicuous statement to that effect on their containers. In 1960, the General Counsel and the Compliance Division approved certain of the labeling which is the subject of this proceeding. Subsequently, however, in the summer of 1961, respondents were advised that the Commission, upon consideration of this matter, had determined that the requirement of a clear and conspicuous disclosure necessitated that such statements appear on the front panel of the container.

Respondents argue, among other things, that the rescission of the previous approval of the labeling under attack in this case is an abuse of discretion on the part of the Commission and they have refused to comply with the requirement that the disclosure be put on the front panel of their cans. Disregarding, therefore, the inclusion of the corporate respondent, the real issue posed by this case is whether respondents should be put under another order containing an additional proviso specifically requiring that the disclosure of the origin of respondents' oil be placed on the front panel of their containers.

The Commission realizes that changes in the design and labeling of respondents' cans may be time consuming and expensive. A directive that changes be made in respondents' labeling after initial approval by the Commission's staff of certain of these containers is not to be undertaken lightly. Nevertheless, the Commission is charged with protecting the public interest by prohibiting unfair and deceptive acts and practices. It cannot be deterred from that task by a prior mistaken action either on its own part or by its staff.<sup>4</sup> The appropriate manner of disclosure, therefore, remains to be defined in this proceeding.

Complaint counsel challenges the examiner's evaluation of the evidence, while respondents assert there could be no finding of deception on the basis of the testimony in this record. It is unnecessary to deal with these contentions. The Commission has before it, as part of the

<sup>3</sup> This corporation is wholly owned by the individual respondents and members of their family (tr. 23).

<sup>4</sup> Cf., *NLRB v. Baltimore Transit Co.*, 140 F. 2d 51, 55 (4th Cir. 1944), *cert. denied*, 321 U.S. 795 (1944); and *P. Lorillard Co. v. Federal Trade Commission*, 186 F. 2d 52 (4th Cir. 1950).

record, the oil containers which the complaint charges are inadequately and deceptively labeled. Our finding on the issue will be based on our independent examination of these cans. The principle that the "Commission may, where appropriate, predicate a finding of deception on its own visual examination of the alleged means of deception, unassisted by 'consumer testimony'"<sup>5</sup> has, by this time, of course, been established conclusively.<sup>6</sup>

The fact that in the absence of a clear and conspicuous statement on the can to the contrary, the public would assume that the oil contained therein is new or virgin oil, is not disputed.<sup>7</sup> The disposition of this case on appeal hinges solely on the adequacy of the disclosure on respondents' containers. Turning to the exhibits themselves, it is clear that when the front panel of respondents' container is squarely in front of the viewer, the required disclosure as to the nature of the oil is invisible. From the design of these containers it is obvious that they are intended for display with the front panel on which the brand name is imprinted facing the prospective customer so as to attract his attention.<sup>8</sup> As a result, the consuming public in many, if not most, instances will not receive the benefit of the explanatory legend respondents place on the side or back panels of their cans. The required disclosure, if on such a back panel, is not sufficiently conspicuous to give the public adequate notice of the nature of respondents' lubricating oil. The fact that some members of the public would be sufficiently curious to pick up the can and turn to the descriptive material on the back or sides of respondents' containers does not vitiate the fact that many members of the public would not be possessed of such an inquiring nature. The crucial point is that respondents' labeling has the capacity to mislead. The protection of the public therefore necessitates

<sup>5</sup> *The Papercraft Corporation*, 63 F.T.C. 1965, Docket 8489, December 24, 1963.

<sup>6</sup> *Zenith Radio Corporation v. Federal Trade Commission*, 143 F. 2d 29 (7th Cir. 1944).

<sup>7</sup> A finding to this effect has already been made in the prior proceeding involving these respondents, the Commission stating:

"\* \* \* It is clear that in the absence of adequate disclosure to the contrary, the public assumes and has the understanding and belief that oil which is offered to it in regular channels of trade is oil refined from crude instead of oil derived from used oil. \* \* \*"  
(*Frank Kerran, et al., supra* n. 2, at 1041.)

In these hearings, it may be noted, individual respondent Cameron Kerran admitted:  
"Yes, sir, I assume that it is new oil or virgin oil if there is no statement on the can to the contrary." (Tr. 122.)

<sup>8</sup> No testimony on this point is needed, for this finding is adequately supported by the appearance of these exhibits alone. Nevertheless, it is interesting to note that the individual respondent testifying in this proceeding conceded:

"Q. Now, your statement about a particular side of the can, I believe that you said that you tried to get the filling stations to show your brand, is that correct?

"A. Yes, sir.

"Q. And that is why you put your brand on your can isn't it?

"A. Yes, sir." (Tr. 131.)

The fact that due to carelessness or other reasons the front panel may not always be facing out is immaterial here.

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Final Order

the imposition of an order requiring respondents, including the corporate respondent, to disclose the nature of their oil on the front of their containers.

It should be further noted that the obligation to disclose the origin of used oil on the front panel of the container does not rest on these respondents alone. This requirement has been extended to all distributors and sellers of reclaimed or reprocessed oil by the "Trade Regulation Rule Relating to Deceptive Advertising and Labeling of Previously Used Lubricating Oil" which is to become effective January 1, 1965.<sup>9</sup> In short, respondents' obligations under this order, as a practical matter are coextensive with those spelled out by the Commission for the rest of the industry.

Since the respondents will have to change their labeling to comply with the terms of the new order, as well as the Trade Regulation Rule, there is no necessity for dealing with the allegation that use of large print for the term "Re-refined" on the containers has had the tendency to enhance the deception charged. The appropriate typography under the "clear and conspicuous" requirement of the order can best be settled in conference with respondents in the compliance phase of this proceeding. As to the false guarantee charge, we see no reason for disturbing the examiner's findings and conclusions on this point and the appeal of complaint counsel directed to that issue will accordingly be denied.

An appropriate order, directing respondents to cease and desist from the practices found unlawful, will issue and the examiner's initial decision, as modified to conform to the findings and conclusions expressed herein, is adopted as the decision of the Commission.

#### FINAL ORDER

This matter has been heard by the Commission on the appeal of counsel in support of the complaint from the initial decision of the hearing examiner and upon briefs and oral argument in support thereof and in opposition thereto. The Commission has determined that the appeal of complaint counsel should be granted in part and denied in part and that the initial decision, as modified and supplemented to conform to the findings and conclusions in the Commission's opinion, shall be adopted as the decision of the Commission. Accordingly,

*It is ordered*, That respondents Double Eagle Lubricants, Inc., a corporation, and its officers, and Frank A. Kerran and Cameron L. Kerran, individually and as officers of said corporation, and respondents' agents, representatives and employees, directly or through any

<sup>9</sup> 29 Fed. Reg. 11650 (1964).

corporate or other device, in connection with the offering for sale, sale or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of lubricating oil, do forthwith cease and desist from:

1. Advertising, offering for sale or selling, any lubricating oil which is composed in whole or in part of oil which has been reclaimed or in any manner processed from previously used oil, without disclosing such prior use to the purchaser or potential purchaser in the advertising and sales promotion material, and by a clear and conspicuous statement to that effect on the front panel or front panels on the container.

2. Representing in any manner that lubricating oil composed in whole or in part of oil that has been manufactured, reprocessed or re-refined from oil that has been previously used for lubricating purposes, has been manufactured from oil that has not been previously used.

*It is further ordered*, That the initial decision, as modified and supplemented by the findings and conclusions in the accompanying opinion be, and it hereby is, adopted as the decision of the Commission.

*It is further ordered*, That when the order in this proceeding becomes final respondents Frank A. Kerran and Cameron L. Kerran are relieved of their obligation to file reports of compliance under the cease and desist order in Docket 6432.

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

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IN THE MATTER OF

NATIONAL RESEARCH CORPORATION ET AL.

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

*Docket 8601. Complaint, Oct. 28, 1963—Decision, Oct. 23, 1964*

Order requiring Lafayette, La., distributors of "Enurol," a drug product, to cease representing falsely in advertising in newspapers, by radio and television broadcasts and otherwise, that their product is a new discovery that will prevent and cure arthritis, bursitis, rheumatism and other degenerative diseases, restore crippled parts of the body, and decrease the amount of cholesterol in the body; and to cease using the word "Research" as part of their business name.

1068

Complaint

## COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that National Research Corporation, a corporation, and Saul Sonnier, John C. Jackson, and Harold Sonnier, 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 National Research Corporation is a corporation, organized and existing under the laws of the State of Louisiana, with its office and principal place of business located on Georgette Street, at Landry Road, in the city of Lafayette, State of Louisiana.

Respondents Saul Sonnier, John C. Jackson and Harold Sonnier are officers of the corporate respondent. These individuals formulate, direct and control the policies, acts, and practices of the corporate respondent, including the acts and practices hereinafter set forth. The address of respondent Saul Sonnier is 215 South St. Louis Street, Lafayette, Louisiana; the address of respondent John C. Jackson is 201 Delphine Street, Lafayette, Louisiana, and the address of respondent Harold Sonnier is Scott, Louisiana.

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

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

## 1. Designation: "Enuro" (liquid)

Formula (1,000 c.c.):

1 Gram.....	Methyl Parahydroxybenzoate, Purified (Methyl Paraben U.S.P.) Marketed under the trade name "Tegosept M."
11 Minim.....	U.S.P. peppermint oil flavoring.
11 Minim.....	Glycerol (U.S.P.).
2.03 Grams.....	Pharmaceutical grade fungal alpha amylase derived from a strain of aspergillus oryzae. Marketed under the trade name "Mylace 100" by Wallerstein Company.
1.55 Fluid Oz.....	Concentrated derivative of rice bran.
3 Minim.....	Coloring as chocolate brown U.S.P. Q.S. with water.
± 120 Mg.....	Tartaric acid (U.S.P.) to lower PH of total solution to 5.0.

## Complaint

66 F.T.C.

## 2. Designation: "Enurol" (capsulettes)

## Formula (4 capsulettes):

Vitamin A.....	4000 U.S.P. Units.
Vitamin D.....	400 U.S.P. Units.
Vitamin C.....	30 mg.
Vitamin B-1.....	1 mg.
Vitamin B-2.....	1.2 mg.
Niacin.....	10 mg.
Vitamin B-12.....	4 mcgm.
Calcium.....	750 mg.
Phosphorus.....	180 mg.
Magnesium.....	108 mg.
Potassium.....	76 mg.
Iron.....	20 mg.
Manganese.....	3 mg.
Zinc.....	2 mg.
Copper.....	1 mg.
Iodine.....	2 mg.

*Directions:* The directions for use of "Enurol" (liquid and capsulette) found on the bottle label of "Enurol" liquid are: MORNING: One full teaspoon and two ENUROL capsulettes. EVENING: Two full teaspoons and two ENUROL capsulettes. TAKE DURING OR IMMEDIATELY AFTER MEALS. FOLLOW DIRECTIONS EXACTLY FOR BEST RESULTS. SHAKE WELL BEFORE USING.

PAR. 3. In the course and conduct of their said business, respondents have disseminated, and caused the dissemination of, certain advertisements concerning the said preparations, referred to therein collectively as "Enurol," by the United States mails and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, including, but not limited to, advertisements inserted in newspapers, and by means of television and radio broadcasts transmitted by television and radio stations located in the State of Louisiana, having sufficient power to carry such broadcasts across State lines, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said preparations.

PAR. 4. Among and typical of the statements and representations contained in the said advertisements disseminated as hereinabove set forth are the following:

Why suffer needlessly from the aches, pains, discomforts of arthritis, bursitis and rheumatism? ENUROL relieves pain by eliminating the cause of pain!  
(Newspaper)

\* \* \* \* \*  
ENUROL relieves pains of arthritis, bursitis, rheumatism and other degenerative diseases by actually restoring the normal chemical balance in the body thus



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eliminating the cause of pain! This is the only way to relieve pain effectively \* \* \* and ENUROL has proven itself effective in hundreds of successful tests. (Newspaper)

\* \* \* \* \*  
 The enzyme formula in ENUROL uses up the body fluid, cholesterol, by forming a chemical agent which effectively rids the body of all diseased tissue, stopping the crippling action. This diseased tissue is deposited into the bloodstream and eliminated through normal body functions.

Then, as ENUROL's potent vitamin, mineral and iron complex strengthens and nourishes the body, the cholesterol is again utilized: building healthy, new tissue to replace that which has been eliminated.

Healthy tissue is continuously supplied until the body's stress-resistance balance is restored, and then the enzyme formula in ENUROL helps maintain this normal balance for continued good health. (Newspaper)

\* \* \* \* \*  
 Scientists report that symptoms of premature aging, disease, energy-robbing aches, pains that may be due to arthritis and rheumatism are caused by a continual loss of enzymes by the body. Now, after 8 years of research, comes the first significant discovery in the fight against these agonizing symptoms \* \* \* it's called ENUROL \* \* \* a new, amazingly effective enzyme formula medicine that, based on the recommended 90-day treatment, helps rid your body of aches, pains, discomforts. (Television)

\* \* \* \* \*  
 Is arthritis making your life miserable? We of National Research Corporation believe we have found a way to end your needless suffering. It's an amazing new enzyme formula medicine called Enurol and it may very well be the greatest discovery of our time. Developed after ten years of research, hundreds of successful tests, Enurol relieves pain of arthritis, bursitis and rheumatism. But Enurol is not a pain killer, it contains no sedatives. Enurol relieves pain by eliminating the cause of pain. (Radio)

\* \* \* \* \*  
 We further believe that in our research and tests we have found the way to free the human body from the agonies of arthritis, bursitis, rheumatism and other symptoms of degenerative diseases \* \* \* and that ENUROL, taken as directed, can help you return to the normal, healthy, active life without pain you once knew. (Newspaper)

\* \* \* \* \*  
 PAR. 5. Through the use of said advertisements, and others similar thereto not specifically set out herein, respondents have represented and are now representing, directly and by implication:

1. That Enurol will prevent and cure arthritis, bursitis, rheumatism, and other degenerative diseases, and the aches, pains and discomforts caused thereby.
2. That Enurol will restore normal structure and function to parts.

of the body crippled by arthritis, bursitis, rheumatism and other degenerative diseases.

