

Complaint

IN THE MATTER OF

PETER PAN FOUNDATIONS, INC.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
SECS. 2(d) AND 2(e) OF THE CLAYTON ACT

Docket C-1178. Complaint, Mar. 1, 1967—Decision, Mar. 1, 1967

Consent order requiring a New York City marketer of women's foundation garments to cease discriminating among competing customers in paying promotional allowances and in furnishing services or facilities.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondent named in the caption hereof, and hereinafter more particularly designated and described, has violated and is now violating the provisions of subsections (d) and (e) of Section 2 of the Clayton Act (U.S.C., Title 15, Section 13), as amended by the Robinson-Patman Act, approved June 19, 1936, hereby issues its complaint, stating its charges with respect thereto as follows:

COUNT I

PARAGRAPH 1. Respondent Peter Pan Foundations, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its principal office and place of business located at 389 Fifth Avenue, New York, New York, with an administrative office located at 6 Penn Place, Pelham Manor, New York.

In September of 1965, Exquisite Form Industries, Inc. (incorporated in New York State in 1961), bought 80% of the stock in Peter Pan Enterprises Corp. (which was incorporated in New York State in September of 1965). Peter Pan Enterprises Corp. in turn owns 100% of Peter Pan Industries, Inc., (incorporated in the State of Delaware in 1962) and the latter corporation owns 100% of Peter Pan Foundations, Inc., the above-named respondent (which was incorporated in New York State in 1938). Peter Pan Enterprises Corp. and Peter Pan Industries, Inc., are nonoperating holding companies.

PAR. 2. Peter Pan Foundations, Inc., is engaged in the business of selling and distributing women's foundation garments, including brassieres, corselettes, girdles, and panty girdles bearing the Peter Pan label which are manufactured by various corporations in the Peter Pan complex. Respondent corporation's gross

volume of business was approximately eight million dollars in each of the years 1964 and 1965.

Peter Pan products are manufactured in New York, New Jersey, Connecticut and Puerto Rico, and then shipped to a warehouse located at 255 Grant Avenue, East Newark, New Jersey, from which deliveries are made to customers located in various cities throughout the United States. The respondent corporation sells these products for resale at retail to many customers, such as department stores, chainstores, women's specialty shops and dress shops, with places of business located in various cities throughout the United States.

PAR. 3. In the course and conduct of its business, respondent corporation is engaged in commerce, as "commerce" is defined in the Clayton Act, as amended, having shipped its products or caused them to be transported from its warehouse in the State of New Jersey to customers located in the same and in other States of the United States and in the District of Columbia.

PAR. 4. Since 1960 and prior thereto, in the course and conduct of its business in commerce, respondent corporation paid or contracted for the payment of something of value to or for the benefit of some of its customers as compensation or in consideration for services or facilities furnished by or through such customers in connection with their offering for sale or sale of products sold to them by said respondent corporation, and such payments were not available on proportionally equal terms to all other customers competing in the distribution of its products.

PAR. 5. Included among, and illustrative of, the payments alleged in Paragraph Four were credits, paid by way of allowances or deductions from invoices, as compensation for respondent corporation's share of the cost of promotional services or facilities, including but not limited to newspaper advertising furnished by customers pursuant to the terms of respondent corporation's cooperative advertising agreements or other promotional arrangements in effect since 1960, in connection with the offering for sale or sale of respondent corporation's products.

PAR. 6. From 1960 to on or about January 1, 1963, and prior thereto, respondent corporation, pursuant to its "Cooperative Advertising Agreement for Peter Pan Foundations" offered to pay, and paid, some customers fifty percent (50%) of the cost of newspaper advertisements devoted exclusively to Peter Pan products. The Agreement further provided that Peter Pan products had to be advertised in accredited newspapers at regularly maintained prices, and that respondent corporation would pay

fifty percent (50%) of reasonable production charges. The total amount of all advertising claims, including production charges, was limited to five percent (5%) of aggregate net purchases for the current year.

PAR. 7. From 1960 to on or about January 1, 1963, and prior thereto, respondent corporation supplemented its cooperative advertising agreement referred to in Paragraph Six by its "Peter Pan Merchandising Plan for Retailers." This plan was only available to those customers who could qualify. In order to qualify, a customer was required to:

(1) Carry at least four of the styles included in the plan and maintain a Fixed Basic Stock level for each of the styles. The Fixed Basic Stock level for each of the styles included in the plan was determined by the individual customer and the Peter Pan representative;

(2) Allow the Peter Pan representative to take physical inventory and automatically order the merchandise necessary to maintain the inventory at the Fixed Basic Stock level;

(3) Advertise the Peter Pan styles in Fixed Basic Stock in local newspapers at least once every six months or run a complete in-store promotion at least once every six months;

(4) Participate in the plan for at least twelve consecutive months and display Peter Pan merchandise and use Peter Pan display materials.

In return, the customer was entitled to:

(a) Return any style in Fixed Basic Stock which did not turn over at least twice during six months but that style had to be replaced with another style included in the plan;

(b) Exchange sizes within style and color to conform stock with Fixed Basic Stock;

(c) Raise or lower basic quantities initially established for any style in Fixed Basic Stock at end of each six month period;

(d) Preferred delivery on Fixed Basic Stock styles regardless of the size of the order;

(e) Reimbursement of sixty percent of net cooperative advertising costs up to seven percent of total net shipments during each six month period;

(f) Certain promotional materials such as mats, window and interior displays, commercials, and contest ideas, etc.

