FINDINGS, OPINIONS, AND ORDERS, JULY 1, 1966, TO DECEMBER 31, 1966

IN THE MATTER OF

DECORWOOD CORPORATION OF AMERICA ET AL.

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

Docket C-1080. Complaint, July 6, 1966—Decision, July 6, 1966

Consent order requiring a Philadelphia, Pa., corporation to cease using deceptive means to recruit franchised dealer-applicators for its wall-covering materials.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Decorwood Corporation of America, a corporation, and D. Bernard Kirschner, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Decorwood Corporation of America is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office and place of business located at 628 West Rittenhouse Street, Philadelphia, Pennsylvania.

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

PAR. 2. For some time last past the respondents have been en-

gaged in the advertising, offering for sale, sale and distribution of "Decorwood" wall covering materials to dealer-applicators on a franchise basis for resale and installation.

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

PAR. 4. In the course and conduct of their aforesaid business, and for the purpose of recruiting dealer-applicators, the respondents have made numerous statements and representations in advertisements inserted in newspapers and magazines with respect to the nature of their business and the terms and conditions of their franchise agreements.

Typical and illustrative of the aforesaid statements are the following:

A 45 year old national company is expanding. Will appoint one man in each local area to service commercial, industrial and residential accounts.

* * * * * * *

NATIONALLY PUBLICIZED
Written up in American Home, New York Times, Phila. Bulletin.

* * * * * * *

The company absorbs all training costs, national advertising costs. . . .

* * * * * * *

Cash required $975 for inventory only, 100% refundable.

* * * * * * *

A RESALE SERVICE FOR YOUR PROTECTION!
Decorwood maintains a resale service to help dealers who have to sell due to sickness, moving, etc.

PAR. 5. By and through the use of the aforesaid statements and representations, and others of similar import and meaning but not specifically set forth herein, the respondents have represented, directly or by implication, that:

(a) The Decorwood Corporation of America has been in existence for 45 years.

(b) Articles relating to the Decorwood Corporation of America or its products have appeared in American Home, The New York Times and The Philadelphia Bulletin.

(c) The Decorwood Corporation of America absorbs all costs incidental to the training of its dealer-applicators.

(d) The Decorwood Corporation of America engages in national advertising.

(e) The capital which is required to be invested by a dealer-applicator is fully secured by inventory.

(f) The capital which is required to be invested by a dealer-applicator is fully refundable upon return of inventory.

(g) The Decorwood Corporation of America provides direct assistance to a dealer-applicator who is forced to sell out due to sickness, moving, or other distress circumstance.

PAR. 6. In truth and in fact:

(a) The Decorwood Corporation of America has not been in existence for 45 years.

(b) No articles relating to the Decorwood Corporation of America or its products have appeared in American Home, The New York Times or The Philadelphia Bulletin.

(c) The Decorwood Corporation of America does not absorb all costs incidental to the training of its dealer-applicators.

(d) The Decorwood Corporation of America does not engage in national advertising.

(e) The capital which is required to be invested by a dealer-applicator is not fully secured by inventory.

(f) The capital which is required to be invested by a dealer-applicator is not fully refundable upon return of inventory.

(g) The Decorwood Corporation of America does not provide direct assistance to a dealer-applicator who is forced to sell out due to sickness, moving, or other distress circumstance.

Therefore, the statements and representations referred to in Paragraphs Four and Five hereof were and are false, misleading and deceptive.

PAR. 7. In the conduct of their business, at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of wall-covering materials of the same general kind and nature as those sold by respondents.

PAR. 8. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the 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 by reason of said erroneous and mistaken belief.

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

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Deceptive Practices proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; and

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

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

1. Respondent Decorwood Corporation of America is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its office and principal place of business located at 628 West Rittenhouse Street, Philadelphia, Pennsylvania.

Respondent D. Bernard Kirschner is an officer of the corporation and his address is the same as that of said corporation.

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

1 Order

ORDER

It is ordered, That respondents Decorwood Corporation of America, a corporation, and its officers, and D. Bernard Kirschner, individually and as an officer of said corporation, and respondents' agents, respresentatives and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of wall-covering materials or any other product in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that:

1. The Decorwood Corporation of America has been in existence for 45 years; or misrepresenting in any manner the period of time during which the corporate respondent or the individual respondent has been engaged in business.

2. Articles relating to the Decorwood Corporation of America or its products have appeared in American Home, The New York Times or The Philadelphia Bulletin; or misrepresenting in any manner the nature or extent of any publicity which the corporate respondent, its products, or the individual respondent may have received.

3. The Decorwood Corporation of America absorbs all costs incidental to the training of its dealer-applicators; or misrepresenting in any manner the nature or extent of any costs which are absorbed by the corporate respondent or the individual respondent.

4. The Decorwood Corporation of America engages in national advertising; or misrepresenting in any manner the nature or extent of any advertising program which the corporate respondent or the individual respondent may have undertaken.

5. All or any part of any investment or payment solicited from a dealer-applicator or any other party is secured in any manner or to any extent: *Provided, however,* That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that in every instance security was in fact provided in the nature and to the extent represented.

6. All or any part of any investment or payment solicited from a dealer-applicator or any other party is refundable in any manner or to any extent: *Provided, however,* That it shall be a defense in any enforcement proceeding instituted

hereunder for respondents to establish that in every instance a refund was in fact provided in the manner and to the extent represented.

7. The Decorwood Corporation of America provides direct assistance to a dealer-applicator who is forced to sell out due to sickness, moving, or other distress circumstance; or misrepresenting in any manner the nature or extent of any assistance which may be provided in connection with the resale or liquidation of distributor assets.

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

IN THE MATTER OF

COVER GIRL OF MIAMI, INC., ET AL.

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

Docket C-1081. Complaint, July 6, 1966—Decision, July 6, 1966

Consent order requiring a Miami, Fla., dress manufacturer to cease misbranding and falsely guaranteeing its textile fiber products in violation of the Textile Fiber Products Identification Act.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Textile Fiber Products Identification Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission having reason to believe that Cover Girl of Miami, Inc., a corporation, and Irving Fedler, individually and as a production manager of said corporation, hereinafter referred to as respondents, have violated the provisions of 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 Cover Girl of Miami, Inc., is a corpo-

ration organized, existing and doing business under and by virtue of the laws of the State of Florida.

Individual respondent Irving Fedler is the production manager of the corporate respondent and directs and controls the acts and practices of the corporate respondent complained of herein.

Respondents are manufacturers of textile fiber products namely, ladies' dresses, with their office and principal place of business located at 490 NW., 26th Street, Miami, Florida.

PAR. 2. Subsequent to the effective date of the Textile Fiber Products Identification Act on March 3, 1960, respondents have been and are now engaged in the introduction, delivery for introduction, manufacture for introduction, sale, advertising, and offering for sale, in commerce and in the transportation or causing to be transported in commerce, and 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 Regulations promulgated thereunder, in that they were falsely and deceptively stamped, tagged, labeled, invoiced, advertised or otherwise identified as to the name or amount of constituent fibers contained therein.

Among such misbranded textile fiber products, but not limited thereto, were textile fiber products, namely ladies' dresses, which were labeled "77% Rayon, 23% Acetate," whereas in truth and in fact, such textile fiber products contained substantially different fibers and amounts of fibers than represented on the label.

PAR. 4. Certain of said textile fiber products were misbranded by respondents in that there was not on or affixed to said textile fiber products any stamp, tag, label or other means of identification showing the required information in violation of Section 4(b) of the Textile Fiber Products Identification Act.

PAR. 5. Respondents have furnished their customers with false guaranties that certain of their textile fiber products were not

misbranded or falsely invoiced by falsely representing in writing on invoices that repondents has filed a continuing guaranty under the Textile Fiber Products Identification Act with the Federal Trade Commission, in violation of Rule 38(d) of the Rules and Regulations under said Act and Section 10(b) of such Act.

PAR. 6. Certain of said textile fiber products were misbranded in violation of the Textile Fiber Products Identification Act in that they were not labeled in accordance with the Rules and Regulations promulgated thereunder in that samples, swatches, or specimens of textile fiber products used to promote or effect sales of such textile fiber products, were not labeled to show their respective fiber contents and other required information, in violation of Rule 21(a) of the aforesaid Rules and Regulations.

PAR. 7. The acts and practices of respondents as set forth here, were in violation of the Textile Fiber Products Identification Act and the Rules and Regulations 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 and the Textile Fiber Products Identification Act; and

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

The Commission, having reason to believe that the respondents have violated the said Acts, 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 Cover Girl of Miami, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida with its office and principal place of business located at 490 NW., 26th Street, Miami, Florida.

Respondent Irving Fedler is the production manager of the said corporation and his address is the same as that of said corporation.

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

ORDER

It is ordered, That respondents Cover Girl of Miami, Inc., a corporation and its officers and Irving Fedler, individually, and as production manager of said corporate respondent, 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. Failing to affix labels to such textile fiber 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.

3. Failing to affix labels showing the respective fiber

content and other required information to samples, swatches and specimens of textile fiber products subject to the aforesaid Act which are used to promote or effect sales of such textile fiber products.

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

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

IN THE MATTER OF

UNITED STATES SALES CORP. DOING BUSINESS AS UNITED STATES PURCHASING EXCHANGE, ETC.

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

Docket C-1082. Complaint, July 7, 1966—Decision, July 7, 1966

Consent order requiring a North Hollywood, Calif., mail-order retailer of miscellaneous merchandise to cease misrepresenting itself as a liquidator, as being connected with United States Government, that it sells at public auctions, the nature of its guarantees, that it sells at wholesale prices, the source of its merchandise, and making other false claims.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that United States Sales Corp., a corporation, and Ronald D. Goldman and Theodore J. Slavin, 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 United States Sales Corp. is a corpo-

ration organized, existing and doing business under and by virtue of the laws of the State of California with its office and principal place of business presently located at 5260 Vineland Avenue, North Hollywood, California. Its former office and place of business was located at 435 East Washington Boulevard, Los Angeles, California.

It also does business under the names of United States Purchasing Exchange and U.S. Purchasing Exchange.

Respondents Ronald D. Goldman and Theodore J. Slavin are officers of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent.

Respondents are successors to United States Claim Adjusters whose principal office and place of business was located first at 1028 South Olive Street, Los Angeles, California and then at 435 East Washington Boulevard in that city.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of a variety of products including electric household appliances, housewares, tools, radios, watches, tape recorders and other articles of merchandise to the public.

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

PAR. 4. In the course and conduct of their aforesaid business, and for the purpose of inducing the purchase of their merchandise, respondents through the use of their several trade names and in circulars and promotional material sent to prospective purchasers make numerous statements and representations respecting their trade status, the nature of their business, the source of their merchandise, their connection with the United States Government, and the nature and extent of their advertised guarantees.

Typical and illustrative of the aforesaid statements and representations are the following:

On envelopes:

United States Claim Adjusters
1028 South Olive Street
Los Angeles 15, California
OFFICIAL NOTICE

* * * * * * *

UNITED STATES CLAIM ADJUSTERS
P. O. BOX 15662
LOS ANGELES 15, CALIFORNIA
(underprint depicting an eagle)
PUBLIC NOTICE
DO NOT
DESTROY
THIS BULLETIN!

On promotional material:

ESTATES BANKRUPTCIES LIQUIDATIONS
PUBLIC NOTICE

WHEREAS:

CLAIM NO B30772 BULLETIN NO 2163

Gentlemen:

We have just been notified that this division has received authorization to liquidate a distressed shipment of 535 brand new waterless cookware sets.

Rather than dispose of these sets at public auction, we are being permitted to make them available to commercial accounts for the benefit of their employees.

LIQ NO. B30772 CONDITION: BRAND NEW PACKAGED

"Honor Craft" Stainless Steel Waterless Cookware Set
Home Demonstration Price....$199.50 LIQUIDATION PRICE $35.00

* * * * * * *

This shipment is being sold on a no limit—no reserve—piece by piece basis. All orders will be processed on the priority system regardless of quantities until supply is exhausted.

The following claims are included in this Bulletin: Claim B63182. Claim R83347. Claim A83775.

Claim # B63182

MAXWELL HOUSE COFFEE: 1 lb cans available in regular and drip grind only. Shipped in case lots only (24 cans per case)

per case $3.20

Crest tooth paste: Large size, with Fluoristan. Shipped in larger lots only.

per dozen $1.50

Refer to: correct claim when ordering

Quantity	
74	"Remington" electric can opener
216	"Hamilton" Deluxe Liquifier and Blender

WALTHAM ..... WATCHES
LOT # C82401
Liquidation price $19.80
..... Guarantee
..... Factory Guarantee
All watches offered at the above liquidation prices.

United States Purchasing Exchange
(address)
not a federal agency

Bulletin # 38524

ATTENTION: Shopowners & Foremen
GENTLEMEN:

Enclosed is our latest bulletin containing merchandise now available. Upon close examination of this bulletin, you will find many items used in your specific business (for resale) for your personal use or for the benefit of your employees.

• • • • • • •

SHOCKPROOF . . . WATCH

ATTENTION MANUFACTURERS

If you have any surplus inventory that you WISH TO LIQUIDATE or are UNDER FORCED LIQUIDATION write at once giving full particulars on available merchandise.

ATTENTION WHOLESALERS: Please do not ask for additional discounts regardless of quantities.

PAR. 5. By and through the use of the aforementioned statements and representations, and others of similar import and meaning but not expressly set out herein, respondents, represent, and have represented, directly or by implication:

1. Through the use of the name "United States Claim Adjusters" separately and in connection with the foregoing statements and representations and others of similar import and meaning not expressly set out herein that they are liquidators, authorized adjusters or agents engaged in the sale or disposition of bankrupt, estate, salvage, distrained or other distress or surplus merchandise for the purpose of liquidating, adjusting, paying off or otherwise settling indebtedness or claims.

2. Through the use of the words "United States" or the abbre-

viation "U.S." as part of respondents' said corporate or trade names in connection with the foregoing statements and representations, and particularly the words "official notice," that responsents are engaged in a business which has a connection or affiliation with the United States Government.

3. That they are making bona fide offers to sell each and every one of the several articles of merchandise described in said advertisements.