3. That Enurol will decrease the amount of cholesterol in the body.
4. That Enurol will help rid the body of diseased and damaged tissue and aid the body in building healthy new tissue.
5. That Enurol will enable a person to maintain good health.
6. That Enurol is a new medical and scientific discovery and achievement.

PAR. 6. In truth and in fact:

1. Enurol will not be of any value in the prevention, treatment, relief or cure of arthritis, bursitis, rheumatism or any other degenerative disease, or the aches, pains or discomforts caused thereby.
2. Enurol will not restore normal structure or function to parts of the body crippled by arthritis, bursitis, rheumatism or any other degenerative disease.
3. Enurol will not decrease the amount of cholesterol in the body.
4. Enurol will neither help rid the body of diseased or damaged tissue nor will Enurol aid the body in building healthy new tissue.
5. Enurol will not enable a person to maintain good health.
6. Enurol is not a new medical or scientific discovery or achievement.

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

PAR. 7. Through the use of the corporate name National Research Corporation, alone and in conjunction with the statements and representations set forth and referred to in Paragraph Four above, respondents have also represented, and are now representing, directly and by implication, that said corporation is a national organization engaged in scientific research.

In truth and in fact, respondents are not engaged in a nationwide business, nor in scientific research or any other kind of research. Therefore, the advertisements set forth and referred to in Paragraph Four above, were and are misleading in material respects and constituted, and now constitute, false advertisements as that term is defined in the Federal Trade Commission Act.

PAR. 8. The dissemination by the respondents of the false advertisements, as aforesaid, constituted, and now constitutes, unfair and de-

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ceptive acts and practices in commerce, in violation of Section 12 of the Federal Trade Commission Act.

*Mr. Francis J. Charlton and Mr. Joel P. Stern* for the Commission.  
*Debaillon & Miller* of Lafayette, La., by *Mr. Roderick L. Miller* for all respondents except Mr. Saul Sonnier.

*Voorhies, Labbe, Fontenot, Leonard & McGlasson* of Lafayette, La., by *Mr. Bennett J. Voorhies* for respondent Mr. Saul Sonnier.

## INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

JULY 13, 1964

The complaint in this matter charges the respondents with violation of the Federal Trade Commission Act through the dissemination of allegedly false advertisements in connection with a medicinal product. Hearings have been held at which testimony and other evidence, both in support of and in opposition to the complaint, were received. Proposed findings and conclusions have been submitted by the parties (except respondent Saul Sonnier), and the case is now before the hearing examiner for final consideration. Any proposed findings or conclusions not included herein have been rejected as not material or as not warranted by the evidence.

Respondent National Research Corporation is a Louisiana corporation, with its office and principal place of business on Georgette Street at Landry Road, Lafayette, Louisiana.

Respondents John C. Jackson and Harold Sonnier are officers of the corporate respondent and formulate its policies and direct and control its acts and practices. The address of respondent John C. Jackson is 201 Delphine Street, Lafayette, Louisiana, and the address of respondent Harold Sonnier is Scott, Louisiana.

The hearing examiner having concluded for the reasons hereinafter set forth that the complaint should be dismissed as to respondent Saul Sonnier, the term respondents as used hereinafter will not include this respondent unless the contrary is indicated.

The medicinal product here involved, which is advertised and sold by respondents under the name "Enuroi," actually consists of two preparations, one being a liquid and the other in capsule (or capsulette) form. The two are intended to be taken in conjunction with each other. Each is a "drug" within the meaning of the Federal Trade Commission Act.

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The formulas and directions for use of the preparations follow:

*The Liquid**Formula (1,000 c.c.) :*

1 Gram-----	Methyl Parahydroxybenzoate, Purified (Methyl Paraben U.S.P.) Marketed under the trade name "Tegosept M".
11 Minim-----	U.S.P. peppermint oil flavoring.
11 Minim-----	Glycerol (U.S.P.).
2.03 Grams-----	Pharmaceutical grade fungal alpha amylase derived from a strain of aspergillus oryzae. Marketed under the trade name "Mylace 100" by Wallerstein Company.
1.55 Fluid Oz-----	Concentrated derivative of rice bran.
3 Minim-----	Coloring as chocolate brown U.S.P. Q.S. with water.
±120 Mg-----	Tartaric acid (U.S.P.) to lower pH of total solution to 5.0.

*The Capsulettes**Formula (4 capsulettes) :*

Vitamin A-----	4000 U.S.P. Units.
Vitamin D-----	400 U.S.P. Units.
Vitamin C-----	30 mg.
Vitamin B-1-----	1 mg.
Vitamin B-2-----	1.2 mg.
Niacin-----	10 mg.
Vitamin B-12-----	4 mcgm.
Calcium-----	750 mg.
Phosphorus-----	180 mg.
Magnesium-----	108 mg.
Potassium-----	76 mg.
Iron-----	20 mg.
Manganese-----	3 mg.
Zinc-----	2 mg.
Copper-----	1 mg.
Iodine-----	2 mg.

*Directions for Use:*

MORNING : One full teaspoon and two ENUROL capsulettes.

EVENING : Two full teaspoons and two ENUROL capsulettes.

TAKE DURING OR IMMEDIATELY AFTER MEALS.

FOLLOW DIRECTIONS EXACTLY FOR BEST RESULTS. SHAKE WELL BEFORE USING.

(Complaint and Answer)

In the course and conduct of their business, respondents have disseminated and caused the dissemination of certain advertisements concerning their product, such advertisements being disseminated by means of the United States mails and by various means in com-

merce, as "commerce" is defined in the Federal Trade Commission Act, including insertion in newspapers and by means of television and radio broadcasts transmitted by television and radio stations located in the State of Louisiana but having sufficient power to carry such broadcasts across state lines. All of this advertising was for the purpose of inducing and was likely to induce, directly or indirectly, the purchase of respondents' product. (Complaint and Answer)

Among and typical of the statements contained in such advertisements are the following:

Why suffer needlessly from the aches, pains, discomforts of arthritis, bursitis and rheumatism? ENUROL relieves pain by eliminating the cause of pain! (Newspaper)

\* \* \* \* \*

ENUROL relieves pains of arthritis, bursitis, rheumatism and other degenerative diseases by actually restoring the normal chemical balance in the body thus eliminating the cause of pain! This is the only way to relieve pain effectively \* \* \* and ENUROL has proven itself effective in hundreds of successful tests. (Newspaper)

\* \* \* \* \*

The enzyme formula in ENUROL uses up the body fluid, cholesterol, by forming a chemical agent which effectively rids the body of all diseased tissue, stopping the crippling action. This diseased tissue is deposited into the bloodstream and eliminated through normal body functions.

Then, as ENUROL's potent vitamin, mineral and iron complex strengthens and nourishes the body, the cholesterol is again utilized: building healthy, new tissue to replace that which has been eliminated.

Healthy tissue is continuously supplied until the body's stress-resistance balance is restored, and then the enzyme formula in ENUROL helps maintain this normal balance for continued good health. (Newspaper)

\* \* \* \* \*

Scientists report that symptoms of premature aging, disease, energy-robbing aches, pains that may be due to arthritis and rheumatism are caused by a continued loss of enzymes by the body. Now, after 8 years of research, comes the first significant discovery in the fight against these agonizing symptoms \* \* \* it's called ENUROL. \* \* \* a new, amazingly effective enzyme formula medicine that, based on the recommended 90-day treatment helps rid your body of aches, pains, discomforts. (Television)

\* \* \* \* \*

Is arthritis making your life miserable? We of National Research Corporation believe we have found a way to end your needless suffering. It's an amazing new enzyme formula medicine called Enurol and it may very well be the greatest discovery of our time. Developed after ten years of research, hundreds of successful tests, Enurol relieves pain of arthritis, bursitis and rheumatism. But Enurol is not a pain killer it contains no sedatives. Enurol relieves pain by eliminating the cause of pain. (Radio)

\* \* \* \* \*

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We further believe that in our research and tests we have found the way to free the human body from the agonies of arthritis, bursitis, rheumatism and other symptoms of degenerative diseases \* \* \* and that ENUROL, taken as directed, can help you return to the normal, healthy, active life without pain you once knew. (Newspaper)

(Complaint and Answer; CX 1A-I)

Through the use of these advertisements respondents have represented, directly or by implication:

1. That Enurol will prevent and cure arthritis, bursitis, rheumatism, and other degenerative diseases, and the aches, pains, and discomforts caused thereby.

2. That Enurol will restore normal structure and function to parts of the body crippled by arthritis, bursitis, rheumatism, and other degenerative diseases.

3. That Enurol will decrease the amount of cholesterol in the body.

4. That Enurol will help rid the body of diseased and damaged tissue and aid the body in building healthy new tissue.

5. That Enurol will enable a person to maintain good health.

6. That Enurol is a new medical and scientific discovery and achievement.

The complaint charges that all of these representations are false and misleading, that respondents' product is wholly incapable of effecting the results claimed for it, and that the product is in no sense a new medical or scientific discovery or achievement.

Four experts testified in support of the complaint, three of them being medical doctors and the fourth a biochemist. The professional qualifications of all of the witnesses are beyond question. All are members of the faculty of the School of Medicine of Tulane University, New Orleans, Louisiana, and the three physicians have had long experience in the actual practice of their profession, having for many years specialized in the diagnosis and treatment of persons suffering from arthritis, bursitis, and other rheumatic diseases. The witnesses, and particularly the three physicians, are a unit in stating that respondents' product is wholly incapable of doing any of the things claimed for it in respondents' advertisements, and that the product is not a new medicinal or scientific discovery or achievement. (Tr. 34-64; 68-131; 133-166; 167-204)

The product was conceived by respondent John C. Jackson several years ago as a result of his experience with cattle. After testing the product on a substantial number of individuals, Mr. Jackson was convinced that it had merit and he then sought the aid of the other individual respondents in placing the product on the market. With

their financial assistance, a corporation was organized (respondent National Research Corporation) and a plant constructed to manufacture the product.

No medical or scientific testimony was offered by respondents. Aside from the testimony of Mr. Jackson, the only evidence offered by them as to the therapeutic effectiveness of the product consists of the testimony of four members of the public who had used the product, and a stipulation between counsel concerning the testimony of nine other users. In substance, the testimony of the four users who appeared and testified was that they had been suffering from rheumatic aches and pains, that they had been treated by physicians without obtaining relief, and that upon taking Enurool over a period of time they did obtain relief from their pains. The stipulation between counsel was that if nine other named individuals were present to testify, their testimony in substance would be that they had "been suffering from aches and pains in various joints without relief, that after taking the product Enurool over a period of time their aches and pains disappeared and have not returned." (Tr. 246-252; 253-259; 259-262; 262-272; 281-282)

Without questioning in the least the sincerity of the user witnesses, it seems clear that their testimony is of very doubtful probative value. Arthritis and bursitis are universally recognized by physicians as being extremely difficult to diagnose and treat (rheumatism is regarded by physicians largely as a lay term, indicating any discomfort around the joints). They cannot be diagnosed correctly by a layman. Thus the users here may not in fact have had arthritis or bursitis at all.

Moreover, any relief from pain which the users may have had after taking Enurool may very well have been due not to Enurool but to what physicians refer to as a "spontaneous remission." In layman's language, this means simply that the disease for no known reason temporarily lets up, is less severe or may seem to disappear entirely. Spontaneous remissions are wholly unpredictable even when the sufferer is under the treatment of a skilled physician.

Further, the mental or psychological condition of the user of a medicinal preparation may play a significant part in the user's feeling of relief. The taking of almost any preparation or even the mere consultation of a patient with his physician may cause the individual to feel better. (Tr. 80-85; 86-88; 90-91; 94-99; 140-141; 142-146; 177-182)

All of these factors cast serious doubt upon the probative value of the user testimony. Certainly testimony of this type is not comparable

in probative weight with testimony of highly qualified and experienced physicians such as those who testified in the present case.

Respondents point out that none of the physicians has ever tested or used the specific product here involved. The witnesses are, however, unquestionably familiar with the ingredients of the product. The fact that they have not used or tested the specific preparation is not considered by the hearing examiner to detract materially from the weight of their testimony.

It is further urged by respondents in their defense that although they supplied the Commission's investigating staff with the names and addresses of numerous users of Enurol, no effort was made by the staff to contact such users and ascertain the users' experience with the product. Further, it is asserted that the Commission has had no tests made of the product. The hearing examiner is unable to see that there was any legal obligation on the Commission to do either of these things. The Commission was entitled to rely upon the opinion of qualified experts as to the therapeutic value of the product.

Upon consideration of the entire record and upon the basis of the overwhelming weight of the evidence, it is found that the product, Enurol, will not be of any value in the prevention, treatment, relief, or cure of arthritis, bursitis, rheumatism, or any other degenerative disease, or the aches, pains, or discomforts caused thereby. The product will not restore normal structure or function to parts of the body crippled by arthritis, bursitis, rheumatism, or any other degenerative disease. It will not decrease the amount of cholesterol in the body. Enurol will neither help rid the body of diseased or damaged tissue nor aid the body in building healthy new tissue. It will not enable a person to maintain good health. The product is not a new medical or scientific discovery or achievement.