(g) Return quantities of each style in Fixed Basic Stock up to but not exceeding the quantity purchased and received during each six month period the plan is in effect and only that merchandise purchased at Peter Pan's regular prices.

PAR. 8. During the years 1960 to 1964 inclusive, respondent corporation has granted or otherwise made available allowances, hereinafter referred to as "PM's" or "Push or Prize Monies," to sales employees of certain customers classified as "chains" to promote the sale of respondent corporation's products, and such allowances have not been offered or otherwise made available on proportionally equal terms to customers competing with the "chains" in the resale at retail of respondent corporation's products.

PAR. 9. On or about January 1, 1963, respondent corporation modified its "Cooperative Advertising Agreement for Peter Pan Foundations" by offering to pay seventy-five percent (75%) of the cost of newspaper advertisements devoted exclusively to Peter Pan products at regularly maintained prices not to exceed seven percent (7%) of a customer's aggregate net purchases for the calendar year. This modified plan did not provide for the payment of production costs and did not authorize cooperative advertising allowances for omnibus ads.

On or about June 1, 1964, respondent's cooperative advertising program was further modified to provide for the payment of sixty-six and two-thirds percent (66 $\frac{2}{3}$ %) of the cost of newspaper advertisements not to exceed seven percent (7%) of net sales on regular priced merchandise.

PAR. 10. From time to time, respondent offered "Special Promotional" agreements, which did not come within the general framework of its "Cooperative Advertising Agreement for Peter Pan Foundations" such as its "Tiger," "In-Genius" and "Fiberlon" promotions. These plans required that a Peter Pan customer purchase a total minimum order; specified the number of garments which must appear in the advertisement; and specified the minimum size of the advertisement. For example on or about July 25, 1964, in connection with the promotion and sale of Peter Pan's "Fiberlon" bras, the respondent offered the following plan:

Peter Pan agrees to pay the following cost of advertising space up to 7% of net sales (based on a 12 month period).

Bra Styles	Size of ad	Min. order
<input type="checkbox"/> 1 Fiberlon Bra in the ad 70%.....	200 lines	5 doz.
<input type="checkbox"/> 2 Fiberlon Bras in the ad 80%.....	400 lines	10 doz.
<input type="checkbox"/> 3 Fiberlon Bras in the ad 90%.....	600 lines	15 doz.
<input type="checkbox"/> 4 Fiberlon Bras in the ad 100%.....	800 lines	20 doz.

PAR. 11. Payments made by respondent corporation pursuant to the cooperative advertising agreements and "Push or Prize Money" agreements referred to in Paragraphs Six, Seven, Eight, Nine and Ten were not made available on proportionally equal terms to all of respondent corporation's customers competing in the resale and distribution of respondent corporation's products in that:

(1) Respondent corporation made or offered to make such payments or allowances to some customers and failed to make or offer to make similar allowances or payments to all competing customers; and

(2) The terms and conditions of respondent corporation's "Cooperative Advertising Agreement for Peter Pan Foundations" and "Peter Pan Merchandising Plan for Retailers" and its "Special Promotional" agreements were and are such as to preclude some competing customers from accepting and enjoying the benefits to be derived from these plans; and

(3) Respondent corporation made or offered to make payments or allowances in excess of the amounts specified in these agreements to some customers and failed to make or offer to make similar payments or allowances on proportionally equal terms to other customers who competed with the favored customers in the resale and distribution of respondent corporation's products; and

(4) Respondent's price-limiting provisions in its cooperative advertising plans only allowed for advertising at "regular" prices and thus restricted the availability of its cooperative advertising allowances to those of its competing customers who complied with respondent's price-limiting provisions.

PAR. 12. The acts and practices of the respondent corporation as alleged above, violate subsection (d) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act (U.S.C., Title 15, Section 13).

COUNT II

PAR. 13. Paragraphs One through Three of COUNT I are hereby adopted and made a part of this Count as fully as if herein set out verbatim.

PAR. 14. The respondent corporation, for a number of years, has contracted to furnish and has furnished to some of the afore-said purchasers, certain services or facilities in connection with the sale or offering for sale of respondent corporation's products and such services or facilities or the offer to furnish such services

or facilities have not been accorded on proportionally equal terms to purchasers competing with the favored purchasers in the resale and distribution of respondent corporation's products.

For example, respondent has, since 1960, listed certain of its customers in various ads in national magazines, in numerous radio and television spots, which were paid for entirely by the respondents. Such customers named were required to purchase a substantial minimum amount of certain merchandise.

As another example, respondent has, since 1960, furnished to some of the aforesaid purchasers the services of special personnel known as "stylists" or "models." Such female personnel, compensated and furnished by respondent, were installed in the places of business of some of the aforementioned purchasers to assist the clerical personnel of said purchasers in advising customers and to display, demonstrate, fit, offer for sale and sell respondent's products to the customers of said purchasers.

During the same period of time, the respondent corporation has sold its products to retailers competing with said purchasers and has not accorded such services and facilities to said retailers on proportionally equal terms.

PAR. 15. The aforesaid acts and practices of respondent corporation as alleged above violate subsection (e) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act (U.S.C., Title 15, Section 13).