4. That the merchandise offered for sale by respondents is normally disposed of by them at public auction.

5. That the supply of each of the several articles of merchandise offered for sale by respondents is limited and that orders will be filled on a first-come first-served basis.

6. That Waltham wrist watches offered for sale by respondents are unconditionally guaranteed.

7. Through the use of the statement "Attention Manufacturers etc." that a substantial source of their merchandise is manufacurers' surplus inventory which is being voluntarily or involuntarily liquidated.

8. Through the use of the statement "Attention Wholesalers etc." that the merchandise is being offered to the public at wholesale prices.

9. That certain of their advertised watches are "Shockproof," that is, that the entire watch so described is protected against damage from any type or amount of shock.

PAR. 6. In truth and in fact:

1. Respondents are not liquidators, authorized adjusters or agents engaged in the sale or disposition of bankrupt, estate, distrained or other distress or surplus merchandise for the purpose of liquidating, adjusting, paying off or otherwise settling indebtedness or claims. Instead, respondents are engaged in the business of purchasing the advertised merchandise from manufacturers, wholesalers or other suppliers and selling it at retail for their own account to the public.

2. Respondents' business has no connection or affiliation whatsoever with the United States Government.

3. Respondents' offers as to certain products are not bona fide. For example, well-known brand name products such as Maxwell House Coffee are offered at prices below the usual retail prices of the products to entice purchasers to order additional merchandise. Respondents fill the order for such additional merchandise but in a substantial number of cases do not fill the order for the

brand name products because they do not have a sufficient stock of such items of merchandise to meet reasonably anticipated demands.

4. Respondents do not sell their merchandise at public auction; they are solely retailers selling their merchandise through their "Bulletin" at the prices stated therein.

5. The supply of each of the several articles of merchandise offered for sale by respondents is not so limited as to allow them to fill orders only on a first-come first-served basis.

6. Said Waltham watches are not unconditionally guaranteed, said guarantee is subject to conditions and limitations not set forth in respondents' advertisements of guarantee.

7. Very little, if any, of respondents' merchandise is liquidated surplus inventory of manufacturers. Respondents obtain their merchandise from wholesalers, distributors and other suppliers engaged in the business of selling merchandise for resale.

8. Respondents' merchandise is not offered to the public at wholesale prices.

9. Respondents' watches are not "Shockproof." The entire watch so described is not protected against damage from any type or amount of shock.

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

PAR. 7. Respondents use the words "Hamilton" and "Remington" and other well known domestic names as trade or brand names in advertising various products. The words "Hamilton" and "Remington" and other well known domestic names are the names or parts of names of, or are used as trade or brand names by long established business firms doing business in the United States which are well and favorably known to the purchasing public.

PAR. 8. By using trade or brand names such as "Hamilton" and "Remington" and other well known domestic names, respondents represent, directly or by implication, that their products so designated are manufactured by or are connected in some way with, the well and favorably known United States firm or firms with which said names have long been associated, which is contrary to fact.

PAR. 9. There is a preference among members of the purchasing public for products manufactured by well and favorably known and long established concerns whose identity is connected

with "Hamilton" and "Remington" and other well known domestic names, a fact of which the Commission takes official notice.

PAR. 10. In the conduct of their business, at all times mentioned herein, the respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of electric household appliances, tools, radios, tape recorders, and other items of merchandise, of the same general kind and nature as that sold by respondents.

PAR. 11. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of respondents' products by reason of said erroneous and mistaken belief.

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

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Deceptive Practices proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; and

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

The Commission, having reason to believe that the respondents have violated the said Acts, 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 United States Sales Corp. is a corporation organized, existing and doing business under and by virtue of the laws of the State of California with its office and principal place of business located at 5260 Vineland Avenue, in the city of North Hollywood, State of California.

It also does business under the names United States Purchasing Exchange and U.S. Purchasing Exchange.

Respondents Ronald D. Goldman and Theodore J. Slavin 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 United States Sales Corp., a corporation, trading under its own name and as United States Purchasing Exchange and U.S. Purchasing Exchange, or under any other name or names, and its officers, and Ronald D. Goldman and Theodore J. Slavin, 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 electrical household appliances, housewares, tools, radios, watches, tape recorders, or any other merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the term "claim adjuster" or any other word or words of similar import or meaning, in or as a part of respondents' trade or corporate name, or representing, directly or by implication, that they are liquidators, authorized adjusters or agents engaged in the sale or disposition of bankrupt, estate, salvage, distrained or other distress or surplus merchandise.

2. Representing, directly or by implication, that they are liquidating, adjusting, paying off or otherwise settling indebtedness or claims.

3. Misrepresenting, in any manner, their trade or business

status or the source, character or nature of the merchandise being offered for sale.

4. Using the name United States or the abbreviation U.S. in or as a part of their corporate or trade name without clearly and conspicuously disclosing in immediate conjunction therewith that respondents are a private stock corporation not connected or affiliated with the Unied States Government; or representing in any manner that respondents' business is connected or affiliated with the United States Government.

5. Offering for sale, products at prices appreciably less than the prices at which substantial sales of said products are being made in the area where respondents do business unless respondents have on hand a sufficient supply of said products to fill the orders reasonably to be expected, or, if respondents have a limited supply that the number of items be clearly disclosed in connection with the offer.

6. Representing, directly or by implication, that merchandise offered for sale by respondents is sold by them at public auctions; or representing in any manner that respondents' method of selling merchandise is other than the over-the-counter and mail-order retail sale thereof.

7. Representing, directly or by implication, that the supply of merchandise offered for sale is limited: *Provided, however,* That it shall be a defense in any enforcement proceeding instituted hereunder in respect to any article of merchandise so advertised for respondents to establish that their supply of said items is not sufficient to meet reasonably anticipated demands therefor and that the supply cannot be replenished through their customary sources.

8. Representing, directly or by implication, that any of respondents' products are guaranteed unless the nature and extent of the guarantee, the identity of the guarantor and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed.

9. Representing, directly or by implication, that the merchandise offered for sale by respondents is manufacturers' liquidated or surplus inventory: *Provided, however,* That it shall be a defense in any enforcement proceeding instituted hereunder in respect to any article of merchandise so represented for respondents to establish that it is merchandise of such class.

10. Representing, directly or by implication, that merchandise is being offered to the public at wholesale prices.

11. Representing, directly or by implication, that watches are shockproof; or misrepresenting in any manner the degree or extent to which the watch case or watch movement is protected from damage by shock.

12. Using the words "Hamilton" or "Remington," or any simulation thereof, as brand or trade names to designate, describe or refer to any of their products: *Provided, however,* That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that a product so represented is that of the manufacturer with which such brand name or trade name is associated.

13. Misrepresenting by use of brand names, trade names or simulations thereof, or in any other manner the actual manufacturer of any product.

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

IN THE MATTER OF

INTERNATIONAL CREDITORS' ASSOCIATION, INC., ET AL

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

Docket C-1083. Complaint, July 7, 1966—Decision, July 7, 1966

Consent order requiring a Chicago, Ill., seller of debt collection forms to cease misrepresenting the nature and scope of its business and making other false claims.

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 International Creditors' Association, Inc., a corporation, and Harold G. Beebe and Eleanor Beebe, 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 International Creditors' Association, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 2801 North Sheffield Avenue, Chicago, Illinois.

Respondents Harold G. Beebe and Eleanor Beebe are officers of the said corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the business of publishing, preparing and selling printed forms, letters and other materials known as "I. C. A.—Collection System" which are to be used by the purchaser in attempting to collect accounts from alleged delinquent debtors.

PAR. 3. Respondents cause said printed forms and other material, when sold, to be transported from their place of business in the State of Illinois to purchasers thereof located in various other States of the United States and have sent and received, by means of the United States mail, letters, checks and documents to and from States other than the State of Illinois. Respondents maintain, and at all times hereinafter mentioned have maintained, a course of trade in their forms and other collection material in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. The said printed forms, letters and other material, known as "I. C. A.—Collection System" are bound in book form and are published, prepared and sold by the respondents to merchants and others who have unpaid accounts and are designed and intended to be used, and are used, by the purchasers thereof in attempting to collect alleged delinquent accounts.

When the forms, letters or other material have been addressed and prepared for mailing they may, at the option of the purchaser, be sent, in bulk, to the office of the respondents in Chicago to be mailed so that they will display a Chicago postmark.

PAR. 5. The respondents use the corporate name International Creditors' Association, Inc., in connection with their business. Respondents further refer to persons and firms purchasing their

said system as members of International Creditors' Association and issue to each purchaser as part of said book or collection system a certificate of membership reading as follows:

To be framed and placed in prominent place where it can be seen.

CERTIFICATE OF MEMBERSHIP
IN THE
INTERNATIONAL
CREDITORS'
ASSOCIATION
(an International Organization)
FOR INTERCHANGE OF CREDIT INFORMATION
AND PROTECTION OF MERCANTILE CREDITS

_____

_____

THIS IS TO CERTIFY that the above named is a registered member of the

INTERNATIONAL CREDITORS' ASSOCIATION
and is entitled to all the benefits of the Association
INTERNATIONAL CREDITORS' ASSOCIATION

By _____
Vice President-Secretary

Date _____

NUMBER
BONDED ATTORNEYS IN ALL CITIES AND TOWNS IN THE UNITED STATES AND CANADA

PAR. 6. By the use of the name "International Creditors' Association" separately and in connection with the statements on said certificate and by other statements and representations not specifically set forth herein, respondents represent, directly or by implication, that the corporate respondent is an association of creditors, is international in scope, and has bonded attorneys in all cities in the United States and Canada.

PAR. 7. In truth and in fact, said corporate respondent is not an association of creditors, is not international in scope, and does not have bonded attorneys in all cities in the United States and Canada, but, on the contrary, the only business of the corporate respondent is the publishing, preparing and selling of the forms known as "I. C. A.—Collection System."

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

PAR. 8. In the reminders and letters which constitute and make up the "I. C. A.—Collection System," respondents have made cer-

tain statements and representations, directly or by implication, with respect to their business. Typical and illustrative, but not all inclusive, of such representations are the following:

International Creditors' Association for reporting delinquent debtors and for the protection of trade.

General offices: 2801 Sheffield Avenue, Chicago, Illinois. U.S.A.

Associated representatives in New York, Chicago, Denver, Philadelphia, Winnipeg, Cincinnati, Toronto, Kansas City, Seattle, San Francisco, St. Louis, Detroit, Vancouver, B.C., New Orleans, Minneapolis.

This association functions nationally—cooperating with local credit bureaus and commercial credit rating agencies in the interest of its members, and it is represented in your locality by attorneys bonded by the Central Guarantee Company, who are properly equipped to effect settlement of this account by legal process if necessary thereby incurring additional expense and embarrassment to you.

Our services included replevin, foreclosures, attachments, judgements, through bonded attorneys everywhere.

PAR. 9. By and through the use of the aforesaid statements and representations, and others of similar import and meaning not expressly set out herein, respondents represented, and now represent, directly or by implication, that:

(1) International Creditors' Association, Inc., is a collection agency;

(2) has bonded or other attorneys and associated representatives in principal cities;

(3) has resources and facilities for compiling and disseminating credit information and that the respondent is a credit bureau; and

(4) is prepared to render legal services and to institute legal proceedings in the collection of delinquent debts.

PAR. 10. In truth and in fact:

(1) International Creditors' Association, Inc., is not a collection agency;

(2) does not have bonded or other attorneys, or associated representatives in principal cities;

(3) has no resources or facilities for compiling or disseminating credit information and is not a credit bureau; and

(4) does not and cannot render legal services or institute legal proceedings of any kind.

On the contrary, respondents' sole business is the publishing, preparing and selling of the said "I. C. A.—Collection System" referred to hereinbefore.

Therefore, the statements and representations set forth in Par-

agraphs Eight and Nine hereof are false, misleading and deceptive.

PAR. 11. Respondents have adopted the following names or designations which are used on one or more of the letters or forms sold as part of the "I. C. A.—Collection System":

1. Collection Department.
2. Claim Department.
3. Credit Reporting Department.

Respondents thereby represent, directly or by implication, that the corporate respondent is a large, departmentalized organization performing the functions indicated.

PAR. 12. In truth and in fact, there are no departments within the corporate respondent but, on the contrary, it is engaged only in the preparation and sale of the forms hereinbefore described.

Therefore, the representations set forth in Paragraph Eleven hereof are false, misleading and deceptive.

PAR. 13. In the conduct of their business, at all times mentioned herein, respondents have been in substantial competition with other corporations, firms and individuals engaged in the business of operating collection agencies and in publishing, preparing and selling forms, letters and other materials for use in attempting to collect delinquent accounts.

PAR. 14. By the sale of said printed forms, letters and other material, known as "I. C. A.—Collection System," respondents have placed in the hands of purchasers means and instrumentalities which have the capacity and tendency to mislead members of the public into the erroneous and mistaken belief that said statements were, and are, true and into payment of accounts by debtors to their creditors by reason of said erroneous and mistaken belief.

PAR. 15. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

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

ents 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 International Creditors' Association, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at 2801 North Sheffield Avenue, in the city of Chicago, State of Illinois.

Respondents Harold G. Beebe and Eleanor Beebe 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 International Creditors' Association, Inc., a corporation, and its officers, and Harold G. Beebe and Eleanor Beebe, individually and as officers of said corporate respondent, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of any service or printed matter for use in the collection of claims or accounts in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the words "Association," "Creditors' Association," "International Creditors' Association," or any other words or terms of similar import or meaning in or as a part of respondents' trade or corporate name; or representing in any other manner that respondents' enterprise is an associa-

tion, or is an organization of creditors, or is international in scope.

2. Representing, directly or by implication, that respondents' business is a credit reporting agency or is a collection agency, or that an account has been placed with them for collection; or misrepresenting in any manner the nature and scope of their business.

3. Representing, directly or by implication, that respondents:

(a) Have bonded or other attorneys or associated representatives in principal cities or in all cities and towns in the United States and Canada; or misrepresenting in any other manner the geographical scope of respondents' operations.

(b) Compile or disseminate credit information.

(c) Are prepared to or render legal services or institute, or cause to be instituted, legal proceedings in the collection of delinquent debts.

4. Representing, directly or by implication, that the corporate respondent has a collection department, claim department or credit department.