It is therefore concluded that the representations in question are erroneous and misleading, and constitute false advertisements.

This does not mean that there has been any willful or intentional misrepresentation on the part of respondents. On the contrary, the hearing examiner is convinced of their good faith. It is, however, elementary that wrongful intent is not an essential element of a violation of the Federal Trade Commission Act. Here the issue is simply whether the product in question has the therapeutic properties claimed for it in the advertisements.

The complaint also attacks the name of the corporate respondent, National Research Corporation, charging that the name represents, contrary to fact, that the corporation "is a national organization engaged in scientific research".



In the examiner's opinion this charge has not been sustained. Insofar as the word "National" is concerned, the word is in such common use in names of business enterprises that it is difficult to believe that it would be misleading to anyone. One could hardly examine a telephone directory of any city or medium-sized town in the country without finding numerous business concerns employing the word national in their names. There is not the slightest indication in the present record that use of the word has ever misled anyone or that it is likely to do so.

As for the word "Research," it is true that the corporation itself has so far done little or no research. However, prior to the formation of the corporation, respondent John C. Jackson did engage in considerable study and research in connection with the product, and the corporation was the beneficiary of such efforts. The corporation's plant is a substantial one, representing an investment of some \$60,000 and containing numerous items of equipment such as condensers, burners, refrigeration units, pressure pumps, vacuum pumps, etc. (Tr. 32). Here again there is no indication whatever in the record that use of the word has ever misled anyone or that it is likely to do so.

There is no occasion here for the mills of the Government to grind so fine as to require excision of portions of the corporate name. Corporate and trade names are valuable business assets and should never be proscribed unless the necessity for such drastic action is clearly apparent.

Finally, there remains the question as to what action is appropriate regarding respondent Saul Sonnier. In response to the complaint, Mr. Sonnier filed a motion to dismiss as to himself. Because of illness he was unable to attend the hearings; however, a stipulation as to his connection with the corporation was entered into by counsel. For some time prior to April 12, 1963, Mr. Sonnier was president and a director of the corporate respondent, was active in the operation of the business, and was partly responsible for its policies and practices. On that date (April 12, 1963, which was some six months prior to the issuance of the complaint), he resigned both as president and as director and has had nothing to do with the management of the business since that time, although he is still the owner of a substantial amount of capital stock of the corporation (Tr. 207-208; RX 2A-B).

Mr. Sonnier having severed all official connection with the business long before the complaint was issued, no useful purpose would be served by retaining him as a respondent in the proceeding. The complaint is therefore being dismissed as to him.

The dissemination by respondents of the false advertisements set forth above constitutes unfair and deceptive acts and practices in com-

merce in violation of the Federal Trade Commission Act. The proceeding is in the public interest.

## ORDER

*It is ordered,* That respondents National Research Corporation, a corporation, and its officers, and John C. Jackson and Harold Sonnier, individually and as officers of said corporation, and respondents' agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of the liquid and capsule preparations referred to collectively as "Enurool", or either of them, or any other preparations of substantially similar composition or possessing substantially similar properties, under whatever name or names sold, do forthwith cease and desist from, directly or indirectly:

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

(a) That said preparations will be of any value in the prevention, treatment, relief, or cure of arthritis, bursitis, rheumatism, or any other degenerative disease, or of any aches, pains, or discomforts caused thereby.

(b) That said preparations will restore normal structure or function to parts of the body crippled by arthritis, bursitis, rheumatism, or any other degenerative diseases.

(c) That said preparations will decrease the amount of cholesterol in the body.

(d) That said preparations will help rid the body of diseased or damaged tissue or aid the body in building healthy new tissue.

(e) That said preparations will enable a person to maintain good health.

(f) That said preparations are a new medical or scientific discovery or achievement.

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

*It is further ordered,* That the complaint be, and it hereby is,

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dismissed as to the charges in Paragraph Seven thereof relating to the name of the corporate respondent.

*It is further ordered,* That the complaint be, and it hereby is, dismissed in its entirety as to respondent Saul Sonnier.

## FINAL ORDER

The complaint in this proceeding charged that respondents violated the Federal Trade Commission Act by misrepresenting that the medicinal product which they distribute and sell under the name of "Enurol" will prevent and cure arthritis, bursitis, rheumatism and other degenerative diseases and the aches and pains and discomforts caused thereby, restore normal structure and function to parts of the body crippled by arthritis, bursitis, rheumatism and other degenerative diseases, decrease the amount of cholesterol in the body and help rid the body of diseases and damaged tissues and aid the body in building healthy new tissues, as well as to enable the person to maintain good health. The complaint further charged that respondents misrepresented Enurol as a new medical and scientific discovery and achievement.

On July 13, 1964, the examiner issued his initial decision, sustaining these allegations in the complaint, with an appropriate order to cease and desist. Respondents, however, were also charged with misrepresenting, through the use of their corporate name "National Research Corporation" alone and in conjunction with the other representations which are the subject of the complaint, that the respondent corporation is a national organization engaged in scientific research when in truth and in fact respondents are not engaged in a nation-wide business or in scientific or any other kind of research. This charge was dismissed by the hearing examiner.

Neither side appealed from the initial decision. The Commission, by its order of September 2, 1964, placed this proceeding on its own docket for review for further consideration of the charges contained in Paragraph Seven of the complaint, relating to the allegedly deceptive nature of the corporate respondent's name, namely, National Research Corporation. The order further provided that both parties could, if they so desired, file briefs on this issue within thirty days after receipt of this order. Complaint counsel, on September 29, 1964, filed a brief on this issue, pursuant to the authorization in the Commission's order. Respondents, however, have not taken advantage of the opportunity afforded them to file a brief on this question.

The Commission, on the basis of its review of the record, the initial

decision, and the brief of counsel in support of the complaint, has determined that the use of the word "Research" in the name of the corporate respondent has the capacity and tendency to mislead and deceive the public. Accordingly,

*It is ordered*, That the portion of the initial decision on page 9 [p. 1078 herein], beginning with the phrase "The complaint also attacks" and ending with the phrase on page 10 [p. 1079 herein] "unless the necessity for such drastic action is clearly apparent" be deleted and that the following findings and conclusions be substituted therefor:

The corporate respondent is not engaged in research and does not have the personnel to conduct scientific or medical research. In this connection the Commission notes that the individual respondent John C. Jackson was the only individual at the National Research Corporation responsible for research, that his formal education ended at high school, that he has never taken any courses in chemistry, nutrition, biology or in any other scientific field, and that prior to developing Enurool, Mr. Jackson was in the cattle business. Finally, the record shows that National Research Corporation has never employed any chemists, pharmacists, biologists or nutritionists.

In the context of the spurious health claims made for Enurool, the use of the word "Research" in the corporate respondent's trade name under these circumstances inherently has the capacity and tendency to mislead the public into the belief that back of respondents' products there stands an organization with the personnel and other requisites for scientific and medical research. The public interest, therefore, requires that the term "Research" be deleted from the corporate respondent's trade name. On the other hand, as the examiner noted, the term "National" is of such widespread use that even in this context the utilization of this term is relatively innocuous and we do not infer that in this case the use of this word in the corporate respondent's trade name has the capacity and tendency to mislead, necessitating that respondents be directed to excise it from their trade name.

*It is further ordered*, That the order to cease and desist contained in the initial decision be changed to read as follows:

#### ORDER

*It is ordered*, That respondents National Research Corporation, a corporation, and its officers, and John C. Jackson and Harold Sonnier, individually and as officers of said corporation, and respondents'

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agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of the liquid and capsule preparations referred to collectively as "Enurol," or either of them, or any other preparations of substantially similar composition or possessing substantially similar properties, under whatever name or names sold, do forthwith cease and desist from, directly or indirectly:

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

(a) That said preparations will be of any value in the prevention, treatment, relief, or cure of arthritis, bursitis, rheumatism, or any other degenerative disease, or of any aches, pains, or discomforts caused thereby.

(b) That said preparations will restore normal structure or function to parts of the body crippled by arthritis, bursitis, rheumatism, or any other degenerative disease.

(c) That said preparations will decrease the amount of cholesterol in the body.

(d) That said preparations will help rid the body of diseased or damaged tissue or aid the body in building healthy new tissue.

(e) That said preparations will enable a person to maintain good health.

(f) That said preparations are a new medical or scientific discovery or achievement.

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

3. Disseminating, or causing to be disseminated, directly or indirectly, by means of the United States mails or by any other means, in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement in which the word "research" or any other words of similar import are used as a part of any name under which respondents do business or which represents in any manner, directly or indirectly, that respondents are engaged in research of any kind.

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*It is further ordered,* That the complaint be, and it hereby is, dismissed in its entirety as to respondent Saul Sonnier.

*It is further ordered,* That the initial decision and order to cease and desist as modified herein be, and they hereby are, adopted as the decision and order of the Commission.

*It is further ordered,* That respondent National Research Corporation, a corporation, and individual respondents John C. Jackson and Harold Sonnier shall, within sixty (60) days of receipt of this order, file with the Commission a report, in writing, setting forth in detail the manner in which respondents have complied with the terms of this order.

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IN THE MATTER OF

SUNRAY YARN CO., 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-853. Complaint, Oct. 27, 1964—Decision, Oct. 27, 1964*

Consent order requiring New York City importer-wholesalers of wool products to cease misbranding the fiber content of wool yarns and falsely invoicing such products.

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 Sunray Yarn Co., Inc., a corporation, and Abraham Friedman and Alex Friedman, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of the said Acts and the Rules and Regulations promulgated under the Wool Products Labeling Act of 1939, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

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

Individual respondents are president and secretary-treasurer, respectively of said corporate respondent. They formulate, direct and control the acts, policies and practices of said corporation including the acts and practices hereinafter referred to.

Respondents are importers and wholesalers of wool products with their office and principal place of business located at 349 Grand Street, New York, New York.

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

PAR. 3. Certain of said wool products were misbranded 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 falsely and deceptively stamped, tagged, labeled or otherwise identified with respect to the character and amount of the constituent fibers contained therein.

Among such misbranded wool products, but not limited thereto, were certain yarns stamped, tagged or labeled as containing 100% Mohair, whereas in truth and in fact, said yarns contained substantially less Mohair than represented and in addition contained a substantial amount of non-woolen fibers.

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

Among such misbranded wool products, but not limited thereto, were certain yarns with labels on or affixed thereto which failed to disclose the percentage of the total fiber weight of the wool product, exclusive of ornamentation not exceeding 5 per centum of said total fiber weight, of (1) woolen fibers; (2) each fiber other than wool if said percentage by weight of such fiber is 5 per centum or more; and (3) the aggregate of all other fibers.

PAR. 5. Certain of said wool products were misbranded in violation of the Wool Products Labeling Act of 1939 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(a) (2) of the Wool Products Labeling Act of 1939 and the Rules and Regulations described a portion of the fiber content as "Rhovyl" and also as "viscose" instead of using the common generic names of said fibers, in violation of Rule 8 of the aforesaid Rules and Regulations.

(b) The term "Mohair" was used in lieu of the word "wool" in setting forth the required fiber content information on labels affixed

to wool products without setting forth the correct percentage of the mohair present, in violation of Rule 19 of said Rules and Regulations.

PAR. 6. 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, now constitute, unfair and deceptive acts and practices and unfair methods of competition in commerce, within the intent and meaning of the Federal Trade Commission Act.

PAR. 7. 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 maintained a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 8. Respondents in the course and conduct of their business, as aforesaid, have made statements on invoices and shipping memoranda to their customers misrepresenting the fiber content of certain of their said products.

Among such misrepresentations, but not limited thereto, were statements representing the fiber content thereof as "Mohair" whereas in truth and in fact, said yarns contained substantially different fibers and amounts of fibers than represented.

PAR. 9. The acts and practices set out in Paragraph Eight have had and now have the tendency and capacity to mislead and deceive the purchasers of said products as to the true content thereof and to cause them to misbrand products sold by them in which said materials were used.

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

#### DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, 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 Sunray Yarn Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 349 Grand Street, in the city of New York, State of New York.

Respondents Abraham Friedman and Alex Friedman 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 Sunray Yarn Co., Inc., a corporation and Abraham Friedman and Alex Friedman, individually and as officers of said corporation and respondents' representatives, agents and employees, directly or through any corporate or other device, do forthwith cease and desist from introducing into commerce, or offering for sale, selling, transporting, distributing or delivering for shipment in commerce wool yarn or any other wool products, as "commerce" and "wool product" are defined in the Wool Products Labeling Act of 1939:

1. Which are falsely and deceptively stamped, tagged, labeled or otherwise identified as to the character or amount of the constituent fibers contained therein.

2. Unless each such product has securely affixed thereto or placed thereon a stamp, tag, label or other means of identification;

(a) Correctly showing in a clear and conspicuous manner each element of information required to be disclosed by Section 4(a)(2) of the Wool Products Labeling Act of 1939.

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(b) Setting forth the common generic name of fibers in the required information on labels, tags or other means of identification attached to wool products.

(c) Correctly setting forth the percentage of mohair contained in wool products when that term is used on labels as required information in lieu of the word "wool."

*It is further ordered,* That respondents Sunray Yarn Co., Inc., a corporation, and Abraham Friedman and Alex Friedman, individually and as officers of said corporation, and respondents' representatives, agents and employees directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of yarn or any other textile products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting the character or amount of constituent fibers contained in yarn or any other textile products on invoices or shipping memoranda applicable thereto or in any other manner.

*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.