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondent named in the caption hereof with violation of subsections (d) and (e) of Section 2 of the Clayton Act, as amended, 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 the respondent of all the jurisdictional facts set forth in the complaint to issue herein, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as set forth in such complaint, and waivers and provisions as required by the Commission's rules; and

The Commission, having considered the agreement, hereby

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

1. Respondent Peter Pan Foundations, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 389 Fifth Avenue, in the city of New York, State of New York.

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

ORDER

It is ordered, That respondent Peter Pan Foundations, Inc., a corporation, and its officers, directors, representatives, agents and employees, directly or through any corporate or other device, in or in connection with the sale and distribution of women's wearing apparel such as brassieres and other related products, in commerce, as "commerce" is defined in the Clayton Act, as amended, do forthwith cease and desist from:

1. Paying, or contracting to pay to or for the benefit of any customer, an advertising allowance, push money or anything of value as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the processing, handling, sale or offering for sale of respondent's products, unless such payment or consideration is offered and otherwise made available on proportionally equal terms to all other customers competing in the distribution or resale of such products;

2. Discriminating, directly or indirectly, among competing purchasers of its products, by contracting to furnish, furnishing, or contributing to the furnishing of the services of stylists or any other services or facilities connected with the processing, handling, sale or offering for sale of respondent's products, to any purchaser from respondent of such products bought for resale, unless such services or facilities are offered and otherwise made available on proportionally equal terms to all purchasers competing in the distribution or resale of such products.

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

Complaint

71 F.T.C.

IN THE MATTER OF

FAIRMOOR COAT & SUIT CORPORATION ET AL.

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

Docket C-1179. Complaint, Mar. 8, 1967—Decision, Mar. 8, 1967

Consent order requiring a New York City manufacturer of fur, wool and textile products, to cease improperly labeling and invoicing its products.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, the Fur Products Labeling Act, the Wool Products Labeling Act of 1939 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 Fairmoor Coat & Suit Corporation, a corporation, and Herbert Haar, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Fur Products Labeling Act, the Wool Products Labeling Act of 1939 and 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 Fairmoor Coat & Suit Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York.

Respondent Herbert Haar is an officer of said corporation. He formulates, directs and controls the policies, acts and practices of said corporation.

Respondents are manufacturers of fur products, wool products and textile fiber products with their office and principal place of business located at 512 Seventh Avenue, New York, New York.

PAR. 2. Subsequent to the effective date of the Fur Products Labeling Act on August 9, 1952, respondents have been and are now engaged in the introduction into commerce, and in the manufacture for introduction into commerce, and in the sale, advertising, and offering for sale in commerce, and in the transportation and distribution in commerce, of fur products; and have manu-

factured for sale, sold, advertised, offered for sale, transported and distributed fur products which have been made in whole or in part of furs which have been shipped and received in commerce, as the terms "commerce," "fur" and "fur product" are defined in the Fur Products Labeling Act.

PAR. 3. Certain of said fur products were misbranded in that they were falsely and deceptively labeled to show that fur contained therein was natural, when in fact such fur was pointed, bleached, dyed, tip-dyed, or otherwise artificially colored, in violation of Section 4(1) of the Fur Products Labeling Act.

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

Among such misbranded fur products, but not limited thereto, were fur products with labels which failed to disclose that the fur contained in the fur products was bleached, dyed, or otherwise artificially colored, when such was the fact.

PAR. 5. Certain of said fur products were misbranded in violation of the Fur Products Labeling Act in that they were not labeled in accordance with the Rules and Regulations promulgated thereunder inasmuch as required item numbers were not set forth on labels, in violation of Rule 40 of said Rules and Regulations.

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

Among such falsely and deceptively invoiced fur products, but not limited thereto, were fur products covered by invoices which failed to disclose that the fur contained in the fur products was bleached, dyed, or otherwise artificially colored when such was the fact.

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

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

bers were not set forth on invoices, in violation of Rule 40 of said Rules and Regulations.

PAR. 9. The aforesaid acts and practices of respondents, as herein alleged, are in violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder and constitute unfair and deceptive acts and practices and unfair methods of competition in commerce under the Federal Trade Commission Act.

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

PAR. 11. Certain of said wool products were misbranded by respondents in that they were not stamped, tagged, labeled, or otherwise identified as required under the provisions of Section 4(a)(2) of the Wool Products Labeling Act of 1939 and in the manner and form as prescribed by the Rules and Regulations promulgated under said Act.

Among such misbranded wool products, but not limited thereto, was a wool product with a label on or affixed thereto which failed to disclose the percentage of the total fiber weight of the said wool product, exclusive of ornamentation not exceeding 5% of the total weight, of (1) wool; (2) reprocessed wool; (3) reused wool; (4) each fiber other than wool when said percentage by weight of such fiber was 5% or more; and (5) the aggregate of all other fibers.

PAR. 12. Certain of said wool products were misbranded, in violation of the Wool Products Labeling Act of 1939 in that they were not labeled in accordance with the Rules and Regulations promulgated thereunder in that the respective percentages of fibers contained in the front and back of pile fabrics was not set forth in such a manner as to give the ratio between the front and back of each of such fabrics where an election was made to separately set out the fiber content of the face and back of the wool products containing pile fabrics, in violation of Rule 26 of the aforesaid Rules and Regulations.