5. Placing in the hands of others the means and instrumentalities to represent any of the matters heretofore prohibited by this order.

It is further ordered, That respondents herein shall have six months from date of service of this order upon them within which to comply with this order and within which to file a report in writing setting forth in detail the manner and form in which they have complied with said order.

IN THE MATTER OF

RAILROAD COMMUNICATIONS TRAINING CENTER ET AL.

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

Docket C-1084. Complaint, July 8, 1966—Decision, July 8, 1966

Consent order requiring a Pueblo, Colo., school for telegraphers to cease using false employment offers, exaggerated earning claims and other misrepresentations to sell its course in telegraphy and allied subjects.

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 Railroad Communications Training Center, a partnership, and Mrs. Vera J. Chostner and Thomas J. Gray, individually and as partners trading and doing business as Railroad Communications Training Center, and J. E. Chostner, individually and as manager of said partnership, 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 Railroad Communications Training Center is a partnership with its principal office and place of business located at 218 West 4th Street, Pueblo, Colorado.

Respondents Mrs. Vera J. Chostner and Thomas J. Gray are individuals and partners trading and doing business as Railroad Communications Training Center. Respondent J. E. Chostner is the husband of respondent Mrs. Vera J. Chostner and is the manager of respondent Railroad Communications Training Center. Said individual respondents formulate, direct and control the acts and practices of respondent Railroad Communications Training Center, including the acts and practices hereinafter set forth. The address of all the individual respondents is the same as that of the respondent Railroad Communications Training Center.

PAR. 2. Respondents are now, and for more than two years last past have been, engaged in the advertising, offering for sale and sale of courses of training and instruction in telegraphy and allied subjects to prepare students thereof for employment as railroad telegraphers, station agents and kindred positions.

PAR. 3. In the course and conduct of their business, respondents cause, and have caused, to be sent, through the United States mails and by various other means, to persons located in States other than the State of Colorado, letters, advertising circulars and other printed material pertaining to respondents' course of training and instruction. Respondents cause their sales representatives to visit prospective purchasers of said course in various States other than the State of Colorado for the purpose of soliciting enrollments in respondents' course and thereby cause purchasers of their said course to come to respondents' place of busi-

ness in the State of Colorado for the purpose of attending the course. In the course of their enrollment of purchasers of respondents' course, said sales representatives transmit enrollment contracts, checks and other commercial instruments through the United States mails and by other means to respondents' place of business in the State of Colorado from various other States. Respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business, and for the purpose of inducing the sale of their course of training and instruction, respondents have published, and caused to be published, in newspapers distributed through the United States mails and by other means, advertisements of which those hereinafter set forth are typical but not all inclusive. Said advertisements have appeared in the "help wanted" and other columns of newspapers.

RAILROAD APPRENTICESHIP. Wanted, young men 17½ to 29 to train for Railroad Communications. For qualifying interview, Write Box Y-162 Arkansas Gazette. Give age, race, name, phone, home location.

* * * * * * *

RAILROADS ARE HIRING. Men from this area 17½ to 29 needed at once to train for railroad agents, operators positions, $400 to $450 monthly. Write P. O. Box 294, Oklahoma City, State, address, education and phone.

PAR. 5. By and through the use of advertisements such as those set forth in Paragraph Four hereof, respondents represent, directly or by implication, that employment is being offered and that respondents' business is that of a railroad company or that respondents are affiliated with a railroad company.

In truth and in fact, employment is not being offered and neither is respondents' business that of a railroad company nor are respondents affiliated with a railroad company. Respondents' business is that of a school and the real purpose of the advertisements is to secure leads to prospective purchasers of respondents' course of training and instruction.

Therefore, the aforesaid representations were, and are, false, misleading and deceptive.

PAR. 6. In the course and conduct of their business, respondents cause their sales representatives to visit prospective purchasers of respondents' course for the purpose of soliciting enrollments. In the course of their solicitation of prospective purchasers, said

representatives have represented, directly or by implication, through verbal statements, that:

1. Persons completing respondents' course of training and instruction in railroad communications will thereby be qualified for and will obtain employment as a railroad station agent or telegrapher or in similar positions without further training and experience.

2. Persons completing respondents' said course and obtaining employment with a railroad will receive a starting salary of $400 per moth or more.

3. Persons completing respondents' said course are guaranteed or otherwise assured of employment with a railroad as a station agent or telegrapher or in similar positions.

4. Persons enrolling in respondents' course who require temporary employment to defray their expenses while attending respondents' school in Pueblo are assured of employment sufficient for that purpose.

PAR. 7. In truth and in fact:

1. Persons completing respondents' course of training and instruction in railroad communications are not thereby qualified for and will not obtain employment as a railroad station agent or telegrapher or in similar positions without further training and experience. Persons completing respondents' course who may secure employment with a railroad are usually hired as apprentices and are required to serve a period of time as such before being considered eligible to fill positions such as station agent or telegrapher.

2. Persons completing respondents' course who may obtain employment with a railroad do not receive a starting salary of $400 per month or more. Such persons are usually hired as apprentices, if at all, and as such their starting salaries are substantially less than $400 per month.

3. Persons completing respondents' course are not guaranteed or otherwise assured of employment with a railroad in any position.

4. Persons enrolling in respondents' course who require temporary employment to defray their expenses while attending respondents' school in Pueblo are not assured of employment sufficient for that purpose.

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

PAR. 8. In the conduct of their business, at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals engaged in the sale of courses of training and instruction in the same or similar subjects as those sold by respondents.

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

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

DECISION AND ORDER

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

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

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

1. Respondent Railroad Communications Training Center is a partnership with its office and principal place of business located at 218 West 4th Street, in the city of Pueblo, State of Colorado.

Respondents Mrs. Vera J. Chostner and Thomas J. Gray are individuals and partners in said Railroad Communications Training Center. Respondent J. E. Chostner is the husband of Mrs. Vera J. Chostner and is the manager of the Railroad Communications Training Center. Their address is the same as that of the 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 Railroad Communications Training Center, a partnership, and Mrs. Vera J. Chostner and Thomas J. Gray, individually and as partners trading and doing business as Railroad Communications Training Center or under any other name or names, and J. E. Chostner, individually and as manager of Railroad Communications Training Center, 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 courses of study and training in railroad communications or any other subject, trade or vocation, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(1) Publishing or causing to be published advertisements in the "help wanted" columns of newspapers or representing, directly or by implication, in any other manner or by any other means, that employment is being offered when the real purpose is to obtain leads to prospective purchasers of respondents' courses of study and training.

(2) Representing, directly or by implication, that respondents' business is that of a railroad company or that respondents are affiliated with a railroad company; or misrepresenting the nature of respondents' business in any other manner.

(3) Representing, directly or by implication, that persons completing respondents' course of training and instruction in railroad communications will thereby be qualified for and will obtain employment as a railroad station agent, telegrapher or in similar positions without further training and experience.

(4) Representing, directly or by implication, that persons completing respondents' said course who obtain employment

with a railroad will receive a starting salary of $400 per month or more; or misrepresenting in any other manner the earnings to be achieved by persons completing respondents' courses of study and instructions.

(5) Representing, directly or by implication, that persons completing respondents' said course are guaranteed or otherwise assured of employment with a railroad as a station agent or telegrapher or in similar positions; or misrepresenting in any other manner the opportunities for employment afforded persons completing respondents' said course.

(6) Representing, directly or by implication, that persons enrolling in respondents' said course who require temporary employment to defray their expenses while attending respondents' resident school are assured of employment sufficient for that purpose; or misrepresenting in any other manner the assistance furnished students in securing employment while attending respondents' resident school.

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

IN THE MATTER OF

CLAUDE E. SPIVEY TRADING AS EAST TENNESSEE HOSIERY COMPANY

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

Docket C-1085. Complaint, July 11, 1966—Decision, July 11, 1966

Consent order requiring a Chattanooga, Tenn., finisher and wholesaler of men's and children's hosiery to cease misbranding his products, failing to disclose their true quality, and misrepresenting imperfect hosiery as first quality.

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 Claude E. Spivey, an individual trading as East Tennessee Hosiery Company, hereinafter referred to as respondent, has 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 Claude E. Spivey is an individual trading as East Tennessee Hosiery Company with his office and principal place of business located at 1270 Market Street, Chattanooga, Tennessee.

Respondent is a finisher and wholesaler of men's and children's hosiery.

PAR. 2. Subsequent to the effective date of the Textile Fiber Products Identification Act on March 3, 1960, respondent has been and is now engaged in the introduction, delivery for introuction, 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 including men's and children's hosiery; and has 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 has 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 respondent in that they were not stamped, tagged, labeled or otherwise identified as required under the provisions of Section 4(b) of the Textile Fiber Products Identification Act, and in the manner and form as prescribed by the Rules and Regulations under said Act.

Among such misbranded textile fiber products, but not limited thereto, were textile fiber products, namely men's and children's hosiery, which were not labeled to show:

1. The constituent fiber or combination of fibers in the textile fiber product;

2. The percentage of each fiber present, by weight, in the total fiber content of the textile fiber product, exclusive of ornamenta-

tion not exceeding 5 per centum by weight of the total fiber content;

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 with respect to such product.

PAR. 4. The acts and practices of respondent 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 of practices, in commerce, under the Federal Trade Commission Act.

PAR. 5. In the course and conduct of his business, respondent purchases hosiery which is imperfect and causes such hosiery to be repaired and finished. In certain instances respondent causes such hosiery to be sorted, with respect to color and size, and to be bundled into selling units of several pairs to the bundle, and then sells such hosiery to wholesalers and to retailers who in turn sell it to the purchasing public. In other instances such hosiery, after repairing and finishing, is sold by respondent to dealers who sort and bundle the hosiery and in turn sell such hosiery to wholesalers and retailers for resale to the purchasing public. Such hosiery products are known in the trade as "irregulars," "seconds," or "thirds," depending upon the nature of the imperfection.

PAR. 6. In the course and conduct of his business, respondent now causes, and for some time last past has caused his said products, including hosiery, when sold, to be shipped from his place of business in the State of Tennessee to purchasers thereof located in various other States of the United States, and maintains, and at all times mentioned herein has maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 7. In the conduct of his business, at all times mentioned herein, respondent has been in substantial competition, in commerce, with corporations, firms and individuals in the sale of products of the same general kind as that sold by respondent.

PAR. 8. Respondent does not mark his said hosiery products in a clear, conspicuous manner to disclose that they are "irregulars" or "seconds," so as to inform purchasers thereof of their imperfect quality. The purchasing public in the absence of markings showing that hosiery products are "irregulars" or "seconds," understands and believes that they are of perfect quality. Respondent's failure to mark or label his products in such a manner as will

disclose that said products are imperfect, has had, and now has, the capacity and tendency to mislead dealers and members of the purchasing public into the erroneous and mistaken belief that said products are perfect quality products, and into the purchase of substantial quantities of respondent's products by reason of said erroneous and mistaken belief.

Official notice is hereby taken of the fact that, in connection with the sale or offering for sale of imperfect hosiery, the failure to disclose on such hosiery products that they are "irregulars" or "seconds," as the case may be, is misleading, which official notice is based upon the Commission's accumulated knowledge and experience, as expressed in Rule 4 of the Commission's amended Trade Practice Rules for the Hosiery Industry promulgated August 30, 1960 (amended June 10, 1964).

PAR. 9. Respondent in selling his hosiery as aforesaid has labeled certain of said packaged hosiery as "First in quality," thereby representing that said hosiery is of first quality. Respondent's practice of labeling such packaged hosiery as "First in quality" has had, and now has, the capacity and tendency to mislead dealers and members of the purchasing public into the erroneous and mistaken belief that said products are first quality products and into the purchase of substantial quantities of respondent's products by reason of said erroneous and mistaken belief.

PAR. 10. The use by such respondent of the aforesaid false, misleading and deceptive practices has had, and now has, the capacity and tendency to mislead dealers and other purchasers into the erroneous and mistaken belief that said statements and representations were, and are, true, and into the purchase of substantial quantities of respondent's products by reason of said erroneous and mistaken belief.

PAR. 11. The aforesaid acts and practices of respondent, as herein alleged, were and are, all to the prejudice and injury of the public and of respondent's competitors and constituted, and now constitute, unfair and deceptive acts and practices and unfair methods of competition, in commerce, within the intent and meaning of Section 5(a) (1) of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the

caption hereof, and the respondent 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 respondent with violation of the Federal Trade Commission Act and the Textile Fiber Products Identification Act; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent 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 respondent has violated the said Acts, 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 Claude E. Spivey is an individual trading as East Tennessee Hosiery Company, with his office and principal place of business located at 1270 Market Street, Chattanooga, Tennessee.

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 Claude E. Spivey, an individual trading as East Tennessee Hosiery Company or under any other name, and respondent's 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 con-

tained 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 misbranding textile fiber products by failing to affix labels to such textile fiber products showing each element of information required to be disclosed by Section 4(b) of the Textile Fiber Products Identification Act;

It is further ordered, That respondent Claude E. Spivey, an individual trading as East Tennessee Hosiery Company or under any other name, and respondent's agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of hosiery, or other related "industry products," which are "irregulars," "seconds," or otherwise imperfect, as such terms are defined in Rule 4(c) of the Amended Trade Practice Rules for the Hosiery Industry (16 CFR 152.4(c)), in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Selling or distributing any such product without clearly and conspicuously marking on each stocking, sock or other unit the words "irregular" or "second," as the case may be, in such degree of permanency as to remain on the product until the consummation of the consumer sale and of such conspicuousness as to be easily observed and read by the purchasing public.

B. Using any advertisement or promotional material in connection with the offering for sale of any such product unless it is disclosed therein that such article is an "irregular" or "second" as the case may be.

C. Using the words "First in quality" or words of a similar import on the package in which such product is sold or in reference to any such product in any advertisement or promotional material.

D. Representing in any other manner, directly or by implication, that such products are first quality or perfect quality.

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

Complaint

IN THE MATTER OF

NORMAN DIAMOND TRADING AS CARPETLAND U.S.A., ETC.

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

Docket C-1086. Complaint, July 15, 1966—Decision, July 15, 1966

Consent order requiring a Philadelphia retailer of carpeting to cease falsely advertising, deceptively guaranteeing, and misbranding his textile fiber products.