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IN THE MATTER OF

HYMAN COHN ET AL. TRADING AS SUPERIOR  
GARMENT COMPANY

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

*Docket C-854. Complaint, Nov. 4, 1964—Decision, Nov. 4, 1964*

Consent order requiring New York City manufacturers of fur and wool products to cease misbranding their wool and fur products, and deceptively invoicing and advertising their fur products.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, the Fur Products Labeling 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 Superior Garment Company, a partnership, and Hyman Cohn, Lillian Cohn, and Albert Cohn, individually and as copartners trading as Superior

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Garment Company, 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 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 Superior Garment Company is a partnership comprised of Hyman Cohn, Lillian Cohn and Albert Cohn who formulate, direct, and control the acts and practices of the said partnership, including the acts and practices hereinafter set forth. The office and principal place of business of respondent is located at 512 Seventh Avenue, New York, New York.

Respondents Hyman Cohn, Lillian Cohn and Albert Cohn are individuals and copartners trading and doing business as Superior Garment Company, and their address is the same as that of said partnership.

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

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

Among such misbranded fur products, but not limited thereto, were fur products with labels which failed to show the true animal name of the fur used in the fur product.

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

(a) The term "Persian Lamb" was not set forth on labels in the manner required by law, in violation of Rule 8 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) 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 respondents in that they were not invoiced as required by Section 5(b)(1) of the Fur Products Labeling Act and the Rules and Regulations promulgated under such Act.

Among such falsely and deceptively invoiced fur products, but not limited thereto, were fur products covered by invoices which failed to disclose any of the information required by said Act.

PAR. 6. Certain of said fur products were falsely and deceptively invoiced in violation of the Fur Products Labeling Act in that they were not invoiced in accordance with the Rules and Regulations promulgated thereunder in the following respects:

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

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

PAR. 7. Certain of said fur products were falsely and deceptively advertised in violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder 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 said Rules and Regulations.

Among and included in the aforesaid advertisements but not limited thereto, were advertisements of respondents in the form of brochures.

PAR. 8. By means of the aforesaid advertisements and others of similar import and meaning not specifically referred to herein, respondents falsely and deceptively advertised fur products in violation of the Fur Products Labeling Act in that the said fur products were not advertised in accordance with the Rules and Regulations promulgated thereunder in that the term "Natural" was not used to describe fur products which were not pointed, bleached, dyed, tip-dyed or otherwise artificially colored, in violation of Rule 19(g) of the said Rules and Regulations.

PAR. 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.

PAR. 10. Subsequent to the effective date of the Wool Products Labeling Act of 1939, respondents have manufactured for introduction into commerce, introduced into commerce, sold, transported, distributed, delivered for shipment and offered for sale in commerce as "commerce" is defined in said Act, wool products as "wool product" is defined therein.

PAR. 11. 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 falsely and deceptively stamped, tagged, labeled or otherwise identified with respect to the character and amount of the constituent fibers contained therein.

Among such misbranded wool products, but not limited thereto, were woolen coats stamped, tagged and labeled, with conflicting information with regard to the fiber content of said products.

PAR. 12. Certain of said wool products were further misbranded by respondents in that they were not stamped, tagged, labeled or otherwise identified as required under the provisions of Section 4(a) (2) of the Wool Products Labeling Act of 1939 and in the manner and form as prescribed by the Rules and Regulations promulgated under said Act.

Among such misbranded wool products, but not limited thereto, were certain coats with labels on or affixed thereto which failed to disclose the percentage of the total fiber weight of the wool product, exclusive of ornamentation not exceeding 5 per centum of said total fiber weight, of (1) woolen fibers; (2) each fiber other than wool present in the wool product in the amount of 5% or more by weight; (3) the aggregate of all other fibers.

PAR. 13. 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.

#### 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, the Fur Products Labeling 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 aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by the respondent 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, the Fur Products Labeling 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 Superior Garment Company is a partnership comprised of Hyman Cohn, Lillian Cohn and Albert Cohn with its office and principal place of business located at 512 Seventh Avenue, in the city of New York, State of New York.

Respondents Hyman Cohn, Lillian Cohn and Albert Cohn are copartners trading and doing business as Superior Garment Company, and their address is the same as that of said partnership.

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 Superior Garment Company, a partnership, and Hyman Cohn, Lillian Cohn, and Albert Cohn, individually and as copartners trading as Superior Garment Company or under any other trade name or names and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction into commerce, and in the manufacture for introduction into commerce, or the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce, of any fur product; or in connection with the sale, advertising, offering for sale, transportation or distribution, of any fur product which is made in whole or in part of fur which has been shipped and received in commerce, as "commerce," "fur" and "fur

product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

A. Misbranding fur products by:

1. Failing to affix labels to fur products showing in words and in figures plainly legible all of the information required to be disclosed by each of the subsections of Section 4(2) of the Fur Products Labeling Act.
2. Failing to set forth the term "Persian Lamb" on labels in the manner required where an election is made to use that term instead of the word "Lamb."
3. Failing to set forth the term "Natural" as part of the information required to be disclosed on labels under the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder to describe fur products which are not pointed, bleached, dyed, tip-dyed, or otherwise artificially colored.
4. Failing to 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. Failing to set forth the term "Natural" as part of the information required to be disclosed on invoices under the Fur Products Labeling Act and Rules and Regulations promulgated thereunder to describe fur products which are not pointed, bleached, dyed, tip-dyed, or otherwise artificially colored.
3. Failing to set forth on invoices the item number or mark assigned to fur products.

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 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.

*It is further ordered,* That respondents Superior Garment Company, a partnership, and Hyman Cohn, Lillian Cohn and Albert Cohn,

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individually and as copartners trading as Superior Garment Company, 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 offering for sale, sale, transportation, distribution or delivery for shipment in commerce, of wool coats or other wool products, as "commerce" and "wool product" are defined in the Wool Products Labeling Act of 1939, do forthwith cease and desist from:

Misbranding such products by:

1. Falsely and deceptively stamping, tagging, labeling or otherwise identifying such products as to the character or amount of the constituent fibers contained therein.
2. Failing to securely affix to, or place on, each such product a stamp, tag, label, or other means of identification showing in a clear and conspicuous manner each element of information required to be disclosed by Section 4(a)(2) of the Wool Products Labeling Act of 1939.

*It is further ordered,* That 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.

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IN THE MATTER OF  
TIMED ENERGY, INC.

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

*Docket C-855. Complaint, Nov. 5, 1964—Decision, Nov. 5, 1964*

Consent order requiring New York City distributors of drug and food products to cease making false therapeutic claims for its vitamin and mineral preparations "Potencaps and Vita-Timed Capsules."

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 Timed Energy, Inc., a corporation, hereinafter referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a pro-



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ceeding 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 Timed Energy, 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 419 Park Avenue, South, in the city of New York, State of New York.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the sale and distribution of preparations which come within the classification of drugs and food as the terms "drug" and "food" are defined in the Federal Trade Commission Act.

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

## I. Designation:

Potencaps.

## Formula:

## Each Capsule Contains:

Vitamin A Palmitate.....	10,000 USP units.
Calciferol (Vitamin D).....	1,000 USP units.
Thiamine Chloride (Vitamin B <sub>1</sub> ).....	15 mgm.
Riboflavin (Vitamin B <sub>2</sub> ).....	6 mgm.
Pyridoxine HCl (Vitamin B <sub>6</sub> ).....	0.5 mgm.
Niacinamide.....	20 mgm.
Glutamic Acid.....	5 mgm.
Cobalimin Conc. (Vitamin B <sub>12</sub> ).....	3 mcg.
Lemon Bioflavinoid Complex.....	5 mgm.
dl-Methionine.....	5 mgm.
Iodine as derived from Potassium Iodide.....	0.1 mgm.
Magnesium Sulfate Dried.....	7.2 mgm.
Rutin.....	5 mgm.
Copper Sulfate.....	2.0 mgm.
Manganese Sulfate.....	3.4 mgm.
Biotin.....	0.5 mcg.
Potassium Chloride.....	1.3 mgm.
Iron as derived from Ferrous Sulfate Exsiccated.	10.0 mgm.
Zinc Sulfate Dried.....	1.0 mgm.
L-Lysine Monohydrochloride.....	10.0 mgm.
Ascorbic Acid (Vitamin C).....	30 mgm.
d-Alpha Tocopherol Acid Succinate (Vitamin E).	2 I.U.
Calcium Pantothenate.....	5 mgm.
Inositol.....	5 mgm.

## Directions:

Average dose as a dietary supplement one capsule daily.

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II. *Designation:*

Vita-Timed Capsules

*Formula:*

Each capsule contains:

Vitamin A Palmitate.....	5,000 USP units.
Calciferol (Vitamin D).....	500 USP units.
Thiamine Chloride (Vitamin B <sub>1</sub> ).....	7.5 mgm.
Riboflavin (Vitamin B <sub>2</sub> ).....	2.5 mgm.
Ascorbic Acid (Vitamin C).....	30.0 mgm.
Cobalamin Conc. (Vitamin B <sub>12</sub> ).....	1 mcgm.
Pyridoxine HCl (Vitamin B <sub>6</sub> ).....	0.1 mgm.
Calcium Pantothenate.....	3 mgm.
Glutamic Acid.....	5 mgm.
Niacinamide.....	10.0 mgm.
Lemon Bioflavonoid Complex.....	5 mgm.
dl-Methionine.....	5.0 mgm.
Iodine as derived from Potassium Iodide..	0.1 mgm.
Magnesium Sulfate Dried.....	7.2 mgm.
Copper Sulfate.....	2.0 mgm.
Manganese Sulfate.....	3.4 mgm.
Inositol.....	5.0 mgm.
Potassium Chloride.....	1.3 mgm.
Iron as derived from Ferrous Sulfate Exsic- cated.....	10.0 mgm.
Biotin.....	0.5 mcgm.
Zinc Sulfate Dried.....	1.0 mgm.
Rutin.....	5 mgm.
L-Lysine Monohydrochloride.....	10 mgm.
d-Alpha Tocopherol Acid Succinate (Vita- min E).....	1.2 I. U.

*Directions:*

Average dose as a dietary supplement one capsule daily.

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

PAR. 4. In the course and conduct of its said business, respondent has disseminated, and caused the dissemination of, certain advertisements concerning the said preparations by the United States mails, in commerce, as "commerce" is defined in the Federal Trade Commission Act, by means of circular letters and pamphlets, for the purpose of inducing, and which were likely to induce, directly or indirectly, the purchase of the said preparations; and has disseminated, and caused

the dissemination of, advertisements concerning the said preparations by various means, including but not limited to the aforesaid media, for the purpose of inducing, and which were likely to induce, directly or indirectly, the purchase of the said preparations in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. Among and typical of the statements and representations contained in said advertisements, disseminated as hereinabove set forth, with respect to respondent's preparation designated "Potencaps" are the following:

You'd be willing to risk a 10¢ piece, wouldn't you, if you thought it would blaze a trail for you to a fuller life, free of the "dragged out" feeling that may plague us, regardless of our age, because of a vitamin and mineral deficiency? \* \* \*

\* \* \* 31 capsules each containing your minimum daily requirement of important vitamins, minerals and food supplements. You just take ONE capsule a day for the next 31 days and see if you don't find it around-the-clock source of new energy. \* \* \*

#### AN EXCLUSIVE NEW FEATURE SETS "POTENCAPS" APART!

The little multi-colored granules in each "Potencaps" capsule are compounded according to an exclusive formula. They have graduated melting points. The various colors are released at successive intervals of about two hours. You get a *constantly replenished* supply of the vitamins and minerals your body needs, in a steady 8-hour flow.

This principle has long been applied to certain *pharmaccutical* preparations but it has *never been applied to any vitamin product before*. You will be surprised how this wonderful product can help you get through the day with a minimum of fatigue caused by a vitamin and mineral deficiency. No longer are you likely to "fade" as the day drags on. No longer are you likely to become more irritable with each passing hour until, by supertime you are thoroughly fagged out and ready to call it a day.

\* \* \* \* \*

#### LIFE BEGINS AT SUPPERTIME!

Whether you are a man or woman—regardless of your position in life—supertime leaves much to be done.

Mothers have a hundred and one things left undone—children's problems, more housework and *most important a husband* to keep happy and comfortable.

Hubby has his problems and worries too. Life is moving along fast—too fast it seems.

Everyone it appears, married or single, with so much still to be done really needs a fresh start just when they are hoping and praying that they can "call it a day."

That's probably when you'll appreciate "Potencaps" the most.

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

1. That Potencaps is the only prolonged release vitamin or vitamin-mineral combination preparation available to consumers.
2. That Potencaps will provide sufficient energy to a person to enable him to complete his daily tasks.
3. That men and women have a special need at suppertime for vitamins and minerals as supplied by Potencaps.
4. That during the day a person's body needs a constantly replenished supply of the vitamins and minerals contained in Potencaps.
5. That Potencaps, because of its prolonged release feature, provides greater nutritional benefits to the user than other products of similar content which do not have this feature.
6. That Potencaps rapidly supplies new energy to the human body and continues to provide new energy for 24 hours.
7. That the use of Potencaps will be of benefit in the treatment and relief of tiredness, exhaustion and irritability.