PAR. 13. The acts and practices of the respondents as set out in Paragraphs Ten, Eleven and Twelve above were, and are, in violation of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, and constituted, and now constitute, unfair and deceptive acts and practices and un-

fair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

PAR. 14. 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 in the importation into the United States, of textile fiber products; and have sold, offered for sale, advertised, delivered, transported and caused to be transported, textile fiber products, which have been advertised or offered for sale in commerce; and have sold, offered for sale, advertised, delivered, transported and caused to be transported, after shipment in commerce, textile fiber products, either in their original state or contained in other textile fiber products, as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act.

PAR. 15. Certain of said textile fiber products were misbranded by respondents 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 prescribed by the Rules and Regulations promulgated under said Act.

Among such misbranded textile fiber products, but not limited thereto, were textile fiber products which were not labeled to show in words and figures plainly legible; (1) the true generic names of the constituent fibers present in the textile fiber products; (2) the percentage of each such fiber; and (3) any fiber or group of fibers present in the amount of less than 5 per centum of the total weight of the textile fiber products as "other fiber" or "other fibers."

PAR. 16. 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 the respective percentages of fibers contained in the front and back of pile fabrics were not set out in such a manner as to give the ratio between the face and back of such fabrics where an election was made to separately set out the fiber content of the face and back of textile fiber products containing pile fabrics, in violation of Rule 24 of the aforesaid Rules and Regulations.

PAR. 17. The acts and practices of the respondents as set forth in Paragraphs Fourteen, Fifteen and Sixteen above were, and

are, in violation of the Textile Fiber Products Identification Act and the Rules and Regulations promulgated thereunder, and constituted, and now constitute, unfair methods of competition and unfair and deceptive acts or practices, in commerce, under the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Textiles and Furs proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act, the Fur Products Labeling Act, the Wool Products Labeling Act of 1939 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 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 Fairmoor Coat & Suit Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 512 Seventh Avenue, New York, New York.

Respondent Herbert Haar is an officer of said corporation and his address is the same as that of said corporation.

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

ORDER

It is ordered, That respondents Fairmoor Coat & Suit Corpora-

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

A. Misbranding any fur product by:

1. Representing directly or by implication on a label that the fur contained in such fur product is natural when the fur contained therein is pointed, bleached, dyed, tip-dyed, or otherwise artificially colored.

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

3. Failing to set forth on a label the item number or mark assigned to such fur product.

B. Falsely or deceptively invoicing any fur product by:

1. Failing to furnish an invoice, as the term "invoice" is defined in the Fur Products Labeling Act, showing in words and figures plainly legible all the information required to be disclosed by each of the subsections of Section 5(b)(1) of the Fur Products Labeling Act.

2. Representing directly or by implication on an invoice that the fur contained in such fur product is natural when such fur is pointed, bleached, dyed, tip-dyed, or otherwise artificially colored.

3. Failing to set forth on an invoice the item number or mark assigned to such product.

It is further ordered, That respondents Fairmoor Coat & Suit Corporation, a corporation, and its officers, and Herbert Haar individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, or manufacture for introduction, into commerce, or the offering for sale, sale, transportation, distribution, delivery for shipment

or shipment in commerce, of wool products, as "commerce" and "wool product" are defined in the Wool Products Labeling Act of 1939, do forthwith cease and desist from misbranding any wool product by:

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

2. Failing to set forth respective percentages of fibers contained in the front and back of pile fabrics in such a manner as to give the ratio between the front and back of each such fabric where an election is made to separately set out the fiber content of the face and back of such wool product containing pile fabrics.

It is further ordered, That respondents Fairmoor Coat & Suit Corporation, a corporation and its officers, and Herbert Haar, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, delivery for introduction, manufacture 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 misbranding any textile fiber product by:

1. Failing to affix a stamp, tag, label, or other means of identification to such textile fiber product 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.

2. Failing to set forth respective percentages of fibers contained in the front and back of pile fabrics in such a manner as to give the ratio between the front and back of each such fabric where an election is made to separately set

out the fiber content of the face and back of such textile products containing pile fabrics.

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

DAVID GOTTESMAN TRADING AS GOTTESMAN COMPANY

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

Docket C-1180. Complaint, Mar. 9, 1967—Decision, Mar. 9, 1967

Consent order requiring a New York City wholesale furrier to cease misbranding and falsely invoicing its fur products.

COMPLAINT

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

PARAGRAPH 1. Respondent David Gottesman is an individual trading as Gottesman Company.

Respondent is a wholesaler of fur products with his office and principal place of business located at 37 West 39th Street, New York, New York.

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

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

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

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

1. To show that the fur products contained or were composed of used fur, when such was the fact.

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

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

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

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

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

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

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

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

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

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

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

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

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

DECISION AND ORDER

The 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 Fur Products Labeling 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 David Gottesman is an individual trading as Gottesman Company, with his office and principal place of business located at 37 West 39th Street, New York, New York.

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

ORDER

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

A. Misbranding any fur product by:

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

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

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

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

B. Falsely or deceptively invoicing any fur product by:

1. Failing to furnish an invoice, as the term "invoice" is defined in the Fur Products Labeling Act, showing in words and figures plainly legible all the information re-

quired to be disclosed by each of the subsections of Section 5(b) (1) of the Fur Products Labeling Act.

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

3. Failing to set forth on an invoice the item number or mark assigned to such fur product.

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

FIRST FEDERAL CONSTRUCTION COMPANY, INC., ET AL.

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

Docket C-1181. Complaint, Mar. 9, 1967—Decision, Mar. 9, 1967

Consent order requiring an Evansville, Indiana, seller of residential aluminum siding to cease misrepresenting through salesmen, connections with large aluminum companies, making false guarantees, fictitious pricing and deceptive savings claims, and deceptively representing that homes of prospective purchasers would be used as model homes.