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 Norman Diamond, an individual trading as Carpetland U.S.A. and House Beautiful and formerly a copartner with Martin Korsh trading as Carpetland U.S.A. and House Beautiful, hereinafter referred to as respondent, has 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 Norman Diamond is an individual trading as Carpetland U.S.A. and House Beautiful. He formerly traded under said trade names as a copartner with Martin Korsh, not named as a respondent in this proceeding.

Respondent Norman Diamond is a retailer of floor coverings. His office and principal place of business is located at 5204 Lancaster Avenue, Philadelphia 31, Pennsylvania. The office and principal place of business of the said former partnership also was located at that address. The acts and practices challenged hereinafter were engaged in by respondent Norman Diamond during the period when such business was operated as a partnership.

PAR. 2. Subsequent to the effective date of the Textile Fiber Products Identification Act on March 3, 1960, respondent has

been and is 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 has 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 has 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 respondent within the intent and meaning of Section 4(a) of the Textile Fiber Products Identification Act and the Rules and Regulations promulgated thereunder, in that they were falsely and deceptively stamped, tagged, labeled, invoiced, advertised or otherwise identified as to the name or amount of constituent fibers contained therein.

Among such misbranded textile fiber products but not limited thereto, were floor coverings which were falsely and deceptively advertised in the Philadelphia Daily News and in the Sunday Bulletin Newspapers published in the city of Philadelphia, Commonwealth of Pennsylvania, and having a wide circulation in the said Commonwealth and various other States of the United States, in that respondent in disclosing the fiber content information as to floor coverings, containing exempted backings, fillings, or paddings, failed to set forth such fiber content information in such a manner as to indicate that it applied only to the face, pile, or outer surface of the floor coverings and not to the exempted backings, fillings, or paddings.

PAR. 4. Certain of said textile fiber products sold by means of samples, swatches or specimens, and unaccompanied by an invoice or other paper showing the information required to appear on the label, were further misbranded by respondent in that there was not on or affixed to said textile fiber products any stamp, tag, label or other means of identification showing the required information in violation of Section 4(b) of the Textile Fiber Products Identification Act and the Rules and Regulations promulgated under such Act.

PAR. 5. Certain of said textile fiber products were falsely and

deceptively advertised, in that respondent, in making disclosures or implication as to the fiber content of such textile fiber products in written advertisements, 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 floor coverings which were falsely and deceptively advertised in The Evening Bulletin and The Sunday Bulletin, newspapers published in the city of Philadelphia, Commonwealth of Pennsylvania, and having a wide circulation in said Commonwealth and various other nearby States of the United States, 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 "Caprolan" and "Acrilan," without the true generic names of the fibers contained in such textile fiber products being set forth.

PAR. 6. Certain of said textile fiber products were falsely and deceptively advertised by respondent 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 in the following respect by means of advertisements placed by the respondent in The Philadelphia Sunday Bulletin and The Philadelphia Evening Bulletin, published in Philadelphia, Pennsylvania, in that:

(a) In disclosing the required fiber content information as to floor coverings containing exempted backings, fillings, or paddings, such disclosure was not made in such a manner as to indicate that such required fiber content information related only to the face, pile, or outer surface of the floor coverings and not to the backing, filling, or padding, in violation of Rule 11 of the aforesaid Rules and Regulations.

(b) Fiber trademarks were used in advertising textile fiber products without a full disclosure of the fiber content information required by the said advertisement, in violation of Rule 41(a) of the aforesaid Rules and Regulations.

(c) Fiber trademarks were used in advertising textile fiber

products, namely, floor coverings, containing only one fiber, and such fiber trademarks did not appear at least once in the required fiber content information in the said advertisement in immediate proximity and conjunction with the generic name of the fiber in plainly legible and conspicuous type or lettering at least once in the advertisement, in violation of Rule 41(c) of the aforesaid Rules and Regulations.

(d) All parts of the required information were not set forth in immediate conjunction with each other in legible and conspicuous type or lettering of equal size and prominence, in violation of Rule 42(a) of the aforesaid Rules and Regulations.

PAR. 7. The acts and practices of the respondent, 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 and practices, in commerce, under the Federal Trade Commission Act.

PAR. 8. In the course and conduct of his business, respondent now causes and for sometime last past has caused, his said products, when sold, to be shipped from the respondent's suppliers to purchasers thereof located in various States of the United States, and maintains, and at all times mentioned herein has maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 9. In the course and conduct of his business respondent has caused his said textile products to be offered for sale in issues of The Sunday Bulletin, The Evening Bulletin and The Philadelphia Daily News, newspapers published in the city of Philadelphia, Commonwealth of Pennsylvania and distributed in interstate commerce and has maintained a substantial course of trade in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 10. Respondent in the course and conduct of his business, as aforesaid, has made the following guarantee statements in newspaper advertising of his textile products, namely, floor coverings:

10-Year Wear Guarantee

* * * * * * *

Guaranteed 10 Years For Wear

PAR. 11. Through the use of said statements and representations, as set forth above, and others similar thereto, but not spe-

cifically set out herein, respondent has represented, directly or indirectly, to the purchasing public that said floor coverings are unconditionally guaranteed for ten years.

PAR. 12. In truth and in fact said floor coverings are not unconditionally guaranteed for ten years and the nature and extent of the guarantee and the manner in which the guarantor will perform was not set forth in connection therewith. Moreover, the name and address of the guarantor was not set forth as required. Therefore, the statements and representations made by the respondent as hereinbefore stated were and are false, misleading and deceptive.

PAR. 13. In the course and conduct of his business, and for the purpose of inducing the purchase of his products, respondent and his salesmen and representatives, have made certain statements and representations with respect thereto in advertisements inserted in the aforementioned newspapers, and by other media, of which the following are typical and illustrative but not all inclusive:

1. The Sunday Bulletin-September 27, 1964 "Carpetland Shatters All Previous Caprolan Pile Broadloom Prices!!! etc."
2. The Evening Bulletin-September 8, 1964 "September Carpet Blast etc."

PAR. 14. By and through the use of the aforesaid statements and representations, and others of similar import and meaning but not specifically set out herein, and through oral statements made by his salesmen and representatives, respondent has represented, directly or by implication that he was making a bona fide offer to sell carpeting and/or floor covering at the prices specified in the advertising.

PAR. 15. In truth and in fact, respondent's offers were not bona fide offers to sell the said carpeting and/or floor covering, including installation, at the advertised prices but were made for the purpose of obtaining leads and information as to persons interested in the purchase of carpeting and/or floor covering. After obtaining leads through response to such advertisements, and calling upon such persons, the respondent, his salesmen and his representatives made no effort to sell the advertised carpeting or floor covering at the advertised price, but, instead, exhibited and disparaged such merchandise in such a manner as to discourage its purchase and attempted to, and frequently did, sell much higher priced carpets or floor coverings.

Therefore, the statements and representations as set forth in

Paragraph Fourteen and Fifteen hereof were and are false, misleading and deceptive.

PAR. 16. In the conduct of his business, at all times mentioned herein, respondent has been in substantial competition, in commerce, with corporations, firms, and individuals in the sale of carpeting and/or floor covering of the same general kind and nature as those sold by respondent.

PAR. 17. 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 purchase of substantial quantities of respondent's products by reason of said erroneous and mistaken belief.

PAR. 18. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondent's competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondent named in the caption hereof with violation of the Federal Trade Commission Act and the Textile Fiber Products Identification 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 agreements 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 Norman Diamond is an individual trading as Carpetland U.S.A. and House Beautiful with his office and principal place of business located at 5204 Lancaster Avenue, Philadelphia 31, Pennsylvania.

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

ORDER

It is ordered, That respondent Norman Diamond, individually and trading as Carpetland U.S.A. and House Beautiful, or under any other name, and respondent's representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, manufacture for introduction, delivery for introduction, sale, advertising, or offering for sale, in commerce, or the transportation or causing to be transported in commerce, or in 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. Failing to set forth that the required disclosure as to the fiber content of floor coverings relates only to the face, pile or outer surface of such products and not to exempted backing, filling or padding, when such is the case.

2. Failing to affix labels to such textile fiber products showing 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 content of any textile fiber prod-

uct 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 indentification under Section 4(b)(1) and (2) of the Textile Fiber Products Identification Act is contained in the said advertisement, except that the percentages of the fibers present in the textile fiber product need not be stated.

2. Failing to set forth, in disclosing the required fiber content information as to floor coverings containing exempted backing, fillings or paddings, that such disclosure relates only to the face, pile or outer surface of such textile fiber products and not to the exempted backing, fillings or paddings.

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

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. Failing to set forth all parts of the required information in advertisements of textile fiber products in immediate conjunction with each other in legible and conspicuous type or lettering of equal size and prominence.

It is further ordered, That respondent, Norman Diamond, individually and trading as Carpetland U.S.A. and House Beautiful, or under any other name, and respondent's representatives, agents and employees, directly or through any corporate or other device, in connection with the sale, offering for sale or distribution of floor coverings, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Advertising or offering any such products for sale for the purpose of obtaining leads or prospects for the sale of different textile fiber products unless the advertised products are capable of adequately performing the functions for which they are offered and respondent maintains an adequate and readily available stock of said products.

2. Using any advertising, sales plan or procedure involving the use of false, deceptive or misleading statements or representations which are designed to obtain leads or prospects for the sale of other textile fiber merchandise.

3. Representing directly or indirectly that any textile fiber products or services are offered for sale when such offer is not a bona fide offer to sell said textile fiber products or services.

4. Representing that any of respondent's products are guaranteed, unless the nature and extent of the guarantee, the name of the guarantor, the address of the guarantor and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed.

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

IN THE MATTER OF

MERCK & CO., INC., TRADING AS QUINTON COMPANY ET AL.

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

Docket 8635. Complaint, Aug. 7, 1964—Decision, July 20, 1966

Order modifying a final order dated April 8, 1966, 69 F.T.C. 526, which required a New Jersey drug manufacturer and its advertising agency to cease its deceptive television advertising of throat lozenges, by substituting as corespondent a successor advertising agency.

ORDER REOPENING PROCEEDING, ADDING A STIPULATION TO THE RECORD THEREOF, AND MODIFYING FINAL ORDER

On April 8, 1966 [69 F.T.C. 526], following an adjudicative proceeding, the Commission entered its final order directing Merck & Co., Inc., and Doherty, Clifford, Steers & Shenfield, Inc., to cease and desist from certain acts and practices, found to be in

violation of Sections 5 and 12 of the Federal Trade Commission Act, 15 U.S.C. §§ 45 and 52.

Petitions for review of the Commission's said final order of April 8, 1966, were filed on June 16, 1966, in the United States Court of Appeals for the Sixth Circuit by Merck & Co., Inc., and Doherty, Clifford, Steers, & Shenfield, Inc. The record in this proceeding has not yet been filed in the Court of Appeals.

On July 15, 1966, it was stipulated by and between counsel for Doherty, Clifford, Steers & Shenfield, Inc., Needham, Harper & Steers, Inc., and the Commission that Doherty, Clifford, Steers & Shenfield, Inc., an advertising agency named as a party respondent in the final order issued on April 8, 1966, was on December 31, 1964, merged with and into Needham, Louis & Brorby, Inc., at which time Doherty, Clifford, Steers & Shenfield, Inc., was dissolved and ceased existence as a corporation, and that the name of the resulting corporation is Needham, Harper & Steers, Inc., also an advertising agency, which is a Delaware corporation and has its principal place of business at Prudential Plaza, Chicago, Illinois.

By the said stipulation the parties also stipulated and agreed that the record in this proceeding might be reopened, that the stipulation might be made a part thereof, and that the final order issued by the Commission on April 8, 1966, might be amended to make Needham, Harper & Steers, Inc., subject to certain of its prohibitions.

Now, therefore, pursuant to the authorization of Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. § 45(b), and Section 3.28(a) of the Commission's Rules of Practice for Adjudicative Proceeding, 16 CFR § 3.28(a) (Supp. 1966),

It is ordered, That this proceeding be, and it hereby is, reopened;

It is further ordered, That the said stipulation of July 15, 1966, be, and it hereby is, made a part of the record of this proceeding; and

It is further ordered, That the Commission's Final Order of April 8, 1966 [69 F.T.C. 526], be, and it hereby is, modified by striking therefrom the preamble on page 563 of such order and substituting therefor the following:

> *It is further ordered,* That respondent Doherty, Clifford, Steers & Shenfield, Inc., a corporation, and Needham, Harper & Steers, Inc., a corporation, and their officers, agents, representatives, and employees, directly or through any

corporate or other device, in connection with the offering for sale, sale or distribution of throat lozenges or any similar preparation, do forthwith cease and desist from, directly or indirectly: * * *

IN THE MATTER OF

AUTOMATION INSTITUTE OF OMAHA, INC., ET AL.

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

Docket C-1087. Complaint, July 22, 1966—Decision, July 22, 1966

Consent order requiring an Omaha, Nebr., correspondence school to cease using false job opportunities and earning claims and other misrepresentations to sell its courses in data processing.

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 Automation Institute of Omaha, Inc., a corporation, and C. D. Rohlffs, A. Lauren Rhude, and Burris M. Jones, individually and as officers and directors of said corporation, and Thomas J. Simmons and Vernon F. Kurtenbach, individually and as directors 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 Automation Institute of Omaha, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Nebraska, with its principal office and place of business located in the WOW Building, 14th and Farnam Streets, in the city of Omaha, State of Nebraska.

Respondents C. D. Rohlffs, A. Lauren Rhude and Burris M. Jones are officers and directors of the corporate respondent. Respondents Thomas J. Simmons and Vernon F. Kurtenbach are directors of the corporate respondent.