PAR. 7. In truth and in fact:

1. Potencaps is not the only prolonged release vitamin or vitamin-mineral combination preparation available to consumers.
2. Potencaps will not provide sufficient energy to a person to enable him to complete his daily tasks.
3. Men and women do not have a special need at suppertime or at other particular times during the day for vitamins or minerals as supplied by Potencaps.
4. During the day a person's body does not need a constantly replenished supply of the vitamins and minerals contained in Potencaps.
5. Potencaps does not provide greater nutritional benefits to the user than other products of similar content which do not provide prolonged release action.
6. Potencaps does not rapidly supply new energy to the human body, nor does it continue to provide new energy for 24 hours.
7. The use of Potencaps will not be of benefit in the treatment or relief of tiredness, exhaustion or irritability except in a small minority of persons in whom such symptoms are due to a deficiency of Thiamine Chloride (Vitamin B<sub>1</sub>), Riboflavin (Vitamin B<sub>2</sub>), Ascorbic Acid (Vitamin C), or Niacinamide.

Furthermore, the statements and representations have the capacity and tendency to suggest, and do suggest, to persons of both sexes and all ages who experience feelings of tiredness, exhaustion or irritability, that there is a reasonable probability that they have symptoms which will respond to treatment by the use of Potencaps. In the light of such statements and representations, the advertisements are misleading in a material respect and therefore constitute false advertisements, as

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that term is defined in the Federal Trade Commission Act, because they fail to reveal the material facts that in the great majority of persons or of any age, sex or other group or class thereof, who experience the symptoms of tiredness, exhaustion, or irritability, such symptoms are not caused by a deficiency of one or more of the nutrients provided by Potencaps, and that in such persons the said preparation will be of no benefit.

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

PAR. 8. Among and typical of the statements and representations contained in said advertisements, disseminated as hereinabove set forth, with respect to respondent's preparation designated "Vita-Timed Capsules" are the following:

Do you have all the pep, vim and vigor you should have?

Here's a way to find out. If you are willing to risk 10¢. Yes, if you are slowing up and don't have the same zip and zest for living it may be due to vitamin deficiency. Scientists have long studied our nutritional requirements and well know the importance of balanced nutrition to our every day living. Vita-Timed Capsules have been formulated by one of the outstanding laboratories of the country to insure against vitamin and mineral deficiency. They not only contain all the vitamins and minerals necessary to supplement your present diet, but they have a *unique feature—Controlled Release*.

Here is how Controlled Release works. Once a day—preferably in the morning—you take only one Vita-Timed Capsule. After two hours, one fourth of the vitamin and mineral content is released to the body to be assimilated. Two hours later a second quarter of the content is available to the body. Two hours later the third quarter and so on, until the entire capsule has been assimilated in small efficient doses. Your body receives a full benefit of all the 25 vitamins and minerals in small even doses over a full 8 hours.

This method of Time Release has been used on pharmaceuticals and is now in this exclusive Vita-Timed Capsule Formula.\*\*\*

You may cancel anytime you wish but I have a feeling you will want to continue this Vita-Timed Plan and enjoy the energy, the pep, vim and vigor that you may be now lacking due to a vitamin mineral-deficiency.

The enclosed label from a Vita-Timed Capsule container lists the vitamins and minerals contained in each capsule.

PAR. 9. Through the use of said advertisements, and others similar thereto not specifically set out herein, respondent has represented, and is now representing, directly and by implication:

1. That Vita-Timed Capsules is the only prolonged release vitamin or vitamin-mineral preparation available to consumers.
2. That the use of Vita-Timed Capsules will be of benefit in the treat-

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ment and relief of a lack of energy, strength, vitality and vigor, and run-down feeling.

PAR. 10. In truth and in fact:

1. Vita-Timed Capsules is not the only prolonged release vitamin or vitamin-mineral combination preparation available to consumers.

2. The use of Vita-Timed Capsules will not be of benefit in the treatment or relief of a lack of energy, strength, vitality or vigor, or run-down feeling except in a small minority of persons in whom such symptoms are due to a deficiency of Thiamine Chloride (Vitamin B<sub>1</sub>), Riboflavin (Vitamin B<sub>2</sub>), Ascorbic Acid (Vitamin C), or Niacinamide.

Furthermore, the said statements and representations have the capacity and tendency to suggest, and do suggest, to persons of both sexes and all ages who experience a lack of energy, strength, vitality or vigor, or rundown feeling, that there is a reasonable probability that they have symptoms which will respond to treatment by the use of Vita-Timed Capsules. In the light of said statements and representations, said advertisements are misleading in a material respect and therefore constitute false advertisements as that term is defined in the Federal Trade Commission Act, because they fail to reveal the material facts that in the great majority of persons, or of any age, sex or other group or class thereof, who experience such symptoms, these symptoms are not caused by a deficiency of one or more of the nutrients provided by Vita-Timed Capsules, and that in such persons the said preparation will be of no benefit.

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

PAR. 11. The dissemination by respondents of the false advertisements, as aforesaid, constituted, and now constitutes unfair and deceptive acts and practices in commerce in violation of Sections 5 and 12 of the Federal Trade Commission Act.

#### DECISION AND ORDER

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

The respondent and counsel for the Commission having thereafter

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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, make the following jurisdictional findings, and enters the following order:

1. Respondent Timed Energy, 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 419 Park Avenue, South, in the city of New York, State of New York.

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

## ORDER

## PART I

*It is ordered,* That respondent Timed Energy, Inc., a corporation, and its officers, and respondent's representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of any vitamin, or vitamin-mineral preparation do forthwith cease and desist from, directly or indirectly, disseminating, or causing the dissemination of, by means of the United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which represents, directly or by implication, that vitamin, or vitamin-mineral preparations which release their contents over a prolonged period of time when being digested in the human body are in any way superior, because of this feature, to other preparations of similar content which do not have this feature.

## PART II

*It is further ordered,* That respondent Timed Energy, Inc., a corporation, and its officers, and respondent's representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of "Potencaps" or "Vita-Timed Capsules," or any other preparation of substantially similar composition or possessing substantially similar properties, under whatever name or names sold, do forthwith cease and desist

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

1. That "Potencaps" or "Vita-Timed Capsules," or both of them together, constitute the only prolonged release vitamin or vitamin-mineral combination preparations available to consumers.

2. That "Potencaps" will provide sufficient energy to a person to enable him to complete his daily tasks.

3. That men or women have a special need at suppertime for vitamins or minerals as supplied by "Potencaps."

4. That during the day a person's body needs a constantly replenished supply of the vitamins or minerals contained in "Potencaps."

5. That "Potencaps" rapidly supplies new energy to the human body, or continues to provide new energy for 24 hours: or which misrepresents in any manner the time in which said preparation may produce such an effect.

6. That the preparation "Potencaps" or any ingredient supplied thereby, will be of benefit in the treatment and relief of tiredness, exhaustion, or irritability, unless such advertisement expressly limits the effectiveness of the preparation to those persons whose symptoms are due to a deficiency of Thiamine Chloride (Vitamin B<sub>1</sub>), Riboflavin (Vitamin B<sub>2</sub>), Ascorbic Acid (Vitamin C), or Niacinamide, and, further, unless the advertisement clearly and conspicuously reveals the facts that in the great majority of persons, and of any age, sex or other class or group thereof, who experience tiredness, exhaustion or irritability, such symptoms are caused by conditions other than those which may respond to treatment by the use of the preparation and that in such persons the preparation will not be of benefit.

7. That the use of "Vita-Timed Capsules," or any ingredient supplied thereby, will be of benefit in the treatment or relief of a lack of energy, strength, vitality or vigor or run-down feeling, unless such advertisement expressly limits the effectiveness of the preparation to those persons whose symptoms are due to a deficiency of Thiamine Chloride (Vitamin B<sub>1</sub>), Riboflavin (Vitamin B<sub>2</sub>), Ascorbic Acid (Vitamin C), or Niacinamide, and, further, unless the advertisement clearly and conspicuously reveals the facts that in the great majority of persons, or of any age, sex or other class or group thereof, who experience tiredness, exhaustion or irritability, lack of energy, strength, vitality and vigor or run-



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down feeling, such symptoms are caused by conditions other than those which may respond to treatment by the use of the preparation, and that in such persons the preparation will not be of benefit.

## PART III

*It is further ordered*, That respondent Timed Energy, Inc., a corporation, and its officers, and respondent's representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of any vitamin or vitamin-mineral preparation do forthwith cease and desist from directly or indirectly, disseminating or causing to be disseminated, by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of respondent's preparations, in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which contains any of the representations prohibited in, or which fails to comply with any of the affirmative requirements of, PART I or II hereof.

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

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 IN THE MATTER OF

## BOEPPLE SPORTSWEAR MILLS, INC.

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

*Docket 8633. Complaint, June 30, 1964—Decision, Nov. 10, 1964\**

Consent order requiring a New York City seller of wearing apparel, to cease violating Sec. 2(d) of the Clayton Act by such practices as granting substantial promotional allowances, for the advertising of its products, to favored customers purchasing for resale, while not making proportionally equal payments available to all competitors of favored customers. The effective date of the order has been postponed until further order of the Commission.

## COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondent named in the caption hereof, and hereinafter more

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\*This order was made effective on Aug. 9, 1965, see *Abby Kent Co., Inc., et al.*, Docket No. C-328, et al., Aug. 9, 1965, 68 F.T.C. 393.

particularly described, has violated and is now violating the provisions of subsection (d) of Section 2 of the Clayton Act, as amended, (U.S.C., Title 15, Sec. 13), hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent, Boepple Sportswear Mills, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 1410 Broadway, New York 18, New York.

PAR. 2. Respondent is now and has been engaged in the manufacture, sale, and distribution of ladies' sweaters and knitted skirts to a large number of retail specialty and department stores located throughout the United States. Respondent's sales of its products are substantial, having exceeded \$1,600,000 for the calendar year ending 1960.

PAR. 3. In the course and conduct of its business, respondent has engaged and is now engaging in commerce, as "commerce" is defined in the Clayton Act, as amended, in that respondent sells and causes its products to be transported from the respondent's principal place of business located in the State of New York, to customers located in many States of the United States and in the District of Columbia. There has been at all times mentioned herein a continuous course of trade in commerce in said products across State lines between said respondent and its customers.

PAR. 4. In the course and conduct of its business in commerce, respondent paid or contracted for the payment of something of value to or for the benefit of some of its customers as compensation or in consideration for services or facilities furnished by or through such customers in connection with their offering for sale or sale of products sold to them by respondent, and such payments were not made available on proportionally equal terms to all other customers competing in the sale and distribution of respondent's products.

PAR. 5. Included among the payments alleged in Paragraph Four were credits, or sums of money, sometimes hereinafter referred to as promotional allowances, paid either directly or indirectly by way of discounts, allowances, rebates or deductions, as compensation or in consideration for promotional services, or facilities furnished by customers in connection with the offering for sale, or sale of respondent's products, including advertising in various forms, such as newspapers.

For example, respondent made payments and allowances to various customers in various trading areas including Chicago, Illinois, and New York, New York, for advertising its products in newspapers and catalogs. During the year 1960, respondent paid The Fair and Wie-

boldt Stores, Inc., of Chicago, Illinois, promotional allowances in the amounts of \$165.06 and \$100, respectively. During the year 1962, respondent paid Carson, Pirie, Scott of Chicago an advertising allowance of \$200. In New York, during 1961, respondent paid promotional allowances to Oppenheim Collins and Best & Co., among others, in the amounts of \$150 and \$933, respectively. In 1962, respondent paid promotional allowances to Best & Co., Saks Fifth Avenue and Bloomingdale Bros., Division of Federated Department Stores, Inc., in the amounts of \$925, \$250 and \$540.72, respectively.

Respondent did not make, or offer to make, or otherwise make available such allowances on proportionally equal, or any, terms to all other customers in Chicago and New York competing with those who received such allowances.

PAR. 6. The acts and practices of respondent as alleged above are in violation of subsection (d) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act (U.S.C., Title 15, Sec. 13).

*Mr. Peter J. Dias, Mr. Myer S. Tulkoff and Mr. Gerald Levine, for the Commission.*

No appearance filed for respondent.

INITIAL DECISION BY WILMER L. TINLEY, HEARING EXAMINER

OCTOBER 2, 1964

The Federal Trade Commission, on June 30, 1964, issued its complaint charging the respondent named in the caption hereof with discriminating in promotional payments or allowances among its competing customers in violation of subsection (d) of Section 2 of the Clayton Act, as amended. The complaint was duly served upon respondent by registered mail on July 15, 1964, and the answer thereto was due on August 14, 1964. No answer to the complaint has been filed.

On August 20, 1964, the hearing examiner cancelled the hearing scheduled in the complaint herein, subject to being rescheduled by further order, and scheduled a joint prehearing conference with counsel to be held on September 21, 1964, in New York, N.Y., in seven proceedings, including this one, in which complaints were simultaneously issued by the Commission, charging manufacturers of wearing apparel with similar violations of subsection (d) of Section 2 of the Clayton Act, as amended. Although the respondent herein was then in default under Section 3.5(c) of the Commission's Rules of Practice, the order scheduling the joint prehearing conference was

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served upon said respondent, and provided that it may "be represented at said conference by counsel, or by an authorized official of the corporation." Said joint prehearing conference was duly held in New York, N.Y., on September 21, 1964. It was stenographically reported, and the transcript thereof constitutes a part of the record herein, but, pursuant to the request of some of the parties, it is not public (Section 3.8(b) of the Commission's Rules of Practice). The respondent herein was not represented at said prehearing conference.

No answer to the complaint having been filed, and no appearance having been made by the respondent herein at the joint prehearing conference hereinabove referred to, respondent is in default. Pursuant to the provisions of Section 3.5(c) of the Commission's Rules of Practice, the hearing examiner accordingly enters this initial decision, finding the facts to be as alleged in the complaint and containing appropriate conclusions and order.

## FINDINGS OF FACT

1. Respondent, Boepple Sportswear Mills, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 1410 Broadway, New York 18, New York.