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 Commission, having reason to believe that First Federal Construction Company, Inc., a corporation, and Theodore B. Conn, Jr., 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. First Federal Construction Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Indiana, with its principal

office and place of business located at 1011 Grove Street, Evansville, Indiana.

Theodore B. Conn, Jr., 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 2612 N. Court Drive, Evansville, Indiana.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the offering for sale, sale, distribution and installation of various items of merchandise for installation in or on private homes, including aluminum siding.

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 Indiana 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 products, through oral sales solicitations by their representatives or salesmen, respondents have represented, directly or by implication, to prospective customers:

1. That respondents' salesmen or representatives are representatives of the Kaiser Aluminum and Chemical Corporation or the Aluminum Company of America.

2. That respondents' products are guaranteed by the Kaiser Aluminum and Chemical Corporation in every respect without condition or limitation for an unlimited period of time.

3. That respondents' products are being offered for sale at a special or reduced price and that savings are thereby afforded purchasers from respondents' regular selling price.

4. That the homes of prospective purchasers have been specially selected as model homes for the installation of respondents' siding, and that after installation such homes would be used as points of reference for demonstration and advertising purposes by the respondents, and that, as a result of allowing their homes to be used as models, purchasers would receive allowances, discounts, commissions or some other compensation.

PAR. 5. In truth and in fact:

1. Respondents' salesmen or representatives are not representatives of the Kaiser Aluminum and Chemical Corporation or the

Aluminum Company of America, nor are they connected with such organizations.

2. Respondents' materials are not unconditionally guaranteed by the Kaiser Aluminum and Chemical Corporation in every respect without condition or limitation or guaranteed for an unlimited period of time; but on the contrary such guarantee by the Kaiser Aluminum and Chemical Corporation as may be furnished in connection with respondents' products is subject to numerous terms, conditions and limitations and extends only for a specified number of years.

3. Respondents' products are not being offered for sale at a special or reduced price and savings are not granted respondents' customers because of a reduction from respondents' regular selling price. In fact, respondents do not have a regular selling price but the prices at which respondents' products are sold vary from customer to customer depending on the resistance of the prospective purchaser.

4. The homes of prospective purchasers are not specially selected as model homes, and respondents do not use purchasers' homes as points of reference for advertising or demonstration purposes. In addition, respondents do not give allowances, discounts, commissions or other compensation to purchasers who agree to have their homes used as models.

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

PAR. 6. In the course of their business and at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of aluminum siding and other building materials 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, 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. 8. The aforesaid acts and practices of respondents, as hereinafter 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 First Federal Construction Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Indiana, with its offices and principal place of business located at 1011 Grove Street, Evansville, Indiana.

Respondent Theodore B. Conn, Jr., is an officer of said corporation and his address is 2612 N. Court Drive, Evansville, Indiana.

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 First Federal Construction

Company, Inc., a corporation, and its officers, and Theodore B. Conn, Jr., individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, distribution or installation of residential aluminum siding or any other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that respondents or their salesmen or representatives are representatives of or are connected or affiliated with the Kaiser Aluminum and Chemical Corporation or the Aluminum Company of America; or misrepresenting, in any manner, the business connections or affiliations of the respondents.

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

3. Representing, directly or by implication, that any price for respondents' products is a special or reduced price unless such price constitutes a significant reduction from an established selling price at which such products have been sold in substantial quantities by respondents in the recent regular course of their business.

4. Misrepresenting, in any manner, savings available to purchasers of respondents' products.

5. Representing, directly or by implication, that the home of any of respondents' customers or prospective customers has been selected as a model home to be used for advertising purposes or will be used for advertising purposes.

6. Representing, directly or by implication, that any allowance, discount, commission or other compensation is granted by respondents to purchasers in return for permitting the premises on which respondents' products are installed to be used for advertising purposes.

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

Complaint

71 F.T.C.

IN THE MATTER OF

W. R. GRACE & CO.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
SECTION 7 OF THE CLAYTON ACT*Docket C-1182. Complaint, Mar. 9, 1967—Decision, Mar. 9, 1967*

Consent order prohibiting a large diversified corporation with headquarters in New York City from acquiring any corporation manufacturing or selling chocolate or cocoa products (SIC 2072), for a period of 10 years without prior approval of the Federal Trade Commission.

COMPLAINT

The Federal Trade Commission having reason to believe that the above-named respondent has violated the provisions of Section 7 of the Clayton Act, as amended, and that a proceeding in respect thereof would be in the public interest, issues this complaint, stating its charges as follows:

I

Definitions

1. For the purposes of this complaint, the following definitions are applicable:

(a) *Chocolate and cocoa products.* Chocolate and cocoa products are foods prepared in cocoa bean grinding establishments by heating and cracking dried or cured cocoa beans and removing the shell therefrom. This category includes foods prepared in such establishments by further processing of cocoa bean grindings. This definition corresponds to Standard Industrial Classification Industry No. 2072.

(b) *Cocoa Powders.* Cocoa powders are foods prepared by pulverizing the residual material remaining after part of the cocoa fat has been removed from ground cocoa nibs. This product may be packaged for household use or for use by commercial enterprises in flavoring confectionery, bakery, dairy and other food products. This definition corresponds to Bureau of Census Product Code No. 20728 75.