The individual respondents formulate, direct and control the

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

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of courses of instruction intended to prepare students thereof for employment as IBM key punch machine, machine tabulation, and computer operators. Said courses are pursued by correspondence through the United States mail, as well as by resident training in the school.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their courses of study and instruction to be sent from their place of business, in the State of Nebraska, to, into and through States of the United States other than the State of origin, to purchasers thereof located in such other States. Respondents have also sent through the United States mails from their place of business in the State of Nebraska various circulars, pamphlets, letters, and other written and printed material to prospective students in States other than the State in which respondents' school is situated. Respondents also employ salesmen who call on prospective purchasers of the courses of instruction located in States other than the State of Nebraska. Respondents maintain and at all times mentioned herein have maintained, a substantial course of trade in said courses of study and instruction in commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their aforesaid business, and to induce the purchase of their courses of instruction, respondents have made many statements and representations, directly and by implication, by salesmen, in pamphlets and circulars and through advertisments in newpapers distributed through the United States mails, and by other means, to prospective customers in the several States in which courses are sold. Typical, but not all inclusive, of the statements and representations made by respondents, are the following:

1. There is a great demand for graduates of respondents' school as electronic data processing equipment operators.

2. Respondents have specific data processing equipment as set forth in the description of courses offered by respondents, and that students will be taught to use such equipment.

3. That upon graduation, the student will obtain employment

at a starting salary of from $400 to $600 per month, and even more in some instances.

4. That a prospective student must enroll in respondents' school at once or in a specified time because of a limitation in size of class, or time of start of instruction, or other reason.

5. That respondents have a nationwide placement service.

PAR. 5. In truth and in fact:

1. There is little or no demand for graduates of respondents' schools as electronic data processing equipment operators.

2. Respondents do not have all of the specific items of data processing equipment as set forth in the description of courses offered by respondents, and students do not receive training in the operation of all items of data processing equipment as listed by respondents in the description of courses offered by respondents.

3. Upon graduation, the students do not obtain employment at a starting salary of from $400 to $600 per month, or more; very few students obtain employment as operators of data processing equipment, and those who do obtain such employment are paid salaries materially less than such amounts.

4. There is no need for prospective students to enroll in respondents' classes at once or in a specified time, except that occasionally there may be short periods of time when only a few openings may remain in a particular class, or a brief time remains until a class will commence receiving instruction.

5. Respondents do not have a nationwide placement service. They may, on occasion, supply assistance to selected persons in obtaining employment and supply their students or graduates with lists of employers using or employing various job categories and refer students to other Automation Institute franchisees who may or may not supply limited employment information in their geographic area.

PAR. 6. In the conduct of their business, at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of courses of instruction of the same general kind and nature as those sold by respondents.

PAR. 7. The use by respondents of the aforesaid false, misleading and deceptive statements, respresentations 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 to subscribe to, and purchase, substantial numbers of respondents'

said courses of study and instruction by reason of said erroneous and mistaken belief.

PAR. 8. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and respondents' competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Deceptive Practices proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; and

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

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

1. Respondent Automation Institute of Omaha, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Nebraska, with its office and principal place of business located in the WOW Building, 14th and Farnam Streets, in the city of Omaha, State of Nebraska.

Respondents C. D. Rohlffs, A. Lauren Rhude and Burris M. Jones are officers and directors of said corporation and their address is the same as that of said corporation.

Respondents Thomas J. Simmons and Vernon F. Kurtenbach

are directors 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, Automation Institute of Omaha, Inc., a corporation, and its officers and directors, and C. D. Rohlffs, A. Lauren Rhude, Burris M. Jones, individually and as officers and directors of said corporation, and Thomas J. Simmons and Vernon F. Kurtenbach, individually and as directors of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale, or distribution of courses of study, training and instruction in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing directly or by implication:

(1) That there is a great demand for persons completing respondents' courses as electronic data processing equipment operators or otherwise representing in any manner that opportunities for employment will be available to such persons: *Provided, however,* That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that such opportunities are available as represented.

(2) That training in the operation of any item of equipment will be provided: *Provided, however,* That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that such training is provided as represented.

(3) That the salaries or earnings of persons completing respondents' courses will be any amount: *Provided, however,* That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that such persons may reasonably expect to receive the salaries or earnings represented.

(4) That a prospective student must enroll in respondents' school at once or in a specified time: *Provided, however,* That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that such

condition was imposed because of a limitation in size of class, or time of start of instruction or any other valid reason existing at the time such representation is made.

(5) That respondents operate or provide a nationwide placement service for their students or graduates; or that respondents operate or provide a nationwide referral service or offer any other assistance in obtaining employment for their students or graduates without clearly and conspicuously disclosing in connection therewith the nature and extent of any such service or assistance which respondents provide.

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

IN THE MATTER OF

MONTGOMERY WARD & CO., INCORPORATED

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

Docket 8617. Complaint, Feb. 19, 1964—Decision, July 26, 1966*

Order requiring a large mail order and chain store retailer to cease deceptively guaranteeing certain of its merchandise by failing to disclose the nature and extent of the guarantee, the identity of the guarantor, and the manner in which the guarantor will perform.

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 Montgomery Ward & Co., Incorporated, 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, Montgomery Ward & Co., Incorporated, is a corporation organized, existing and doing business

*Reported as amended by hearing examiner's order of January 15, 1965.

under and by virtue of the laws of the State of Illinois with its principal office and place of business located at 619 West Chicago Avenue in the city of Chicago, State of Illinois.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the advertising, offering for sale, sale and distribution of automotive equipment and other articles of merchandise to the public.

PAR. 3. In the course and conduct of its business, respondent now causes, and for some time last past has caused, said merchandise, when sold, to be shipped from its numerous mailing facilities and stores to the purchasers thereof located in the various States of the United States, other than the States from which such shipments, originate, and, further, respondent now causes, and has caused, advertising and promotional material to be prepared at its central offices and distributed therefrom to its stores located in States other than the States in which said central offices are located, so that respondent thereby maintains, and at all times mentioned herein has maintained, a substantial course of trade in said merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of its business as aforesaid and for the purpose of inducing the sale of its said merchandise, respondent has made certain statements and representations in advertisements inserted in newspapers with respect to the nature and extent of the guarantees offered in connection therewith.

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

(a) Remanufactured engines.

* * * * * * *

Guaranteed 90 days or 4,000 Miles.

(b) Shock absorbers installed on all 4 wheels—GUARANTEED 15,000 miles.

PAR. 5. By and through the use of the aforesaid statements and others of similar import, respondent represented, directly or by implication, that its said merchandise is guaranteed without condition or limitation.

PAR. 6. In truth and in fact, respondent's guarantees of the said merchandise are not unconditional but are subject to limitations and conditions which are not revealed in their advertising of said guarantees.

Therefore, the advertisements and representations referred to

in Paragraphs Four and Five were and are false, misleading and deceptive.

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

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 purchase of substantial quantities of respondent's merchandise by reason of said erroneous and mistaken belief.

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

Mr. Frank P. Dunn for the Commission.

Mr. Frederick M. Rowe, Mr. Charles J. Barnhill, Mr. Narcisse A. Brown, and *Mr. Ronald J. Wilson* for respondent.

Kirkland, Ellis, Hodson, Chaffetz & Masters, Washington, D.C., of counsel.

INITIAL DECISION BY WALTER R. JOHNSON, HEARING EXAMINER
MARCH 29, 1965

This proceeding was initiated by formal complaint filed by the Commission on February 19, 1964, charging respondent Montgomery Ward & Co., Incorporated, with violation of Section 5 of the Federal Trade Commission Act by certain newspaper advertisements of its products.[1] In pertinent part, the Commission's complaint alleged that respondent was engaged in commerce through the retail sale of merchandise at various locations throughout the United States, and in connection with such merchandising prepared advertising and promotional materials at its central offices for distribution to its local retail stores.

The complaint further alleged as follows:

[1] The complaint was amended by the Hearing Examiner on January 15, 1965, after stipulation by the parties, to correct technical misnomers and errors in the original complaint.

PAR. 4: In the course and conduct of its business as aforesaid and for the purpose of inducing the sale of its said merchandise, respondent has made certain statements and representations in advertisements inserted in newspapers with respect to the nature and extent of the guarantees offered in connection therewith.

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

(a) "Remanufactured engines."

* * * * * * *

"Guaranteed 90 days or 4,000 Miles."

(b) "Shock absorbers installed on all 4 wheels—GUARANTEED 15,000 miles."

PAR. 5: By and through the use of the aforesaid statements and others of similar import, respondent represented, directly or by implication, that its said merchandise is guaranteed without condition or limitation.

PAR. 6: In truth and in fact, respondent's guarantees of the said merchandise are not unconditional but are subject to limitations and conditions which are not revealed in their advertising of said guarantees.

Therefore, the advertisements and representations referred to in Paragraphs Four and Five were and are false, misleading and deceptive.

In addition, the complaint alleged that

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 purchase of substantial quantities of respondent's merchandise by reason of said erroneous and mistaken belief.

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

The complaint also carried the customary declaration that a proceeding by the Commission in respect to the aforesaid allegations "would be in the public interest."

The respondent moved on March 24, 1964, for a more definite statement and a particularization of the charges in the complaint. Specifically, the motion requested particularization of "the merchandise concerning which false misrepresentations are charged to be made," "the time and place of the advertisements complained," "what representations are relied upon" as being allegedly deceptive, and the alleged limitations and conditions demonstrating the alleged representations as being false, misleading, or deceptive. By answer of March 25, 1964, complaint counsel volunteered to furnish to the respondent the requested particulars on

or before April 6, 1964. In view of complaint counsel's answer, Hearing Examiner Abner E. Lipscomb, originally assigned to the case, issued an order on March 31, 1964, granting respondent's motion for a more definite statement. In accordance with the Examiner's direction, complaint counsel on April 3, 1964, submitted a list of his proposed evidence, consisting of five advertisements of automotive products, published in the Washington Post and Star at various dates from November 15, 1962, to March 20, 1963; two advertisements of water heaters in the Washington Star on October 18, 1960, and March 26, 1961; and fifteen advertisements for sewing machines, some undated and others appearing in various newspapers on December 17, 1957, February 13, 1958, April 9, 1958, and September 23, 1960.

Following such particularization by complaint counsel, respondent filed its answer on April 13, 1964. In pertinent part, respondent's answer pointed out the misnomer in the complaint's designation of its corporate name, admitted the general allegations pertaining to the general nature of its business and advertising procedures, and denied "that the representations quoted in Paragraph 4 are typical representations"; "that where the quoted statements were used, respondent will and does guarantee, the products therein described without condition or limitation"; and "that as to purchasers relying in said statements or those induced to purchase the merchandise therein described, respondent's guarantees are unconditional and are not subject to limitations and conditions not revealed in its advertising." Respondent's answer further denied the other allegations of the complaint.

On July 6, 1964, the respondent filed a motion requesting an order dismissing the complaint for lack of "public interest," which was denied by Examiner Lipscomb on December 15, 1964. Based upon an understanding with counsel at prehearing conferences held on July 7, 15 and 17, 1964, Examiner Lipscomb issued an order on July 17, 1964, which stated in part:

2. That on or before July 24, 1964, counsel supporting the complaint shall furnish copies of all documents to be proffered in evidence herein to opposing counsel;

3. That on or before August 28, 1964, counsel for the respondent shall furnish counsel supporting the complaint copies of all documents to be proffered in evidence herein, and, as far as reasonably possible, the names and addresses of all witnesses that respondent expects to call to testify.

On July 22, 1964, Examiner Lipscomb issued an explanatory prehearing order providing

that the documents listed in the subpoena duces tecum dated July 22, 1964 and addressed to Mr. Charles W. Wood, Vice President, Montgomery Ward & Co., shall be deemed, for the purpose of proffering those documents in evidence, to have been timely called to the attention of counsel for the respondent and within the spirit and purpose of the prehearing order of July 17, 1964.

The directives of the prehearing order were complied with by counsel for the parties.

Various interlocutory appeals and rulings by the Commission ensued. At respondent's instance, the Commission on September 24, 1964, modified the subpoena duces tecum by striking Paragraph (h), relating to Montgomery Ward's policy statement pertaining to its representation SATISFACTION GUARANTEED OR YOUR MONEY BACK and other guarantee claims. The Commission's order stated that "the subpoena in question evidences an attempt to broaden the proceeding beyond the original intentions of the Commission in issuing the complaint," and expressed "the Commission's desire that this proceeding be expedited and kept within manageable proportions." Subsequently, the Commission on October 15, 1964, issued an order denying complaint counsel's request to file an interlocutory appeal from the Hearing Examiner's order of September 29, which had denied complaint counsel's motion to broaden the proceeding with additional advertisements, and reiterated its previously expressed "desire that this proceeding be expedited and kept within manageable proportions." On November 6, 1964, the Commission denied a motion by complaint counsel to amend and enlarge the complaint, stating that "Complaint counsel's request to broaden the complaint by adding a charge unrelated to those contained in the original complaint is inconsistent with the Commission's previous rulings limiting the scope of this proceeding and with its continuing desire that this proceeding not be unduly broadened and protracted."

Thereafter, by order of the Director of Hearing Examiners dated December 16, 1964, the undersigned Hearing Examiner was designated and appointed to take testimony and receive evidence in this proceeding in place of Abner E. Lipscomb.

Hearings on the complaint were held at Washington, D.C., on January 11, and 12, 1965, at which time there were received in evidence ninety exhibits offered by complaint counsel. There were also received in evidence seventeen exhibits offered by the respondent. All of the exhibits were within the scope and limitations of the prehearing order. Copies of the precise exhibits of the respon-

dent were served upon complaint counsel on August 28, 1964, pursuant to the prehearing order, coupled with a request, under the provisions of Section 3.13 [2] of the Commission's Rules of Practice, "to admit the genuineness of each document, and also the truth of the relevant matters of fact therein contained." No reply to such request was filed by complaint counsel (T. 65–68). The only witness called by complaint counsel was John A. Barr, Chairman of the Board of Montgomery Ward, who testified only briefly with respect to financial information concerning the respondent. There was no oral testimony with respect to any of the substantive allegations of the complaint or to explain or connect any documentary exhibits received in evidence. After complaint counsel rested his case, the respondent presented and argued a motion to dismiss based upon an alleged failure to establish a prima facie case on which the Examiner, pursuant to Rule 3.6(e) of the Commission, elected to defer ruling until the close of the case for the reception of evidence (T. 155–56). Respondent elected not to proceed further with a defense and to stand on the record as made (T. 157). On January 12, 1965, the record was closed for the reception of evidence, and February 11, 1965, and February 26, 1965, were the dates fixed for the filing of proposed findings and replies thereto, respectively. Proposed findings of fact and replies were timely filed by counsel for the parties.