2. Respondent is now and has been engaged in the manufacture, sale, and distribution of ladies' sweaters and knitted skirts to a large number of retail specialty and department stores located throughout the United States. Respondent's sales of its products are substantial, having exceeded \$1,600,000 for the calendar year ending 1960.

3. In the course and conduct of its business, respondent has engaged and is now engaging in commerce, as "commerce" is defined in the Clayton Act, as amended, in that respondent sells and causes its products to be transported from the respondent's principal place of business located in the State of New York, to customers located in many States of the United States and in the District of Columbia. There has been at all times mentioned herein a continuous course of trade in commerce in said products across State lines between said respondent and its customers.

4. In the course and conduct of its business in commerce, respondent paid or contracted for the payment of something of value to or for the benefit of some of its customers as compensation or in consideration for services or facilities furnished by or through such customers in connection with their offering for sale or sale of products sold to them by respondent, and such payments were not made available on pro-

portionally equal terms to all other customers competing in the sale and distribution of respondent's products.

5. Included among the payments referred to in paragraph 4 hereof were credits, or sums of money, sometimes hereinafter referred to as promotional allowances, paid either directly or indirectly by way of discounts, allowances, rebates or deductions, as compensation or in consideration for promotional services, or facilities furnished by customers in connection with the offering for sale, or sale of respondent's products, including advertising in various forms, such as newspapers.

6. For example, respondent made payments and allowances to various customers in various trading areas including Chicago, Illinois, and New York, New York, for advertising its products in newspapers and catalogs. During the year 1960, respondent paid The Fair and Wieboldt Stores, Inc., of Chicago, Illinois, promotional allowances in the amounts of \$165.06 and \$100, respectively. During the year 1962, respondent paid Carson, Pirie, Scott of Chicago an advertising allowance of \$200. In New York, during 1961, respondent paid promotional allowances to Oppenheim Collins and Best & Co., among others, in the amounts of \$150 and \$933, respectively. In 1962, respondent paid promotional allowances to Best & Co., Saks Fifth Avenue and Bloomingdale Bros., Division of Federated Department Stores, Inc., in the amounts of \$925, \$250 and \$540.72, respectively.

7. Respondent did not make, or offer to make, or otherwise make available such allowances on proportionally equal, or any, terms to all other customers in Chicago and New York competing with those who received such allowances.

#### CONCLUSION

The acts and practices of respondent, as hereinabove found, are in violation of subsection (d) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act (U.S.C., Title 15, Section 13).

#### ORDER

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

Paying or contracting for the payment of anything of value to, or for the benefit of any customer of the respondent as compensation or in consideration for advertising or promotional

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services, or any other service or facility, furnished by or through such customer in connection with the handling, sale or offering for sale of wearing apparel products manufactured, sold or offered for sale by respondent, unless such payment or consideration is made available on proportionally equal terms to all other customers competing with such favored customer in the distribution or resale of such products.

## DECISION AND ORDER

No appeal from the initial decision of the hearing examiner having been filed, and the Commission having determined that the case should not be placed on its own docket for review and that pursuant to Section 3.21 of the Commission's Rules of Practice (effective August 1, 1963), the initial decision should be adopted and issued as the decision of the Commission:

*It is ordered,* That the initial decision of the hearing examiner shall, on the 10th day of November, 1964, become the decision of the Commission.

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

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IN THE MATTER OF

## THE GREYSTONE CORPORATION

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

*Docket C-856. Complaint, Nov. 13, 1964—Decision, Nov. 13, 1964*

Consent order requiring a New York City seller of magazines and other merchandise by direct mail and through retailers to cease using deceptive methods of debt collection, threatening delinquent debtors with legal process, and using the name of a fictitious collection agency.

## COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that The Greystone Corporation, a corporation, hereinafter referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the

public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, The Greystone 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 located at 100 6th Avenue, in the city of New York, State of New York.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the advertising, offering for sale and sale of magazines, publications and other merchandise to the general public by and through the United States Mails, and to the general public through other business concerns.

PAR. 3. In the course and conduct of its business, respondent now causes and for some time last past has caused its said magazines, publications and other merchandise, when sold, to be shipped from its place of business and sources of supply in the State of New York to purchasers thereof located in the various other States of the United States and in the District of Columbia, and maintains and at all times mentioned herein has maintained a substantial course of trade in said magazines, publications and other merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of its aforesaid business, respondent offers certain magazines, publications and other merchandise for sale through the United States Mails. Said magazines, publications and other merchandise are distributed and payment made therefor through the United States Mails.

For the purpose of inducing the payment of purportedly delinquent accounts that have arisen from the aforesaid transactions, respondent has made certain statements and representations in letters and notices disseminated through the United States Mails to purportedly delinquent customers.

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

(a) On respondent's letterheads:

Will you help me win an argument I'm having with our Credit Manager?

He says you have not paid for books in the amount shown on the enclosed statement and he wants to place your account with THE MAIL ORDER CREDIT REPORTING ASSOCIATION for collection.

I disagree with him, because I'm convinced that you have merely overlooked his bills or have a good reason for ignoring them. I have prevailed upon him to delay sending your account to THE MAIL ORDER CREDIT REPORTING ASSOCIATION for a few more days.

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YOU ARE HEREBY ON NOTICE THAT: Three weeks from the date shown on the enclosed bill, your account will be transferred to THE MAIL ORDER CREDIT REPORTING ASSN.

(b) On the following letterhead:

THE MAIL ORDER CREDIT REPORTING ASSOCIATION, INC.  
CREDIT REPORTS—SPECIAL INVESTIGATIONS—COLLECTIONS  
15 West 38th Street, New York 18, N.Y.

One of our members, THE GREYSTONE PRESS, has brought to our attention a claim they have against you.

The Credit Manager of the Company informs us that he and the members of his staff have made repeated efforts to collect the amount due, but that these efforts have been without success.

Ours is a credit and collection organization founded by publishers, mail order houses and other concerns as a protection against loss on bad accounts, and we are determined to secure settlement of this claim for our member. \* \* \*

We have been asked to give you every opportunity to settle this small account, because our client wishes to keep your good will and friendship. If you deliberately ignore our effort to collect this debt, we will be obliged to advise our client to take recourse in the established legal processes of the courts.

That certainly would not be pleasant. Wouldn't it prove unpleasant and embarrassing to you to be refused credit at some future date because of a small bill that you had every opportunity to settle?

We are now calling this matter to your attention *once more* before placing your name in our "General Delinquent File".

Five days from the date of this letter your case will be filed with special counsel for prosecution. Only your immediate attention to this matter will delay the contemplated action.

PAR. 5. By and through the use of the aforesaid statements, representations and practices, and others of similar import and meaning not specifically set out herein, respondent has represented directly and by implication that:

a. If payment is not made, the delinquent customer's name is transmitted to a bona fide credit reporting agency.

b. If payment is not made, the customer's general or public credit rating will be adversely affected.

c. "THE MAIL ORDER CREDIT REPORTING ASSOCIATION, INC.," is a separate bona fide collection and credit reporting agency located in New York City.

d. Respondent has turned over to "THE MAIL ORDER CREDIT REPORTING ASSOCIATION, INC." the delinquent account of the customer for collection and other purposes.

e. If payment is not made, the delinquent customer's account will be transferred to an outside attorney with instructions to institute suit or to take other legal steps to collect the outstanding amount due.

f. Letters and notices on the letterhead of "THE MAIL ORDER CREDIT



REPORTING ASSOCIATION, INC." have been prepared and mailed by said organization.

PAR. 6. In truth and in fact:

a. If payment is not made, the delinquent customer's name is not transmitted to a bona fide credit reporting agency.

b. If payment is not made, the customer's general or public credit rating is not adversely effected.

c. "THE MAIL ORDER CREDIT REPORTING ASSOCIATION, INC.," is not a separate bona fide collection or credit reporting agency. Said organization is a fictitious name utilized by respondent and others for the purpose of disseminating collection letters.

d. Respondent has not turned over to "THE MAIL ORDER CREDIT REPORTING ASSOCIATION, INC." the delinquent account of the customer for collection or any other purpose.

e. If payment is not made, the delinquent customer's account is not transferred to an outside attorney with instructions to institute suit or other legal steps to collect the outstanding amount due.

f. The letters and notices on the letterhead of "THE MAIL ORDER CREDIT REPORTING ASSOCIATION, INC." have not been prepared or mailed by said organization. Said letters and notices have been prepared and mailed or caused to be mailed by respondent. Replies and responses to said letters and notices are forwarded unopened to respondent.

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

PAR. 7. Respondent also engages in the practice of selling its books and publications to others for resale to the public. In conjunction with the aforesaid business, respondent has engaged in the practice of providing sample letters and forms by and through which they may mislead its customers and deceive the public in the same manner and in the same way as set forth in Paragraphs Four and Five hereof.

PAR. 8. The use by respondent of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true, and into the payment of substantial sums of money to respondent and to others who have purchased books and publications from respondent for resale, by reason of said erroneous and mistaken belief.

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

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tices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

## DECISION AND ORDER

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

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

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

1. Respondent The Greystone Corporation 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 100 6th Avenue, in the city of New York, State of New York.

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

## ORDER

*It is ordered*, That respondent The Greystone Corporation, a corporation, and its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of magazines, publications or 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 that:
  - a. A customer's name will be or has been turned over to a bona fide credit reporting agency unless respondent establishes that where payment is not received the information of said delinquency is referred to a bona fide credit reporting agency;

b. A customer's general or public credit rating will be adversely affected unless respondent establishes that where payment is not received, the information of said delinquency is referred to a bona fide credit reporting agency or other business organizations;

c. Delinquent accounts will be or have been turned over to a bona fide separate collection agency unless respondent in fact turns such accounts over to such agencies;

d. Delinquent accounts will be turned over to an attorney to institute suit or other legal action where payment is not made, unless respondent establishes that such is the fact;

e. Delinquent accounts will be or have been turned over to "THE MAIL ORDER CREDIT REPORTING ASSOCIATION, INC." for collection or any other purpose;

f. "THE MAIL ORDER CREDIT REPORTING ASSOCIATION, INC.", any other fictitious name, or any trade name owned in whole or in part by respondent or over which respondent exercises operating control is an independent bona fide collection or credit reporting agency;

g. Letters, notices or other communications in connection with the collection of respondent's accounts which have been prepared or originated by respondent, have been prepared or originated by any other person, firm or corporation;

2. Placing in the hands of others the means and instrumentalities by and through which they may mislead and deceive the public in the manner and as to the things prohibited in Paragraph 1 hereof.

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

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IN THE MATTER OF

E. B. I. SWEATER CO., 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-857. Complaint, Nov. 13, 1964—Decision, Nov. 13, 1964*

Consent order requiring New York City importers of wool products to cease violating the Wool Products Labeling Act by such practices as falsely labeling sweaters "60% mohair, 35% wool, 5% nylon" when they contained

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substantially different quantities of fibers, and using the word "mohair" instead of "wool" without setting forth the correct percentage of mohair.

## 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 E. B. I. Sweater Co., Inc., a corporation trading under its own name and as Dantina Fashions, and Conte Mario Co., Inc., a corporation trading under its own name and as Contessa Nina, and Enzo Rasi and Aida Ione Crain, individually and as officers of said corporations, hereinafter referred to as respondents, have violated the provisions of the said Acts and the Rules and Regulations promulgated under the Wool Products Labeling Act of 1939, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent E. B. I. Sweater Co., Inc., a corporation trading under its own name and as Dantina Fashions and Conte Mario Co., Inc., a corporation trading under its own name and as Contessa Nina are corporations organized, existing and doing business under and by virtue of the laws of the State of New York.

Individual respondents Enzo Rasi and Aida Ione Crain are officers of said corporations and cooperate in formulating, directing and controlling the acts, policies and practices of the corporate respondents including the acts and practices hereinafter referred to.

Respondents are importers of wool products with their office and principal place of business located at 10 West 33rd Street, New York, New York.

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

PAR. 3. Certain of said wool products were misbranded by 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 falsely and deceptively stamped, tagged, labeled or otherwise identified with respect to the character and amount of the constituent fibers contained therein.

Among such misbranded wool products, but not limited thereto, were sweaters stamped, tagged, labeled or otherwise identified as containing 60% mohair, 35% wool, 5% nylon, whereas in truth and in fact, said sweaters contained substantially different amounts of fibers than represented.

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

Among such misbranded wool products, not not limited thereto, were certain sweaters with labels on or affixed thereto which failed to disclose the percentage of the total fiber weight of the wool product, exclusive of ornamentation, but not exceeding five percentum of said total fiber weight of: (1) woolen fibers; (2) each fiber other than wool if said percentage by weight of such fiber is five percentum or more; (3) the aggregate of all other fibers.

PAR. 5. Certain of said wool products were misbranded in violation of the Wool Products Labeling Act of 1939, in that they were not labeled in accordance with the Rules and Regulations promulgated thereunder in the following respects:

(a) Non-required information and representations used on the said products and on the labels affixed thereto were false, deceptive and misleading as to the fiber content of said products and were set forth, and used in such a manner as to interfere with the required information, in violation of Rule 10(b) of the aforesaid Rules and Regulations.

(b) The required stamp, tag, label or mark of identification was minimized and rendered obscure and inconspicuous by conflicting information and enlarged lettering of the term "mohair" in violation of Rule 11 of the aforesaid Rules and Regulations.

(c) The term "mohair" was used in lieu of the word "wool" in setting forth the required fiber content information on labels affixed to wool products without setting forth the correct percentage of the mohair, in violation of Rule 19 of the Rules and Regulations under the Wool Products Labeling Act of 1939.