(c) *Chocolate and cocoa coatings.* Chocolate and cocoa coatings are intermediate food products prepared by finely pulverizing the cocoa butter or hard fat and cocoa powders to produce a solid or semiplastic substance suitable for use in coating confectionery, bakery, dairy and other food products. This category includes

sweet milk, liquor and confectionery (cocoa) coatings. This definition corresponds to Bureau of Census Product Code No. 20721.

(d) *Cocoa butter*. Cocoa butter is a food obtained from cocoa bean grindings by removing the cocoa powder therefrom. This definition corresponds to Bureau of Census Product Code No. 20728 81.

II

W. R. Grace & Co.

2. W. R. Grace & Co. (Grace) is a corporation organized and existing under the laws of the State of Connecticut with its principal office located at 7 Hanover Square, New York, New York, 10005.

3. Grace ranks among the 100 largest industrial corporations in the United States, with 1965 sales and revenues of \$1,003,070,000 and assets of \$1,070,592,000.

4. Originally a trading corporation, Grace has diversified and expanded its activities into transportation, manufacturing, agriculture, banking and food, largely by the acquisition of existing enterprises. At the end of 1965, approximately 66 per cent of Grace's revenues were derived from chemical operations, including plastics and fertilizers, and approximately 12 percent of revenues were derived from food products.

5. For a number of years prior to 1962, Grace had been a leading manufacturer of chocolate products in several countries of South America, with plants in Colombia, Peru and Chile. Its Colombian subsidiary, Comestibles La Rosa, S.A., is one of the leading companies in its field in Colombia, producing 529 metric tons of chocolate in 1964. Cia. "Arturo Field y La Estrella" Ltda., in which Grace owns a majority interest, is a leading Peruvian manufacturer of biscuits and candy and also manufactures chocolate. In 1964, Arturo Field produced about 340 metric tons of chocolate. Grace is also a majority stockholder in Hucke Hermanos, S.A.C., a leading Chilean producer of biscuits, candy and chocolate. In 1964, Hucke produced about 4,100 metric tons of these products.

6. In December, 1962, Grace acquired a majority interest in C. J. Van Houten & Zoon, N. V., one of the world's leading manufacturers of chocolate and cocoa products and by 1964 had increased its holdings to 92 percent of the outstanding stock of this company. On October 15, 1964, C. J. Van Houten & Zoon, N. V.

acquired N. V. Cacaofabriek De Zaan, whose chocolate and cocoa products production facilities are among the most modern in the world. Together, they constitute one of the largest chocolate and cocoa producers in Europe, accounting for approximately 20 percent of all cocoa bean grindings in Belgium, The Netherlands and Federal Republic of Germany; and are substantial exporters of chocolate and cocoa products to the United States.

7. To obtain a stronger position in this field, majority interests were obtained in 1963 in two other chocolate companies, Urney Chocolates, Ltd., located in Dublin, Ireland, the largest independent chocolate producer in that country and Chocolaterie Modele, S.A., known as "Martougin," of Antwerp, Belgium. In 1964, Urney, together with its subsidiaries, manufactured 11,000 metric tons of chocolate and confectionery products for distribution in Ireland, the United Kingdom and the United States.

8. Today Grace ranks among the six leading chocolate companies in the world, accounting for approximately 8 percent of the world's cocoa bean grindings. Through Van Houten and De Zaan, Grace ranks as one of the world's leading producers of cocoa butter and cocoa powder, accounting for 19.7 percent of the world's trade in cocoa butter and 30 percent of the world's trade in cocoa powder in 1962. Grace commands a pre-eminent technical position in producing chocolate and cocoa products and its know-how in producing cocoa butter and cocoa powder is among the best in the world.

9. Grace is a leading exporter to the United States of chocolate and cocoa products. In 1963, Grace's chocolate and cocoa products exported to the United States totaled \$5,972,000 and accounted for 20 percent of all cocoa powder imports, 4 percent of all chocolate and confectionery coating imports and 3 percent of all cocoa butter imports.

10. Prior to October 20, 1964, Grace's long range planning contemplated further geographic diversification of operations removed from traditional sources in Latin America; the development of a leading world position in the chocolate and cocoa products and confectionery products industries; and ultimately the manufacture of these products in the United States. Supported by the historical, technical and commercial reputation of Van Houten, Grace contemplated the internal expansion of production facilities in the United States. Although Grace recognized that it could enter the United States chocolate industry by expanding internally, it chose to make its entry by acquiring an established producer, Ambrosia Chocolate Company.

11. Grace at all times relevant herein has been engaged "in commerce" within the meaning of the Clayton Act.

III

Ambrosia Chocolate Company

12. Ambrosia Chocolate Company (Ambrosia) was, prior to its acquisition by Grace on October 20, 1964, a corporation organized and existing under the laws of the State of Wisconsin, with its principal office and place of business located at 528 West Highland Avenue, Milwaukee, Wisconsin.

13. Ambrosia ranked as a leading producer of intermediate chocolate and cocoa products in the United States with 1963 sales of \$17,167,638 and was one of the most advanced companies in the use of cocoa butter substitutes and the production of chocolate coatings for use in the ice cream, biscuit, and candy industries. Ambrosia possessed excellent technical knowledge, competent management, an expanding market, and demonstrated continued growth in excess of the industry average.