The Hearing Examiner has given consideration to the proposed findings filed by the parties hereto and all findings of fact and conclusions not hereinafter specifically found or concluded are herewith rejected. Upon consideration of the entire record herein, the Hearing Examiner makes the following findings of fact and conclusions:

Respondent, Montgomery Ward & Co., Incorporated, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois with its principal office and place of business located at 619 West Chicago Avenue, in the city

---

[2] "§ 3.13 *Admissions as to facts and documents.*—(a) At any time after answer has been filed, any party may serve upon any other party a written request for the admission of the genuineness of any relevant documents described therein, or the admission of the truth of any relevant matters of fact set forth in such documents.

"(b) Each requested admission shall be deemed made unless, within ten (10) days after service of the request, or within such shorter or longer time as the hearing examiner may allow, the party so served serves upon the party making the request, with a copy to the Secretary of the Commission, either (1) a sworn statement denying specifically the relevant matters of which an admission is requested or setting forth in detail the reasons why he can neither truthfully admit nor deny them . . . .

"(c) Admissions obtained pursuant to this procedure may be used in evidence to the same extent and subject to the same objections as other admissions."

of Chicago, State of Illinois (Complaint, Par. 1; Answer, Par. 1). Respondent is now, and for some time last past has been, engaged in the advertising, offering for sale, sale and distribution of automotive equipment and other articles of merchandise to the public (Complaint, Par. 2; Answer Par. 2). Founded in 1872 as a partnership pioneering in the mail order business (RX 16H), Montgomery Ward has grown to become the third largest national retailer of general merchandise in the United States. Its annual sales have exceeded $1,000,000,000 in each of the past eight years. For the year ended January 1964, its sales were $1,500,111,708 (Barr, Tr. 126, 127, 131). This selling is done through almost 600 retail stores, 9 mail order houses and 267 catalog order offices (RX 16K)[3], which offer for sale substantially more than 100,000 items of merchandise (RX 1C). In the course and conduct of its business, respondent now causes, and for some time last past has caused, said merchandise, when sold, to be shipped from its numerous mailing facilities and stores to the purchasers thereof located in the various States of the United States, other than the States from which such shipments originate, and, further, respondent now causes, and has caused, advertising and promotional material to be prepared at its central offices and distributed therefrom to its stores located in States other than the States in which said central offices are located, so that respondent thereby maintains, and at all times mentioned herein has maintained, a substantial course of trade in said merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act (Complaint, Par. 3; Answer, Par. 3).

The case-in-chief consists of 29 advertisements by respondent in newspapers in five cities (Chicago, Illinois; Washington, D.C.; Kansas City, Missouri; Fort Worth, Texas; and Baltimore, Maryland) appearing at various dates between 1957 and 1964 (CX 1–3, 20–27, 29–41, 44–48); a series of 13 so-called "basic ads" for sewing machines, which were prepared by respondent's advertising department in its Chicago offices for use by all of its retail stores in 1958, 1959 and 1960 (CX 5–7, 9–15, 17–19); a series of "sample guarantees" for each product depicted in the advertisements and involved in this proceeding, which were delivered to the customers on the sale of the products in the years 1960 to 1964 (CX 50–76); and various excerpt pages from respondent's catalogs for 1960 through 1964 showing the guarantees for the products involved (CX 77–91). In addition, the record contains certain corre-

[3] Tabulation for the year 1954. Record does not reveal current number of outlets.

spondence between the respondent and the Commission on various dates between 1958 and 1964 (CX 4, 8, 16, 42, 43) and the Commission's GUIDES AGAINST DECEPTIVE ADVERTISING OF GUARANTEES adopted on April 26, 1960 (CX 49).

Five of the questioned advertisements in the record concern "remanufactured engines," a product which is specifically mentioned in the complaint. Of these, one is an advertisement from the Chicago Sun-Times dated March 13, 1962 (CX 31A–B), which states:

> Every installation is guaranteed by the factory. . . . Every motor is guaranteed 4,000 miles with new car service. . . .

One from the Chicago Sun-Times, dated February 21, 1961 (CX 32), states:

> 4000 mile guarantee . . . .

One from The Washington Post, dated November 15, 1962 (CX 33), states:

> 4,000 MILE OR 90 DAY GUAR. . . . guaranteed.

One from The Washington Sunday Star, dated January 20, 1963 (CX 34), states:

> 90-GUAR.—4,000 MILES . . . .

One from The Washington Evening Star, dated February 6, 1963 (CX 35), states:

> for Cars & Trucks . . . Guaranteed 90 Days or 4,000 Miles . . . .

A purchaser of a remanufactured engine is given a guarantee certificate (Tr. 105), which contains conditions and limitations not disclosed in the advertisement. A sample guarantee for remanufactured engines (CX 73A) states:

> FOR A PERIOD OF NINETY DAYS from date installed or four thousand miles (whichever occurs first) we warrant this rebuilt assembly for passenger car service against defects in material and factory workmanship provided our installation and operating instructions are followed. If this assembly is used in truck or commercial installation, it is warranted for thirty days only.
>
> Any part of this rebuilt assembly which under such conditions fails because of defective parts or factory workmanship during the period of warranty, may be exchanged for new parts without charge, provided old parts are returned. On such failures occurring within thirty days, we will also refund reasonable labor cost. After thirty days (on passenger cars) the warranty is limited to exchange of parts only.
>
> This warranty does not apply to any motor which has not been installed by

Wards Authorized Installer, or customer does not return to Installer for the 500 mile check-up, or fails because of defects or inefficiency of parts or units (carburetor, air cleaner, fuel pump, etc.), not furnished with the motor. Nor does it cover motors subjected to misuse or accident, or operated under conditions causing greater than normal wear, or used for purposes for which it was not originally designed (such as in a boat, stationary power unit, etc.).

The obligations assumed under this warranty are in lieu of all warranties or guarantees expressed or implied.

This warranty is not valid unless the Certificate of Installation is properly filled in and returned to the Mail Order House or Retail Store from which motor was purchased.

The record contains newspaper advertisement concerning twenty-one other products, together with sample guarantee certificates referring to each such product. In each instance, the guarantee certificate contained conditions and limitations which were not disclosed in the newspaper advertisement.

There is no evidence in the record that any customer did in fact purchase any of the products advertised in the questioned advertisements, that any customer made any claim under any guarantee involved in this proceeding, or that respondent failed to satisfy any claim under any of its guarantees. Therefore, the record cannot support a finding that any of the foregoing advertisements for any of the products were misleading or deceptive, or subject to any undisclosed conditions or limitations by the respondent.

It is concluded that the motion of the respondent to dismiss the complaint should be allowed for the reason that the evidence offered in support of the complaint fails to establish a prima facie case.

ORDER

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

OPINION OF THE COMMISSION

JULY 26, 1966

BY JONES, *Commissioner:*

This matter is before the Commission on the appeal of counsel supporting the complaint from the hearing examiner's initial decision dismissing the complaint. The Commission issued its complaint in the matter on February 19, 1964, charging Montgomery Ward & Co., Incorporated, a national retailer of general merchandise making with false and misleading representations and engag-

ing in unfair methods of competition in violation of Section 5 of the Federal Trade Commission Act by failing to disclose in certain of its newspaper advertisements that the guarantee claims made therein were subject to certain conditions and limitations. Respondent in its answer denied that these advertisements referred to in the complaint were typical and asserted that respondent will and does guarantee its products without condition or limitation. After full evidentiary hearings the hearing examiner found that complaint counsel had failed to establish a prima facie case and ordered the complaint dismissed. The examiner was of the view that even though the guarantee certificates given to the purchasers of the advertised products contained conditions and limitations which were not disclosed in such advertisements, counsel had failed in his proof because he had not offered any evidence that respondent invoked these conditions and limitations when claims were filed with it by purchasers or had ever failed to satisfy any claim under any of its guarantees (I.D., pp. 60–61).

I

The evidence of record establishes that respondent, Montgomery Ward & Co., Incorporated (Wards), is a corporation engaged in the sale of merchandise to the public in interstate commerce. Wards is one of the largest national retailers of general merchandise with annual sales in excess of $1 billion. It operates over 500 retail stores which sell more than 100,000 separate items of merchandise. Newspaper advertising is admittedly Wards' principal medium for stimulating the sale of its merchandise (RX 16(z) (1)).

In order to establish the deceptive nature of respondent's newspaper advertising, complaint counsel offered into evidence some 43 newspaper advertisements by various Wards' stores, containing guarantee representations for products as diverse as sewing machines, drills, automotive parts and shrubbery. These advertisements appeared in local newspapers in a number of cities at various dates between 1957 and 1964. As to each of these guaranteed items complaint counsel offered into evidence sample guarantee certificates which were supplied to customers purchasing the advertised product during the year in which advertisement was placed. These sample guarantee certificates had been obtained from respondent in response to a request for the certificate covering a particular item in a specified year. Counsel's case consisted entirely of a comparison of the guarantees as advertised and the

terms and conditions set forth on the actual guarantee certificates delivered by Wards to the purchaser at the time of sale. Counsel also offered into evidence the Commission's Guides Against Deceptive Advertising of Guarantees adopted April 26, 1960 (CX 49), which provide *inter alia* that when guarantees are advertised they must clearly and conspicuously disclose all of the terms and conditions imposed upon such guarantees.

Respondent's evidence was entirely documentary in nature and related almost exclusively to its internal company policies and procedures applicable to its advertising and guarantees. Respondent's documents demonstrate that respondent maintains at its headquarters an advertising department to aid its local stores in their advertising. This department sends to each local Wards Outlet a book of ad formats from which a complete newspaper advertisement can be prepared locally by store employees for insertion in local newspapers. This advertising material is periodically checked by respondent's law department prior to circulation to the local stores. Respondent's policy as expressed in some of its internal company memoranda circulated to its employees is "to be truthful and fully informative in all advertising" (RX 15 and 17). Respondent constantly reminded it employees in its memoranda to comply with the Commission's guides on guarantees (RX 7a).

In support of its contention that in fact Wards fully performed the guarantee as advertised, respondent offered into evidence a letter from its General Counsel to the Commission, sent during the course of consent negotiations with respect to the instant complaint, in which its policy with respect to honoring guarantees is set forth. In this letter, respondent's General Counsel advised the Commission staff that:

> When Wards states a guarantee, whether or not it is an approved Company guarantee, the Company expects to and will live up to the printed text of the guarantee. Therefore, any customer who purchases an item of merchandise can expect the guarantee to be fulfilled in accordance with the printed terms appearing in advertisements without regard to whether it correctly states the Company's usual guarantee for that item of merchandise. (RX 1b-c)

Furthermore,

> . . . the Company must not only adequately state in its advertising the applicable guarantees (and their limitations) but more important must fulfill the terms of its guarantees in whatever form they appear. (RX 1c)

However, the record contains no company documents prepared

in the regular course of Wards' business prior to the issuance of the complaint in this matter enumerating such an asserted policy respecting the honoring of guarantees as advertised regardless of the terms of the actual guarantees themselves. Nor did Wards introduce any evidence of actual performance of any of the advertised unlimited guarantees on which complaint counsel's case was based. Moreover, there was no showing by respondent that at the time of the challenged advertisements any such internal company policy of honoring guarantees as advertised which the General Counsel's letter asserts existed was ever communicated to any Wards customer, either generally or in any particular instance.[1]

In addition to this general defense, based on Wards' internal store policies, Wards also defended against two of the specific advertisements relied on by complaint counsel (CX 34 and 35) by denying that they had been authorized or approved. Respondent offered affidavits executed by its company officials for the purpose of this litigation which stated that the two advertisements in question were prepared in disregard of the company-prepared formats which were available to the Wards store, that the advertisements had been locally prepared and they did not represent the general practice or conduct of the respondent company (RX 1b).

The hearing examiner found from the record evidence that as to the remanufactured engines and 21 other products (unnamed in the decision) the guarantee certificates given to the purchaser of such products contain conditions and limitations not disclosed in the newspaper advertisements (I.D., pp. 60–61). However, he ordered that the complaint be dismissed on the ground that:

> There is no evidence in the record that any customer did in fact purchase any of the products advertised in the questioned advertisements, that any customer made any claim under any guarantee involved in this proceeding, or that respondent failed to satisfy any claim under any of its guarantees . . . .

He concludes, therefore, that:

> . . . the record cannot support a finding that any of the foregoing advertisements for any of the products were misleading or deceptive, or subject to any undisclosed conditions or limitations by the respondent.

Complaint counsel takes issue in his appeal with the hearing examiner's conclusion that actual evidence of respondent's failure to satisfy the advertised guarantee claims is required to support a

[1] Subsequent to oral argument in this matter respondent submitted copies of advertisements which it placed throughout the country in which it is stated that "whenever Wards advertises a guarantee for a particular product . . . the company will live up to the guarantee as advertised."

finding that respondent's questioned advertisements are misleading or deceptive.

Respondent, on the other hand, supports the position taken by the examiner and asserts that deception has not been established since the record shows that in fact Wards fully performs its advertised guarantees and disregards any specific limitations in these guarantees which are contained in the guarantee certificates accompanying the merchandise.

From our analysis of the evidence of record in this proceeding and the prevailing legal precedent, we believe that the hearing examiner's decision is in error. We therefore specifically reject his conclusion as to the absence of evidence of violation and find, for the reasons set out in this opinion, that the allegations of the complaint have been sustained in law and in fact.

II

Although respondent did not appeal from the hearing examiner's decision, it asserted in its brief (p. 16) that complaint counsel had failed in its proof that the challenged advertisements differed from the guarantee accompanying the merchandise. The hearing examiner specifically found that there was a discrepancy between the challenged advertisements and the guarantee certificates given to the purchaser of these advertised products and that the certificates contained conditions and limitations not disclosed in the newspaper advertisements (I.D., pp. 60–61).