PAR. 6. 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.

Decision and Order

66 F.T.C.

## DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, 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, E. B. I. Sweater Co., Inc., a corporation trading under its own name and as Dantina Fashions, and Conte Mario Co., Inc., a corporation trading under its own name and as Contessa Nina 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 10 West 33rd Street, in the city of New York, State of New York.

Respondents Enzo Rasi and Aida Ione Crain are officers of said corporations, and their address is the same as that of said corporations.

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

## ORDER

*It is ordered.* That respondents E. B. I. Sweater Co., Inc., a corporation trading under its own name and as Dantina Fashions, and Conte Mario Co., Inc., a corporation trading under its own name and as Contessa Nina, and their officers, and Enzo Rasi and Aida Ione Crain, individually and as officers of said corporations, 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 offering for sale, sale, transportation, distribution or delivery for shipment, or shipment in commerce, of sweaters or other wool products, as "commerce" and "wool product" are defined in the Wool Products Labeling Act of 1939, do forthwith cease and desist from:

Misbranding such products by :

1. Falsely and deceptively stamping, tagging, labeling or otherwise identifying such products as to the character or amount of constituent fibers contained therein.

2. Failing to securely affix to, or place on, each such product a stamp, tag, label or other means of identification showing in a clear and conspicuous manner each element of information required to be disclosed by Section 4(a)(2) of the Wool Products Labeling Act of 1939.

3. Using non-required information and representations on wool products or on labels affixed thereto in such a manner as to be false, deceptive or misleading as to the fiber content of the wool products or so as to interfere with the information required by the said Act and the Rules and Regulations promulgated thereunder.

4. Affixing or placing the stamp, tag, label or mark of identification required under the said Act or the information required by said Act and the Rules and Regulations promulgated thereunder on wool products in such a manner as to be minimized, rendered obscure or inconspicuous or so as to be unnoticed or unseen by purchasers and purchaser-consumers, when said wool products are offered or displayed for sale or sold to purchasers or the consuming public.

5. Using the term "mohair" in lieu of the word "wool" in setting forth the required fiber content information on labels affixed to wool products without setting forth the correct percentage of the mohair present.

*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.

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IN THE MATTER OF

SAUL S. SIEGAL CO. ET AL.

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

*Docket C-858. Complaint, Nov. 16, 1964—Decision, Nov. 16, 1964*

Consent order requiring Chicago distributors of drapery, and furniture and wall fabrics, to cease misbranding and falsely advertising their textile fiber products.

Complaint

66 F.T.C.

## COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Textile Fiber Products Identification Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Saul S. Siegal Co., a corporation, and Saul S. Siegal, Leon Siegal and Morris Siegal, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of the said Acts and the Rules and Regulations promulgated under the Textile Fiber Products Identification Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Saul S. Siegal Co. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its principal place of business at 847 West Jackson Boulevard, Chicago, Illinois.

Individual respondents Saul S. Siegal, Leon Siegal and Morris Siegal are officers of the corporate respondent, and each cooperates in the formulation, direction, and control of the acts, practices, and policies of the corporate respondent. Their address is the same as the corporate respondent.

The corporate respondent and the individual respondents are now, and have been for a considerable period, engaged in the sale and distribution of drapery, furniture and wall fabrics.

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

PAR. 3. Certain of said textile fiber products were misbranded by respondents within the intent and meaning of Section 4(a) of the Textile Fiber Products Identification Act and the Rules and Regula-



tions promulgated thereunder, in that they were falsely and deceptively stamped, tagged, labeled, invoiced, advertised, or otherwise identified as to the name of constituent fibers contained therein.

Among such misbranded textile fiber products, but not limited thereto, were textile fiber products which were falsely and deceptively advertised by means of catalogues distributed by respondents throughout the United States, in the following respects:

Certain of said advertisements contained terms which represented, either directly or by implication, certain fibers as present in said product when such was not the case.

Among such terms, but not limited thereto, were the terms "hand print on Mohair," "Modern print on mohair antique satin," "Linen-Cotton-Acetate and Silk Noil face casement," "Linen casement with metallic," and "Metallic Boucle."

PAR. 4. Certain of said textile fiber products were misbranded by respondents in that they were not stamped, tagged, labeled or otherwise identified with the information required under Section 4(b) of the Textile Fiber Products Identification Act, and in the manner and form prescribed by the Rules and Regulations promulgated under said Act.

Among such misbranded textile fiber products, but not limited thereto, were textile fiber products which were not labeled to show in words and figures plainly legible:

1. The true generic name of the fiber present; and
2. The percentage of such fibers; and
3. The name, or other identification issued and registered by the Commission of the manufacturer of the product or one or more persons subject to Section 3 of the said Act, with respect to such product.

PAR. 5. Certain of said textile fiber products were falsely and deceptively advertised in that respondents in making disclosures or implications as to the fiber content of such textile fiber products in catalogues used to aid, promote, and assist directly or indirectly in the sale or offering for sale of said products, failed to set forth the required information as to fiber content as specified by Section 4(c) of the Textile Fiber Products Identification Act and in the manner and form prescribed by the Rules and Regulations promulgated under said Act.

Among such textile fiber products, but not limited thereto, were textile fiber products falsely and deceptively advertised by means of advertisements in said catalogues, in that such advertisements contained representations and implications of fiber content by means of the use of such terms, among others but not limited thereto, as "Chromespun," "Dacron," "Fortisan," and "Sateens," which advertisements:

- (1) Failed to set forth the true generic name of fibers present in amounts of more than five percent;
- (2) Failed to list fibers present in order of predominance by weight;
- (3) Designated fibers present in amounts of five percent or less by their generic name or fiber trademark.

PAR. 6. Certain of said textile fiber products were falsely and deceptively advertised in violation of the Textile Fiber Products Identification Act in that they were not advertised in accordance with the Rules and Regulations promulgated thereunder.

Among such textile fiber products, but not limited thereto, were textile fiber products which were falsely and deceptively advertised, by means of catalogues, in the following respects:

A. A fiber trademark was used in advertising textile fiber products without a full disclosure of the fiber content information required by the said Act and the Rules and Regulations thereunder in at least one instance in said advertisement, in violation of Rule 41(a) of the aforesaid Rules and Regulations.

B. A fiber trademark was used in advertising textile fiber products containing more than one fiber and such fiber trademark did not appear in the required fiber content information in immediate proximity and conjunction with the generic name of the fiber in plainly legible type or lettering of equal size and conspicuousness, in violation of Rule 41(b) of the aforesaid Rules and Regulations.

C. A fiber trademark was used in advertising textile fiber products containing only one fiber and such fiber trademark did not appear, at least once in the said advertisement, in immediate proximity and conjunction with the generic name of the fiber, in plainly legible and conspicuous type, in violation of Rule 41(c) of the aforesaid Rules and Regulations.

D. The generic name of a fiber was used in non-required information in advertising textile fiber products, in such a manner as to be false, deceptive and misleading as to fiber content and to indicate, directly or indirectly that such textile fiber product was composed wholly or in part of such fiber when such was not the case, in violation of Rule 41(d) of the aforesaid Rules and Regulations.

Among such products, but not limited thereto, were textile fiber products, advertised as "hand print on mohair," "modern print on mohair antique satin," "Linen-Cotton-Acetate and Silk Noil face casement," "Linen casement with metallic," and "Metallic Boucle," thus implying that such products were composed wholly or in part

of mohair, linen, cotton or metallic fibers, when in fact the products contained no such fibers.

E. Non-required information and representations used in advertising textile fiber products were false, deceptive and misleading as to the fiber content of the textile fiber product and were set forth and used so as to interfere with, minimize and detract from the required information in violation of Rule 42(b) of the aforesaid Rules and Regulations.

PAR. 7. The acts and practices of the respondents as set forth above were, and are, in violation of the Textile Fiber Products Identification Act and the Rules and Regulations promulgated thereunder, and constituted, and now constitute, unfair methods of competition and unfair and deceptive acts or 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 Textile Fiber Products Identification Act, and the respondents having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

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

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

1. Respondent Saul S. Siegal Co. 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 847 West Jackson Boulevard, in the city of Chicago, State of Illinois.

Respondents Saul S. Siegal, Leon Siegal and Morris Siegal 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 Saul S. Siegal Co., a corporation, and its officers, and Saul S. Siegal, Leon Siegal and Morris Siegal, 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, delivery for introduction, sale, advertising, or offering for sale, in commerce, or the transportation or causing to be transported in commerce, or the importation into the United States, of any textile fiber product; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, of any textile fiber product which has been advertised or offered for sale in commerce; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, after shipment in commerce, of any textile fiber product, whether in its original state or contained in other textile fiber products, as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act, do forthwith cease and desist from:

A. Misbranding textile fiber products by:

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

2. Falsely or deceptively stamping, tagging, labeling, invoicing, advertising or otherwise identifying such products by representing either directly or by implication, through the use of such terms as "hand print mohair," "modern print on mohair antique satin," "Linen-Cotton-Acetate and Silk Noil face casement," "Linen casement with metallic," or "Metallic Boucle" or any other terms, that any fibers are present in a textile fiber product when such is not the case.

3. Failing to affix labels to such products showing in a clear, legible and conspicuous manner each element of information required to be disclosed by Section 4(b) of the Textile Fiber Products Identification Act.

B. Falsely and deceptively advertising textile fiber products by:

1. Making any representations, by disclosure or by implication, as to the fiber contents or any textile fiber product in any written advertisement which is used to aid, promote, or assist, directly or indirectly, in the sale or offering for sale of such textile fiber product, unless the same information required to be shown on the stamp, tag, label or other means of identification under Section 4(b) (1) and (2) of the Textile Fiber Products Identification Act is contained in the said advertisement, in the manner and form required except that the percentages of the fibers present in the textile fiber product need not be stated.

2. Using a fiber trademark in advertisements without a full disclosure of the required content information in at least one instance in the said advertisement.

3. Using a fiber trademark in advertising textile fiber products containing more than one fiber without such fiber trademark appearing in the required fiber content information in immediate proximity and conjunction with the generic name of the fiber in plainly legible type or lettering of equal size and conspicuousness.

4. Using a fiber trademark in advertising textile fiber products containing only one fiber without such fiber trademark appearing at least once in the advertisement, in immediate proximity and conjunction with the generic name of the fiber, in plainly legible and conspicuous type.

5. Using a generic name of a fiber in non-required information in advertising textile fiber products in such a manner as to be false, deceptive or misleading as to fiber content or to indicate, directly or indirectly, that such textile fiber products are composed wholly or in part of such fiber when such is not the case.

6. Using non-required information and representations in said advertising in such a manner as to be false, deceptive or misleading as to the fiber content of the textile fiber products or so as to interfere with, minimize or detract from required information.

*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

66 F.T.C.

## IN THE MATTER OF

McKESSON & ROBBINS, INC. AND DRUGGISTS' SERVICE  
COUNCIL, INC., ET AL.ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL  
TRADE COMMISSION ACT*Docket 8510 and 8511. Complaints, June 19, 1962—Decision, Nov. 17, 1964*

Order withdrawing two complaints charging a drug manufacturer and an association of drug wholesalers with inducing discriminatory promotional allowances, but reserving the right to issue new complaints if warranted.

## COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the respondent, McKesson & Robbins, Inc., has violated and is now violating the provisions of Section 5 of the Federal Trade Commission Act (15 U.S.C., Title 15, Sec. 45), and it appearing to the Commission that a proceeding by it in respect thereof would be in the interest of the public, issues its complaint charging as follows:

PARAGRAPH 1. Respondent McKesson & Robbins, Inc., hereinafter referred to as McKesson & Robbins, is a corporation organized, existing and doing business under the laws of the State of Maryland. Its executive office and principal place of business is at 155 East 44th Street, New York, New York.

PAR. 2. McKesson & Robbins manufactures a line of drug products distributed under its own name. It also purchases and distributes wholesale, and has done so for many years past, the products of other manufacturers in drug, cosmetic and sundry lines (hereafter referred to as drug products). It is by far the largest drug wholesaler in the United States. Gross sales volume of McKesson & Robbins in all departments in the fiscal year ending March 31, 1959, was \$613,986,000. Sales volume of the Drug Department was \$403,000,000 for the same period (limited to wholesale of products of other manufacturers, and not including goods returned).

PAR. 3. Products distributed through the Drug Department of McKesson & Robbins are sold through 85 Wholesale Divisions throughout the United States to retail drug stores and other retail establishments throughout the United States. Said wholesale divisions are not separately incorporated but are an integral part of the corporate organization of McKesson & Robbins.

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INC., ET AL.

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PAR. 4. In the course and conduct of its business, McKesson & Robbins has engaged in, and is presently engaged in, commerce, as "commerce" is defined in the Federal Trade Commission Act. It purchases drug products from suppliers throughout the United States and causes such products to be transported from various States to other States for distribution and resale by McKesson & Robbins to retailers throughout the United States.

PAR. 5. McKesson & Robbins in the course and conduct of its business as aforesaid, actively competes with other drug wholesalers throughout the United States in the purchase for resale of said drug products and in the resale and distribution of such products within the United States. Many of the seller suppliers of said products in such sales to respondent and its wholesaler competitors are engaged in commerce as "commerce" is defined in the Clayton Act, as amended.