14. Between 1961 and 1963, Ambrosia acquired all of the outstanding capital stock of Hooten Chocolate Company (Hooten), a corporation organized and existing under the laws of the State of New Jersey, with its principal office and place of business located at 339 North Fifth Street, Newark, New Jersey. Hooten's sales of chocolate and confectionery coatings, chocolate liquor, ice cream coatings, and cocoa butter totaled \$4,076,000 in 1962.

15. Together, Ambrosia and Hooten ranked as the Nation's third largest producer of intermediate chocolate and cocoa products, grinding about 16,000 tons of cocoa beans, which constitutes approximately 4% of total United States grindings. In 1963, they accounted for approximately 7.3% of all domestic chocolate coating shipments, 29.9% of confectionery (cocoa) coating shipments and about 3.9% of all other chocolate and cocoa products intended for use in flavoring or coating other food products.

16. Ambrosia at all times relevant herein was engaged "in commerce," within the meaning of the Clayton Act.

IV

Trade and Commerce

17. Chocolate and cocoa products are intermediate or producer goods which are sold primarily to producers of consumer food products, principally confectionery, bakery and dairy products.

Trade and commerce in chocolate and cocoa products is substantial. The United States accounts for approximately 29 percent of world production of such products, with a consumption average of 7.8 pounds per capita. Domestic manufacturers produce about 80% of total United States requirements for chocolate and cocoa products.

18. In 1963, United States chocolate and cocoa products shipments were valued at \$563 million, an increase of \$89 million over the last decade. Total shipments of intermediate chocolate and cocoa products accounted for \$385 million of which the principal intermediate product, coatings, accounted for shipments of \$132 million.

19. Concentration is high in the chocolate and cocoa products industry and in individual chocolate and cocoa products. In 1958, the four largest companies accounted for 71% of industry shipments of all chocolate and cocoa products and 46% of shipments of all chocolate and cocoa coatings. Twenty companies accounted for nearly all (97%) of industry shipments in that year.

20. Since 1958, mergers and acquisitions have tended to alter the structure of the chocolate and cocoa products industry. Concentration has been increased by mergers among large food, confectionery and related products makers. Mergers between large food, confectionery and related products manufacturers and chocolate and cocoa products manufacturers have reduced the number of independent suppliers of chocolate and cocoa products and have begun to transform the industry from one composed largely of specialized independent producers into one composed of large corporations whose principal business is in other industries. The number of independent manufacturers has been reduced from approximately twenty in 1958 to about eleven companies in 1965.

V

The Acquisition

21. On October 20, 1964, Grace acquired substantially all of the business and assets of Ambrosia in exchange for 116,000 shares of Grace common stock valued at approximately \$6,712,000.

VI

Effects of the Acquisition

22. The effects of the foregoing acquisition has been, or may be, the following, among others:

(a) Substantial potential competition has been eliminated between Grace and Ambrosia in the manufacture and sale of chocolate and cocoa products, generally, and in individual chocolate and cocoa products—cocoa butter, cocoa powder and chocolate and confectionery coatings—in the United States or portions thereof;

(b) New entry into the chocolate and cocoa products industry may be inhibited or prevented;

(c) Other acquisitions in the chocolate and cocoa products industry may be encouraged or stimulated, thus aggravating the competitive impact of the instant acquisition, as hereinbefore described, thereby tending further to transform the chocolate and cocoa products industry from one composed of viable, independent, locally owned business into a more concentrated industry composed of large, diversified corporations;

(d) The members of the consuming public in the United States and in portions thereof, may be denied the benefits of free and unrestricted competition in the chocolate and cocoa products industry.

VII

The Violations Charged

23. The effect of the acquisition of Ambrosia by Grace, viewed separately and as part of a series of acquisitions described in Paragraph 20 may be substantially to lessen competition or to tend to create a monopoly throughout the United States, or in portions thereof, in the manufacture and sale of chocolate and cocoa products generally, or in segments of the chocolate and cocoa products industry, in violation of Section 7 of the Clayton Act, as more fully described above in Paragraph 22.

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 Restraint of Trade proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of Section 7 of the Clayton Act, as amended; 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 Section 7 of the Clayton Act, as amended, 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 W. R. Grace & Co. is a corporation organized and existing under the laws of the State of Connecticut, with its principal office located at 7 Hanover Square, New York, New York 10005.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent.

ORDER

It is ordered, That for ten (10) years from the effective date of this Order, respondent, W. R. Grace & Co., shall not, without prior approval of the Federal Trade Commission, acquire directly or indirectly the whole or any part of the stock or share capital in, or the whole or any part of the assets (other than assets offered for sale in the usual and ordinary course of business) of any corporation engaged in commerce (as presently defined in the Federal Trade Commission Act) and in the manufacture and sale of products included within the chocolate and cocoa products industry (Standard Industrial Classification Industry 2072).

It is further ordered, That respondent W. R. Grace & Co. shall, within sixty (60) days after service upon it of this order, and annually thereafter, file with the Commission a verified report, in writing, setting forth in detail the manner and form in which it has complied with the order to cease and desist as set forth herein.

Complaint

IN THE MATTER OF

FRANCIS E. MASTBROOK DOING BUSINESS AS
EDISON SEWING MACHINE AND VACUUM CLEANER CO.,
ETC.