We agree with the hearing examiner and believe that the record amply demonstrates that the guarantee certificates in question were in fact supplied to the consumer with the advertised merchandise [2] and that they contained terms and limitations not found in the advertisements.[3]

We have no doubt, and indeed so find, that respondent has an internal company policy that all of its advertising must be truthful and specifically that its advertising of guarantees must be legal and conform to the Commission's Guides Against Deceptive Advertising of Guarantees. However, the existence of this policy to abide by the law does not thereby immunize respondent's advertisements from challenge under Section 5 if in fact they are false and deceptive. This is equally true even if the advertisement

[2] Complaint counsel offered no direct evidence to connect the sample guarantee certificates with the specifically challenged advertisement. Respondent supplied these guarantee certificates to Commission counsel in response to a request for certificates applicable to the advertised merchandise at the time the advertisement was placed. Respondent offered no evidence purporting to show that these certificates were not applicable to the advertised products.

[3] A brief summary of this evidence is attached as Appendix A.

in question was not in fact approved by respondent. Such alleged absence of approval, such as is claimed by respondent for two of the challenged advertisements, might be relevant with respect to the nature and scope of the remedy, but cannot serve as any defense to the legality of the advertisement in question.

The issue before us can be simply stated. Can a company advertise a product as guaranteed, attach to the product the actual text of the guarantee which covers that product and which contains numerous limiting terms and conditions not disclosed in the advertisement and then defend a proceeding brought by the Federal Trade Commission against these deceptive advertisements by asserting that as a matter of company practice not disclosed to its customers it would in fact honor the advertised guarantee if claims were presented to it which fell outside the limitations fixed by the specific guarantee certificate? We believe that the decided cases and the basic purpose of the Federal Trade Commission to outlaw unfair methods of competition in general and deceptive advertising in particular require that in the circumstances presented on this record, this question be answered in the negative.

Deceptive advertising of guarantees has long been established as constituting an unfair method of competition subject to the prohibitions of Section 5 of the Federal Trade Commission Act. *Parker Pen Co.* v. *F.T.C.*, 159 F. 2d 509 (7 Cir. 1946). An advertised guarantee is misleading in those instances where it fails to fully and adequately disclose any terms or conditions imposed on the represented guarantee, for as the Seventh Circuit pointed out in *Parker Pen Co., supra* "A guarantee *per se* negatives the idea of a further consideration." It is almost a truism that a purchaser is deceived where what he receives from respondent is less than what he thought he would be receiving in the way of guarantee coverage.

Here, however, respondent argues that the falsity of the advertisement is immaterial and does not constitute deception because in practice if a customer makes a claim in reliance on the guarantee as advertised respondent will honor such a claim. We do not agree. It is well established that under the Federal Trade Commission Act it is the capacity to deceive and not actual deception which is the criterion by which the legality of practices is to be tested. *Stauffer Laboratories, Inc.* v. *F.T.C.*, 243 F. 2d 75 (9 Cir. 1965); *Abel Goodman t/a Weavers Guild* v. *F.T.C.*, 244 F. 2d 584 (9 Cir. 1957).

The gravamen of the deception caused by an incomplete de-

scription in an advertisement of the guarantee offered with the sale of a product was well summarized in the hearing examiner's initial decision *In the Matter of Western Radio Corporation,* Docket No. 7468, July 25, 1962 [63 F.T.C. 882, 893]. There, the hearing examiner pointed out that:

> Since the magazine advertisements which the public first saw induced the purchase, this first impression of the prospective purchaser is the determining factor upon the question of deception with reference to the guarantee. It is now well established "that a guarantee per se negatives the idea of a further consideration" (*Parker Pen Co.* v. *F.T.C.* (C.C.A. 7, 1946), 159 F. 2d 509, 511). This case and many cited therein, as well as numerous subsequent cases, have established beyond question the principle that the Commission's duty is to protect the uninformed, casual or negligent reader from deception by false advertising. Therefore belatedly revealing the true facts to the purchaser concerning all conditions and limitations attached to such guarantee does not alleviate the first deception, nor absolve the advertiser from responsibility for his original false representations. Since the original statement of guarantee was absolute and without any qualification, it is therefore necessarily found that respondents have falsely and deceptively represented that their Radi-Voc is unconditionally guaranteed for one year, in violation of Section 5 of the Federal Trade Commission Act.

In the *Western Radio* case, respondent had advertised that the radio carried a "one-year service guarantee" whereas in fact the guarantee certificate supplied with the radio at the time of purchase disclosed that the guaranteed service was subject to a $1.50 service charge to cover postage and handling and that respondent had reserved the right to determine whether the radio had been properly maintained so as to justify the guaranteed service. On the basis of these facts alone the Commission affirmed the finding of the hearing examiner that the advertisement was deceptive. There was no evidence in the case as to whether respondent actually exercised its right to determine if proper maintenance had been performed or imposed the undisclosed service charge. The Seventh Circuit affirmed ordering enforcement of the order requiring clear and conspicuous disclosure of all terms and conditions of any advertised guarantee. *Western Radio Corp.* v. *F.T.C.*, 339 F.2d 937 (7 Cir. 1964).

The Commission has consistently followed this interpretation of the law and has regularly held advertisements of guarantees deceptive and illegal which omitted to state significant terms and limitations without requiring additional proof that the advertised guarantees were not in fact honored. *Parker Pen Co.* v. *F.T.C.*, 159 F. 2d 509 (7 Cir. 1946) (representation of a "Lifetime Guar-

antee" held misleading because the statement of a 35-cent service charge was not made with equal prominence in the advertisement). *Clinton Watch Co.* v. *F.T.C.*, 291 F. 2d 838 (7 Cir. 1961), *cert. denied*, 368 U.S. 952 (1962) (representation of a "Lifetime Guarantee" without a clear disclosure that a service charge is imposed held misleading). *Baldwin Bracelet Corp.*, Docket No. 8316, December 18, 1962 [61 F.T.C. 1345], *aff'd*, 325 F. 2d 1012 (D.C. Cir. 1963) (broad guarantee claim on a display card held misleading where conditions and limitations were set out on the back of cards to which the product was attached). See also to same effect: *Coro, Inc.* v. *Federal Trade Commission*, 338 F. 2d 149 (1 Cir. 1964); *Helbros Watch Co.* v. *Federal Trade Commission*, 310 F. 2d 868 (D.C. Cir. 1962); and *Benrus Watch Co.* v. *Federal Trade Commission*, 352 F. 2d 313 (8 Cir. 1965).

Thus, respondent's argument here that its advertisement of an unlimited guarantee cannot be held to be deceptive despite its admission that the specific guarantee accompanying the merchandise contained limitations merely because complaint counsel failed to offer proof that respondent did not honor its guarantees as advertised cannot be sustained. An uncommunicated policy of honoring the advertised guarantee rather than imposing the limitations set out in the certificate accompanying the merchandise does not eliminate the capacity to deceive inherent in the advertisement. It is clear that misrepresentation and consumer deception occurs at the time the advertisement is read and the Commission and the courts have refused to require that proof be offered either that any particular consumer in fact read the advertisement or was in fact deceived.

Such a conclusion is highlighted by the fact that respondent has conceded that advertising constitutes its principal marketing tool. Advertising thus plays a major role in the consumer's decision to patronize Wards as against some other retailer. Since a substantial portion of Wards' business is conducted by mail order, there will be many instances where the consumer purchases Wards' merchandise solely on the basis of Wards' advertisement and may not even see the merchandise until after the sale has been consummated and the merchandise delivered and unpacked. It is only then that he learns of the specific conditions to be imposed upon the guarantee which may have been instrumental in his decision to purchase the Wards' item.

Respondent, however, argues that our recent decision in *Brite Manufacturing Co.*, Docket No. 8325, decided June 18, 1964, 65

F.T.C. 1067, *affirmed on other grounds*, 347 F. 2d 477 (D.C. Cir. 1965), in effect overruled this solid line of cases and is controlling.[4] We do not agree.

The Brite Manufacturing Company could in no sense be regarded as similar to respondent in this case. There was no evidence that advertising was Brite's principal marketing tool. Moreover, the type of advertising questioned in *Brite* involved point of sale material presumably examined by the customer when he was in the store. Brite had placed the words "Guaranteed" or "Fully Guaranteed" on certain cardboard strips attached to its watchbands. On the reverse side of these cardboard strips various limitations on the guarantee were stated, such as the fact that the guarantee was limited to 30 days after purchase and in some instances that a 50-cent service charge was imposed. Respondent in *Brite* introduced in defense the uncontradicted testimony of its principal officer that no charge was in fact imposed and the 30-day limitation was not adhered to. Complaint counsel offered nothing to rebut this testimony respecting respondent's practice and policy. The hearing examiner dismissed the guarantee charge on the basis that there was "no substantial evidence establishing that respondent's watchbands are not fully guaranteed" (I.D., p. 14) [65 F.T.C. at 1079], and we affrmed on the same basis, noting that there was affirmative evidence in the record demonstrating that respondent honored the guarantee without qualification.

In the instant case we are confronted with an entirely different factual situation and with an entirely different factual record. Wards is a large national retailer doing a substantial mail order business and depending almost exclusively on national advertising to achieve its sales. The deceptive representations concerning guarantees challenged here did not involve point of sale material but rather were contained in Wards' extensive newspaper advertisements. The challenged advertisements here represented unequivocally that the products were unconditionally guaranteed. It was not until after the customer either came to the store to examine the merchandise or actually received delivery of the merchan-

---

[4] Respondent has also cited in support of its position the cases of *John Surrey, Ltd.*, Dkt. 8605, March 16, 1965 [67 F.T.C. 299]; *House of Marbet, Inc.*, Dkt. 8578, September 24, 1964 [66 F.T.C. 787]; *J. B. Williams Co.*, Dkt. 8547, September 28, 1965 [68 F.T.C. 481]; and *Scott Mitchell House*, Dkt. 8591, September 24, 1964 [66 F.T.C. 830]. However, these cases stand for the proposition that if complaint counsel fails to establish that undisclosed or inadequately disclosed limitations on advertised guarantees actually existed then the complaint must fail for want of deception. This is not in issue here for the hearing examiner found, and we agree, that a discrepancy existed between the guarantee as advertised and the text of the actual guarantee certificate accompanying the product.

dise, if the sale was executed on the basis of an order received by mail, that the limitations in the guarantee were disclosed.

Thus, we do not agree that *Brite* is in any way relevant to or dispositive of the instant case. Nor do we agree with the hearing examiner that complaint counsel's failure to adduce affirmative evidence that respondent in fact failed to honor the guarantee as advertised is fatal to his proof of deception here. Respondent concededly approved the bulk of the challenged advertisements which represented unequivocally that the products in question were unconditionally guaranteed. It strains credulity to believe that Wards intended to engage in an entirely vain and futile act, adding substantially to its costs of sale, in printing up these precise and limited guarantee certificates unless it also intended that these limited guarantee certificates were to carry weight with the purchasers and hopefully would demarcate the outer limits of its warranty liability. There is little doubt that the terms of the guarantee certificate which accompanied the merchandise was the guarantee text which respondent hopefully intended was to be observed by its customers. Respondent cannot now be heard to say that it never intended its customers to pay any attention to these printed guarantee certificates. Certainly, we cannot disregard the existence of these certificates in determining whether any customer was deceived by the misleading guarantee representations contained in Wards' advertisements, which by definition are the mechanism used by Wards to induce the sale of the products in question. In its defense Wards in effect is telling us that if one of its customers complained and sought to invoke the unlimited guarantee contained in the advertisement and persisted long enough in his efforts to get "satisfaction," Wards ultimately would honor the general guarantee as advertised. But we cannot base our conclusion as to whether deception exists or not on the persistency with which Wards' customers press their claims for we are under a duty to protect the gullible and credulous, as well as the cautious and knowledgeable (see *e.g. Charles of the Ritz Distributing Corp.* v. *Federal Trade Commission,* 143 F. 2d 676 (2 Cir. 1944)).

In the instant case, respondent's internal policy honoring guarantees as advertised cannot dissipate the deception caused by the advertisement. This is especially true here where there is absolutely no evidence that this internal policy of Wards' to honor all guarantees as advertised was ever communicated to Wards' customers or was ever known or understood by them. Nowhere in any of res-

pondent's documents or in the affidavits or correspondence submitted by respondent in the record in this case is there any indication that Wards has ever advised its customers of the construction which it tells us it places as a matter of practice on any conflicts which may appear between its advertised guarantees and the terms of the guarantee certificates accompanying the merchandise. Nowhere is there a single document or any evidence of any kind that any Wards' customers understood that this internal policy of Wards' of honoring guarantees as advertised superseded and indeed cancelled out any inconsistent or more limited guarantees affirmatively offered with the products containing specific limiting terms and conditions. Indeed, the implication is quite clear that when a product was in fact specifically guaranteed, the guarantee would not be honored except under the precise terms and conditions stated in the guarantee certificate. It is doubtful that it would even occur to a customer that Wards would offer more in the way of guarantee coverage than that provided for in the specific guarantees attached to particular products.

Respondent, subsequent to its oral argument in this proceeding, submitted samples of its newspaper advertisements during August and September 1965, which contain a statement over the name of Wards' president stating that the company will live up to any product guarantee as advertised. We do not believe that such a statement in any way affects the outcome of this proceeding nor do we believe that even if it had been in existence prior to the date of this complaint, it in any way cures the capacity to deceive inherent in attaching specific and limited guarantees to products which are then advertised without limitation. The inconsistency creating the deception is still present. We have little doubt that none but the most aggressive and sophisticated customers will either recall or retain the advertisement which originally led them to consider the purchase, nor will the average customer persist in his demands that Wards disregard the specific guarantee certificate and honor claims under the broader guarantee originally advertised. Customers would most likely be inclined to retain only the formal guarantee certificate and consequently would be unsure of what was represented to them in the way of guarantee coverage in the advertisement, or would tend to believe that they had been mistaken about the original guarantee offered since it would seem to them unlikely that a store such as Wards would in fact offer inconsistent guarantees. It is highly unlikely that pur-

chasers will press demands on respondent for anything greater than what they have before them in black and white on their certificate.

Thus, irrespective of what Wards' policy may in fact be in honoring guarantees, Wards' practice here of having advertised a broad guarantee and furnishing the customer with a limited guarantee is deceptive and has the capacity to deceive regardless of whether or not respondent stands ready to perform as advertised.