PAR. 6. In the course and conduct of its business as aforesaid, McKesson & Robbins has induced and entered into contracts for and has induced and received from many of said seller suppliers so engaged in commerce, various payments, allowances or other considerations of value for its benefit, for services or facilities furnished by or through McKesson & Robbins in connection with the handling, sale and offering for sale of the said products of such suppliers, knowing, or having reason to know, that such payments, allowances or other considerations of value were not made known, offered, and made available on proportionally equal terms to McKesson & Robbins' competitors also purchasing from such same seller suppliers and engaged in the handling, sale and offering for sale of said products. Respondent, in so contracting for, inducing and receiving the said payments, allowances or other considerations of value from said seller suppliers, knew or should have known that the same when so granted and made by said seller suppliers were in violation of subsection (d) of Section 2 of the Clayton Act, as amended.

To illustrate: In 1959, American Safety Razor Products Corporation paid \$3,500 to McKesson & Robbins for advertising in "Profitunities" which is published monthly by McKesson & Robbins as a catalog-price sheet and distributed to its retail customers without charge. That same year, the Mennen Company paid McKesson & Robbins \$2,100 for advertising in "Profitunities."

In 1959 Union Carbide Corporation paid \$385 to McKesson & Robbins for insertion of advertising in "Gift Book," published yearly by McKesson & Robbins shortly before Christmas and distributed to its retail customers without charge. That same year, Eversharp, Inc.,

Complaint

66 F.T.C.

paid McKesson & Robbins \$300 for insertion of advertising in "Gift Book."

In 1959 Union Carbide Corporation and American Safety Razor Products Corporation each paid \$1,500 to McKesson & Robbins as a "special merchandising" fee.

PAR. 7. The acts and practices, as alleged above, are all to the prejudice of the public and constitute unfair methods of competition and unfair acts and practices within the intent and meaning of Section 5 of the Federal Trade Commission Act.

## COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the parties named in the caption hereof, have violated and are now violating the provisions of Section 5 of the Federal Trade Commission Act (15 U.S.C., Title 15, Sec. 45), and it appearing to the Commission that a proceeding by it in respect thereof would be in the interest of the public, issues its complaint, charging as follows:

PARAGRAPH 1. Respondent Druggists' Service Council, Inc., hereinafter sometimes referred to as DSC, is a non-profit, non-stock membership corporation organized, existing and doing business under the laws of the State of Delaware with its principal office and place of business located at 24 West 40th Street, New York 18, New York. Prior to January 1, 1962, proposed respondent's name was Druggists' Service Company, Inc.

Individual respondents J. Wayne Luther, George F. Gardner and George J. Meill are the president and general manager, vice president, and secretary-treasurer, respectively, of respondent Druggists' Service Council, Inc. Said officers conduct the business activities of Druggists' Service Council, Inc. The address of said individual respondents is the same as corporate respondent Druggists' Service Council, Inc.

PAR. 2 Respondent Chas. S. Leete Co., Inc., is a corporation organized, existing and doing business under the laws of the State of Connecticut having its office and principal place of business on Derby Avenue, West Haven, Connecticut. In 1959 its total gross dollar volume of sales was approximately \$2,000,000.

Respondent The Sisson Drug Company is a corporation organized, existing and doing business under the laws of the State of Connecticut with its principal office and place of business located at 729 Main Street, Hartford, Connecticut. Its total gross dollar volume of sales in 1959 was approximately \$3,400,000.

Respondent Gilman Brothers, Inc., is a corporation organized, exist-



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ing and doing business under the laws of the State of Massachusetts with its principal office and place of business located at 100 Shawmut Avenue, Boston, Massachusetts. In 1959 its total gross dollar volume of sales was approximately \$15,000,000.

Respondent Shoemaker & Busch, Inc., is a corporation organized, existing and doing business under the laws of the State of Pennsylvania with its principal office and place of business located at 3700 Kensington Avenue, Philadelphia, Pennsylvania. Its total gross dollar volume of sales for 1959 was approximately \$5,000,000.

Respondent Towns & James, Inc., is a corporation organized, existing and doing business under the laws of the State of New York with its principal office and place of business located at 909 Remsen Avenue, Brooklyn, New York. Its total gross dollar volume of sales for 1959 was approximately \$15,000,000.

PAR. 3. Respondent Druggists' Service Council, Inc., is a service organization composed of drug and sundry manufacturers and wholesale druggists. Prior to January 1, 1962, respondent DSC was known as Druggists' Service Company, Inc., and was then composed solely of wholesale druggists as its members. Each wholesale member of DSC must meet certain qualifications and pay a membership fee in order to join DSC, and must also agree to pay annual dues to maintain its membership. Each wholesale member has one vote at membership meetings and its board of directors of fifteen men is composed of J. Wayne Luther, president of Druggists' Service Council, Inc., and fourteen officials of member wholesale drug firms. The control, direction and management of the business of respondent DSC is vested in said board of directors.

DSC was organized for the purpose of rendering information, advice and service to its wholesale member drug firms concerning the purchase, advertising, and sale of drug and sundry merchandise; rendering advice and service to manufacturers and suppliers of drug and sundry merchandise; and to aid and assist in promoting better trade relations between wholesale drug firms and manufacturers and suppliers to the mutual benefit of both the wholesale members and the suppliers. Druggists' Service Council, Inc., in carrying out its activities, is engaged in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. The respondents named in Paragraph Two are engaged in the wholesale drug business selling primarily to drug retailers numerous products, including drugs, cosmetics and sundry products. Each of said respondents is a member of respondent DSC. Respondent DSC has a total of approximately 182 members located in the various States

of the United States and the District of Columbia which, in the course and conduct of their wholesale drug business or as wholesale members of and participants in the activities of DSC are all engaged in commerce, as "commerce" is defined in the Federal Trade Commission Act.

The wholesale membership of said respondent DSC constitutes a class so numerous and changing as to make it impracticable to specifically name each and all of such wholesale members as parties respondent herein. Those wholesale members named and designated herein are fairly representative of the entire wholesale membership, and are named as respondents herein in their individual capacities in which they have been represented in the wholesale membership of said respondent DSC, and as representatives of all wholesale members of said respondent DSC, as a class, including those not herein specifically named, all of whom are made respondents herein. All such members of DSC are sometimes hereinafter referred to as "buyer respondents."

PAR. 5. The aforesaid wholesale members of Druggists' Service Council, Inc., and all of the other such members of DSC are in competition with other wholesale drug firms, some of which are members of DSC and some of which are not members of DSC. Wholesale members of DSC maintain their membership in furtherance of their business interests and their competitive status in the industry.

PAR. 6. By virtue of the buyer respondents' membership in respondent Druggists' Service Council, Inc., the latter, acting on behalf of its wholesale members, in the course and conduct of its business in commerce, has induced and entered into contracts for, and has induced and received from many manufacturers and suppliers of products handled by the buyer respondents various advertising promotional, consultation or advisory payments to it for the benefit of its wholesale members. Some such payments have been made, or contracted to be made, as compensation or in consideration for advertising in publications or participation in promotions furnished by or through Druggists' Service Council, Inc., in connection with the sale or offering for sale of products sold to its wholesale members by such manufacturers and suppliers. Other such payments have been made, or contracted to be made, as compensation or in consideration for consultation or advisory services furnished by or through Druggists' Service Council, Inc., in connection with the processing, handling, sale, or offering for sale of products sold to its wholesale members by such manufacturers and suppliers. Respondent Druggists' Service Council, Inc., and its wholesale members knew or had reason to know that such advertising, promotional, consultation or advisory payments were not made known,

McKESSON & ROBBINS, INC. AND DRUGGISTS' SERVICE COUNCIL, 1129  
INC., ET AL.

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offered or made available on proportionally equal terms to buyer respondents' competitors also purchasing from such manufacturers and suppliers and engaged in the handling, sale and offering for sale of like drug and sundry products. All respondents knew or should have known that the inducement of these payments and the payments, when so granted by the manufacturers and suppliers, were in violation of subsection (d) of Section 2 of the Clayton Act, as amended.

PAR. 7. The manufacturers' and suppliers' payments mentioned in Paragraph Six of this complaint contribute to the cost of DSC services designed in whole or in part to benefit the DSC wholesaler in his relationship with the retail druggist. Illustrative of suppliers' payments in 1959 which served this purpose are the following:

White Laboratories, Inc., paid \$2,801.55 to Druggists' Service Council, Inc., for advertising in "Buying Guide," a monthly DSC catalogue publication, available at a minimal charge to DSC wholesale members who then distribute it to their retail customers at no charge.

Eversharp, Inc., paid \$9,000 to Druggists' Service Council, Inc., for advertising in "Gifts Galore," a DSC promotional activity, whereby DSC makes up a promotional kit with advertising and sells the kits only to DSC's wholesalers who in turn sell them to their retail drug customers.

Chesebrough-Pond's, Inc., paid \$2,400 to Druggists' Service Council, Inc., for participation in "Monthly Promotional Service," a DSC monthly promotional kit sold to DSC's wholesalers who resell same to retail druggists.

Warner-Lambert Pharmaceutical Company paid \$1,500 to Druggists' Service Council, Inc., for various consultation and advisory services furnished by DSC and its wholesale members for the mutual benefit of said manufacturer and wholesale members of Druggists' Service Council, Inc.

PAR. 8. The acts and practices of respondents, as hereinbefore alleged, are all to the prejudice and injury of competitors and of the public, and constitute unfair methods of competition and unfair acts and practices within the intent and meaning of Section 5 of the Federal Trade Commission Act.

ORDER WITHDRAWING COMPLAINTS AND DISMISSING MOTION TO  
AMEND COMPLAINTS

The complaints in these closely related matters were issued on June 19, 1962, charging respondents with having knowingly induced

and received discriminatory promotional allowance in violation of Section 5 of the Federal Trade Commission Act. After the Commission, on July 27, 1964, issued its decisions and order in 17 cases involving firms which allegedly had made discriminatory promotional allowances to the present respondents in violation of Section 2(d) of the Clayton Act (*Chesebrough-Ponds, Inc.*, F.T.C. Docket 8491, et al.) [p. 252 herein], complaint counsel, on September 30, 1964, made motions before the hearing examiners to amend the complaints against the present respondents. Primarily, the proposed amendments would add a charge that respondents, in inducing or receiving payments or allowances from suppliers, "used the leverage of [respondents'] purchasing power and position" "to the prejudices and injury" of such suppliers and of respondents' competitors. Since the proposed amendments were not "reasonably within the scope of the proceeding initiated by the original complaint[s]," the examiners were not authorized to allow them. Section 3.7(a)(1), Procedures and Rules of Practice (effective August 1, 1963). Accordingly, on October 19, 1964, the examiner in Docket 8511, and on October 20, 1964, the examiner in Docket 8510, certified complaint counsel's motions to amend complaint to the Commission, as prescribed in Section 3.7(a)(1). See *Standard Camera Corp.*, F.T.C. Docket 8469 (Order of November 7, 1963) [63 F.T.C. 1238].

The Commission may issue an amended and enlarged complaint containing new allegations not within the scope of the proceeding initiated by the original complaint in situations where "the interests of both parties and the public interest will best be served by the issuance of an amended and supplemental complaint \* \* \* rather than by the initiation of a new proceeding through the issuance of a new and separate complaint." *Austin Packing Co.*, F.T.C. Docket 7730 (Order of May 23, 1963). [62 F.T.C. 1553]. See, e.g., *Quaker Oats Co.*, F.T.C. Docket 8112 (Order of December 11, 1961) [59 F.T.C. 1487]. In other situations, however, the Commission has determined that delay would be avoided and orderly procedure promoted by withdrawing the original complaint and thereafter issuing a new, superseding complaint containing enlarged allegations. Cf. *Estee Sleep Shops*, F.T.C. Docket 8527 (Order of January 16, 1963) [62 F.T.C. 59]; *Kenron Awning & Window Corp.*, F.T.C. Docket 8459 (Order of December 10, 1962) [61 F.T.C. 1329]; *Perma-Lite Raybern Manufacturing Corp.*, F.T.C. Docket 8486 (Order of May 2, 1963) [62 F.T.C. 1254]. Determination of the appropriate course depends upon the particular circumstances.

Since hearings have not yet been commenced in the present matters

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## Complaint

even though the complaints were issued more than two years ago, the Commission deems the latter procedure, that of withdrawing the complaints rather than issuing amended complaints, more appropriate. In view of the posture of these matters before the hearing examiners, issuance of amended complaints would, in practical effect, be tantamount to issuance of completely new complaints. In these circumstances the more orderly procedure is to withdraw the original complaints, without prejudice to the issuance of new, expanded complaints if found to be warranted. Accordingly,

*It is ordered*, That the complaints in the above-captioned proceedings be, and they hereby are, withdrawn.

*It is further ordered*, That the motions of complaint counsel to amend the present complaints be, and they hereby are, dismissed as moot.

## IN THE MATTER OF

## THE QUAKER OATS COMPANY

ORDER, OPINION, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION ACT AND SEC. 2 (a) OF THE CLAYTON ACT

*Docket 8112. Complaint, Sept. 14, 1960—Decision, Nov. 18, 1964*

Order setting aside initial decision and dismissing for lack of showing of injury to competition and for failure of proof, respectively, charges of price discrimination and selling below cost on the part of a major producer of oat flour, among other food products.

## AMENDED AND SUPPLEMENTAL COMPLAINT

The Federal Trade Commission, having reason to believe that the respondent named in the caption hereof, and more particularly designated and described hereinafter, has violated and is now violating the provisions of Section 2(a) of the Clayton Act (U.S.C., Title 15, Section 13), as amended, and Section 5 of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its amended and supplemental complaint, stating its charges with respect thereto as follows:

## COUNT I

Alleging violation of Section 2(a) of the Clayton Act, as amended:

PARAGRAPH 1. Respondent, The Quaker Oats Company, sometimes hereinafter referred to as respondent Quaker, is a corporation orga-