The challenged advertisements, in addition to being misleading and deceptive as respects Wards' customers also constitute unfair methods of competition condemned by Section 5 of the Federal Trade Commission Act as respects Wards' competitors. In this age of mass production and large-scale retailing the offer of guarantee coverage is an important instrument of competition. See Barnes, "False Advertising," 23 *Ohio State L.J.* 598, 633 (1962). If respondent or indeed any other company can be free to make whatever exaggerated guarantee claims it wants to in its advertising and then avoid any liability by reliance on an internal storewide policy of honoring all customer claims, it has a substantial and unfair advantage over its competitors who do not wish to adopt a policy of this type of irresponsible advertising. If respondent is allowed to continue such a practice protected by a policy of honoring these broader claims only where demand is made, competition would no longer exist in the amount of guarantee services offered customers, but rather in the degree to which performance can be warded off by firm but tactful salesmen and complaint departments.

We do not believe, therefore, that respondent should be allowed to continue to make misleading guarantee claims merely because it asserts—without specific evidence of any practice in this regard —that it has a policy of honoring the guarantees as advertised. The deception created by the existence of a discrepancy between the advertisements and the guarantee certificates does not disappear as a result of such a policy. The capacity to deceive in a very material sense continues to be present and requires that we conclude that the challenged advertisements are violative of Section 5 of the Federal Trade Commission Act.

Accordingly, we shall enter an order which will require respondent to cease and desist from representing that any of its merchandise is guaranteed unless all conditions and limitations thereon are clearly and conspicuously disclosed.

Commissioners Elman and Reilly dissented and have filed dissenting opinions.

APPENDIX A

The following is a summary of the evidence offered by complaint counsel in support of the allegation that respondent's advertised guarantee representations failed to disclose all of the terms, conditions and limitations which were stated on the guarantee certificate supplied with the merchandise:

1. *Sewing machine* advertisements

Complaint counsel offered into evidence five advertisements for sewing machines obtained from local newspapers (CX 1–3, CX 20 and CX 45), and 13 representative advertisements for the years 1958–1960 which had been supplied to the Commission by the respondent (CX 5–7, 9–15, 17–19). Each of these advertisements contains a statement that the sewing machine is "guaranteed 20 years" or words of similar import.

A guarantee certificate for sewing machines was offered into evidence by complaint counsel (CX 50). This guarantee says in pertinent part that Wards will repair or replace any defective part for one year from the date of purchase and that for 19 years thereafter Wards will replace any casting or drive mechanism which fails. Charges for labor and transportation were also required by the guarantee certificate.

2. *Water heater* advertisements

The record contains four newspaper advertisements concerning guaranteed water heaters. These advertisements were placed during the years 1960 through 1962 and stated that the advertised water heater is "guaranteed for 10 years," or in one instance "for 15 years" (CX 21, 26(b), 30(b) and 39). The sample water heater guarantee certificates (CX 53, 55 and 66) state that the guarantee on the water heater tank is prorated during the last half of the guarantee period and that only the tank is guaranteed after the first year. Charges for labor and installation are to be paid by the customer and the customer must adhere to certain maintenance requirements.

3. *Automotive products* advertisements

The record contains seven newspaper advertisements for automotive products. Four of these advertisements contain a statement that Wards' remanufactured engines are "guaranteed 4,000 miles" or "4,000 miles or 90 days" (CX 31(b), 32, 33 and 35).

The sample guarantee for Wards' rebuilt engines states that Wards warrants that any part which fails within 90 days or 4,000 miles may be exchanged for new parts without charge provided the old parts are returned. The warranty does not apply unless the motor has been installed by Wards' authorized installer and the customer returns to the installer for the 500-mile checkup. A certificate of installation must be returned by the customer to respondent. There are also certain requirements as to the type of vehicle in which the engine can be used and the type of use to which that vehicle can be put for the guarantee to be effective.

Two advertisements contain the statement that Wards' brake shoes are "guaranteed 25,000 miles" (CX 36–37). Such advertisement fails to disclose that the actual guarantee requires a nominal labor installation fee of $2 per wheel and is applicable only if the brake shoe should fail due to defects in material or workmanship. The guarantee runs only to the person for whom the original installation was performed and applies only where the customer has obtained a complete brake overhaul (CX 74).

An advertisement in the *Washington Star* of January 20, 1963 contains statements that Wards' shock absorbers are "guaranteed 15,000 miles," that Wards' brake shoes are guaranteed for "25,000 miles," that Wards' remanufactured engines are guaranteed for a "90-day 4,000 miles" period and that Wards' batteries are "guaranteed two years" (CX 34). As to the shock absorbers, a sample guarantee contained in a Wards mail order catalog states that if a shock absorber should fail within the guarantee period Wards will replace it, "charging only for the service received" (CX 76). The actual provisions of the motor and brake shoe guarantees have been discussed above. With respect to the battery which is "guaranteed two years" the applicable guarantee certificate states that every battery is fully guaranteed against defects in workmanship for 90 days and thereafter it is guaranteed on an adjusted service basis for specified periods following the purchase date. Passenger car batteries used in commercial service are guaranteed for only half of these periods (CX 75).

4. *Miscellaneous Products*

The record contains 16 newspaper advertisements concerning miscellaneous products (CX 22, 23(b), 24(b), (c), 25(b), 26(b), 27(b), (c), 29(b), 38, 40, 41, 44, 46 and 48), together with a sample guarantee certificate referring to each such product (CX 51,

52, 54, 56–65 and 69–72). These miscellaneous products include items such as freezers, furnaces, gas boilers, cameras, radios, saws, sanders, drills and electric blankets. With respect to all but two of these advertisements (CX 24(b) and 24(c)) the full text of the product guarantee certificates is not set out in the advertisement.

DISSENTING OPINION

JULY 26, 1966

BY ELMAN, *Commissioner:*

I dissent for substantially the reasons stated by Commissioner Reilly. The only unlawful practice with which Wards was charged in the complaint was that of falsely advertising products as unconditionally and unqualifiedly guaranteed when in fact they were not so guaranteed. The evidence is undisputed, however, that whenever Wards advertised a product as unconditionally or unqualifiedly guaranteed, it fully honored the guarantee as advertised. There is no evidence whatsoever that any customer making a purchase in reliance upon such an advertised guarantee did not get exactly what was represented: a product guaranteed as advertised and backed up by Wards' established policy of "Satisfaction Guaranteed or Your Money Back." On these facts, none of the challenged advertisements can be found to be false or deceptive; no customer was misled by any of the advertisements; and the complaint was properly dismissed by the hearing examiner because its allegations were not supported by the proof.

To be sure, on some products that it sells Wards also gives its customers a specific product guarantee, the terms and conditions of which are set forth in a certificate. The evidence is undisputed that these specific product guarantees were in addition to, and not in lieu of, and did not supersede or modify either an advertised unconditional guarantee or Wards' general unconditional policy of "Satisfaction Guaranteed or Your Money Back." The notion that Wards distributed these certificates for the purpose of discouraging customers from pressing their unconditional guarantee claims is simply a flight of fancy. If Wards in fact engaged in such a practice, it would indeed be unfair and reprehensible. But the complaint did not charge Wards with following such a practice; there is no evidence of it in the record; and Wards has had no opportunity to defend against such a charge.

DISSENTING OPINION

JULY 26, 1966

BY REILLY, *Commissioner:*

While the record in this matter shows that respondent may have been guilty of an unfair or deceptive practice by using conflicting representations concerning the nature and extent of its guarantees, this is not the practice challenged in the complaint.[1]

The complaint alleges that respondent has represented that its merchandise is guaranteed without condition or limitation. This allegation has been sustained by the evidence. The complaint further alleges that respondent's guarantees are not unconditional but are subject to limitations and conditions which are not revealed in the advertising. This allegation has not been proven. Insofar as can be determined from this record, respondent fully performs all advertised guarantees in complete accord with the representations in its advertising.

The majority holds however that the showing of a discrepancy between the challenged advertisements and the guarantee certificates received by the purchaser constitutes proof that respondent does not perform under the guarantee as advertised. In other words, in the face of two conflicting representations, each purportedly expressive of Montgomery Ward's guarantee agreement with the customer, but neither of which is deceptive on its face, the majority selects the ad as the deceptive one and relies on the certificate as evidence of this deception.

The fallacy of the majority's reasoning can be easily demonstrated: A seller advertises a garment as "All Wool" and places a label on the garment reading "90% Wool, 10% Rayon." Under these facts, the supplier would be guilty of either false advertising or misbranding. It is of course impossible to decide which claim is false without knowing the fiber content of the garment. If we apply the majority's reasoning however it would be unnecessary to make any inquiry as to the fiber content. We would hold that the advertising is false. And we would adhere to this holding even though the seller could prove that the garment was all wool.

Or to use another example: Suppose a seller falsely claimed in

[1] Respondent advertised certain of its products unqualifiedly as guaranteed. Accompanying some of the products when sold was a certificate setting pre-conditions or limiting respondent's obligation in connection with the guarantee. Such certificates could deter purchasers from making claims under the advertised or unconditional guarantee. Thus, if respondent does in fact honor the unconditional guarantee, the certificates could be misleading. Under these circumstances, the customer could be deceived by the guarantee certificate but not by the advertising.

advertising that his guarantee was unconditional. Suppose also that the certificates accompanying the product also falsely stated that the guarantee was without limitation. Would the fact that there was no discrepancy between the advertising and the guarantee certificate be dispositive of the case? Could the seller rely on the certificate to prove that his advertising was truthful and non-deceptive? Of course not. The issue in such a case would be the same as the issue here—does respondent in fact perform under the guarantee as claimed in the advertising.

The majority states that "In the instant case, respondent's internal policy honoring guarantees as advertised cannot dissipate the deception caused by the advertisement. This is especially true here where there is absolutely no evidence that this internal policy of Wards' to honor all guarantees as advertised was ever communicated to Wards' customers or was ever known or understood by them." The majority thus holds that even if respondent does perform under the guarantee as advertised the deception caused by the advertising that it will so perform is not dissipated. This is indeed strange logic for where is the deception if there is no inconsistency between the representation as to the manner in which respondent will perform under the guarantee and the manner in which it does in fact perform? And in stating that respondent's policy of honoring guarantees as advertised has never been communicated to respondent's customers the majority ignores the fact that it is because respondent did communicate to the public its policy of guaranteeing its products without condition or limitation that we brought this action in the first place. (See Paragraph 5 of the complaint.)

Prior decisions of the Commission cited by the majority are not precedent for this case. To the extent that they are based on evidence establishing that in fact the respondent did not perform unconditionally after an unconditional representation, they are distinguishable from the facts of record here. To the extent that they hold that a subsequent statement of limitation is sufficient to prove the deceptiveness of the original unqualified guarantee, they have been overruled by *Brite Manufacturing Company,* Docket 8325, June 18, 1964 [65 F.T.C. 1067], *aff'd on other grounds,* 347 F. 2d 477 (D.C. Cir. 1965), and the other more recent cases decided by the Commission, *House of Marbet, Inc.,* Docket 8578, September 24, 1964[66 F.T.C. 787], *Scott Mitchell House,* Docket 8591, September 24, 1964 [66 F.T.C. 830], *John Surrey, Ltd.,* Docket 8605, March 16, 1965 [67 F.T.C. 299], and

J. B. Williams Company, Docket 8547, September 28, 1965 [68 F.T.C. 481].

In *Brite* there were two conflicting representations, one unqualified on the front of the cardboard strip to which the product (watch straps) was attached, the other setting forth conditions on the reverse of the same strip. The Commission in that case took note of affirmative evidence that Brite did not insist upon the limitations but its principal reliance was upon the absence of evidence that the respondent in fact insisted upon performance. Contrary to the majority's statement that *Brite* is not ". . . in any way relevant to or dispositive of the instant case," *Brite* fits this case to a "T."

The points of contrast by which the majority seeks to distinguish this case from *Brite* are entirely formal and accidental. The substantial basis for comparison between the cases is the fact that in each there were conflicting guarantee representations and the Commission was confronted with the necessity for deciding which was misleading. The salient consideration in both cases is sufficiency of proof and in both cases complaint counsel failed to prove which was the deceptive representation.

As stated above, there can be little doubt that the practice of making conflicting or contradictory statements with respect to a guarantee would have the capacity or tendency to mislead the public. But respondent has not been charged with engaging in this practice. It has been charged with misrepresenting in advertising that it guarantees its products without condition or limitation. The record does not sustain this charge. It does not show that the advertised guarantee claims are false or deceptive as alleged. In holding that the advertising was false the majority has substituted speculation for proof. I do not agree.

FINAL ORDER

This matter having been heard by the Commission upon the appeal of complaint counsel from the hearing examiner's initial decision and upon briefs and oral argument in support of and in opposition to said appeal; and

The Commission having determined for the reasons stated in the accompanying opinion that the appeal of counsel supporting the complaint should be granted and that certain of the findings and conclusions and the order contained in the initial decision should be modified to conform to the views expressed in the accompanying opinion:

It is ordered, That the initial decision be modified by striking the last sentence of the fourth full paragraph on page 61 and the fifth full paragraph on page 61.

It is further ordered, That the initial decision be modified by striking the order on page 61 and substituting therefor the following:

It is ordered, That respondent Montgomery Ward & Co., Incorporated, a corporation, and its officers, representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of any articles of merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Representing, directly or by implication that any of respondent's merchandise is guaranteed unless the nature and extent of the guarantee, the identity of the guarantor, and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed.

It is further ordered, That the hearing examiner's initial decision, as modified by this order and the accompanying opinion be, and it hereby is, adopted as the decision of the Commission.

It is further ordered, That the respondent 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 they have complied with the order to cease and desist set forth herein.

Commissioners Elman and Reilly dissented and have filed dissenting opinions.

IN THE MATTER OF

NATIONAL DAIRY PRODUCTS CORPORATION

ORDER, OPINIONS, ETC., IN REGARD TO THE ALLEGED VIOLATION OF SECS. 2(a) and 2(d) OF THE CLAYTON ACT

Docket 7018. Complaint, Dec. 31, 1957—Decision, July 28, 1966

Order requiring a company engaged in processing and distributing dairy and food products with headquarters in New York City, to cease discriminating in prices and promotional allowances between competing retailers handling the product line of its Sealtest Foods Division, in violation of Secs. 2(a) and 2(d) of the Clayton Act.