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

Docket 8710. Complaint, Sept. 14, 1966—Decision, Mar. 13, 1967

Consent order requiring a Washington, D.C., retailer of sewing machines and vacuum cleaners to cease using deceptive means to sell his merchandise, such as alleging certain items were repossessed and purchasers would save paid-in amount, making false guarantee offers, using bait and switch tactics, using contests, prizes, and certificates in a deceptive manner, fictitiously pricing merchandise, and falsely implying that he was conducting a survey for appliance manufacturers.

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 Francis E. Mastbrook, doing business as Edison Sewing Machine and Vacuum Cleaner Co., Edison Sewing Machine Co., Sewing Machine Exchange, Coles Adjustment Service, Edison Sales, and Consumer Advertising and Research Service, 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 Francis E. Mastbrook is an individual doing business as Edison Sewing Machine and Vacuum Cleaner Co., Edison Sewing Machine Co., Sewing Machine Exchange, Coles Adjustment Service, Edison Sales, and Consumer Advertising and Research Service, with his office and principal place of business located at 2626 Bladensburg Road, NE., Washington, D.C., 20710.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the advertising, offering for sale, sale and distribution of sewing machines and vacuum cleaners and other appliances at retail to the public.

PAR. 3. In the course and conduct of his business respondent maintains his principal place of business within the District of Columbia, and now causes, and for some time last past has caused,

his said products, when sold, to be shipped from his place of business to purchasers thereof within the District of Columbia, and 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. 4. In the course and conduct of his business and for the purpose of inducing the purchase of his products, respondent now makes, and has made, certain statements and representations in advertisements in newspapers of general circulation respecting the price, savings, guarantee, nature of his products and the status of his business.

Among and typical, but not all inclusive of such statements and representations, are the following:

SEWING MACH.—Auto. zig-zag, reposs., take over payments, \$5 mo., EXCH Credit Dept 526-6951.

SEWING MACHINE—Singer zig-zag, 2 mos. old, like new, bal. only \$62, Pay \$5 per mo., Call Credit Mgr., Cole Adj., 526-1852.

SEWING MACH.—Singer slant needle, like new, repossessed, bal. \$58, \$5 mo. Coles Adj. Serv.—526-1852.

SEWING MACH.—Recond., guar., \$14.95 up. SEW. MACH. EXCH. 2626 Bladensburg rd. ne. LA-6-6950.

PAR. 5. By and through the use of said statements and representations, and others of similar import and meaning but not specifically set out herein, separately and in connection with the oral statements of salesmen, respondent represents and has represented, directly or by implication:

1. Through the use of the statements "reposs. take over payments," "repossessed, bal. \$58" and words or statements of similar import, that sewing machines, partially paid for by a previous purchaser, are being offered for the unpaid balance of the purchase price, affording savings to purchasers.

2. Through the use of the names and designations "EXCH. Credit Dept.," "Credit Mgr. Cole Adj.," "Coles Adj. Serv." and other names and designations of similar import, that his principal business is that of lending money and settling and collecting accounts.

3. That in the guise of such names and designations referred to in 2 above that he is making a bona fide offer to sell repossessed sewing machines for reason of default in payments by the previous purchaser, and on the terms and conditions stated.

4. That sewing machines are guaranteed without conditions or limitations.

PAR. 6. In truth and in fact:

1. Said sewing machines are not being offered for the unpaid balance of the purchase price, and the represented savings were not afforded purchasers.

2. Respondent is not engaged in the business of lending money or of collecting and settling accounts but is engaged in the business of the retail sale of new and used sewing machines, vacuum cleaners and other appliances to the public.

3. Respondent is not making bona fide offers to sell the said sewing machines and on the terms and conditions stated but said offers to sell are made for the purpose of obtaining leads as to persons interested in the purchase of such machines. After obtaining leads through response to said advertisements, respondent or his salesmen call upon such persons in their homes or wait upon them in the store, but make no effort to sell the advertised machines. Instead, they exhibited sewing machines which were in such poor condition as to be unusable, and disparaged the advertised product to discourage its purchase, and attempted to and frequently did, sell much higher price sewing machines.

4. The guarantee of said sewing machine contains numerous conditions and limitations which are not disclosed in the advertising.

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

PAR. 7. In the course and conduct of his business and for the purpose of inducing the purchase of his sewing machines respondent periodically conducts a contest in which persons are invited to encircle misspelled words appearing in a newspaper advertisement, the winners to be determined on the basis of most misspelled words found, neatness, and promptness of reply. The grand prize is an Edison sewing machine or a Morse Console Stereo and 25 second prizes of \$50 merchandise certificates and 35 third prizes of \$40 merchandise certificates. Participants in these contests then receive a "gift certificate" by mail. Typical, but not all inclusive of the statements and representations made in said advertisement and follow-up material, are the following:

Complaint

71 F.T.C.

The newspaper advertisement (spelling corrected):

a
WIN new EDISON SEWING MACHINE
OR MORSE STEREO ! ! ! !
F R E E !

(picture of Edison Sewing Machine
model 142B and Morse Stereo Console
phonograph)

G R A N D P R I Z E

25-2nd prizes

\$50 mdse certificates
Machine list (Sewmatic No. 82)\$99.50
Certificate 50.00
Balance 49.50

35-3rd Prizes

\$40 mdse certificates
Machine Price (Sewmatic No. 82)\$99.50
Certificate 40.00
Balance\$59.50

IT'S FUN! YOU CAN BE A WINNER

Follow these Rules

* * * *

NAME _____ PHONE _____
ADDRESS _____
NO. MISSPELLED WORDS _____

Contest Closes Midnight Nov. 28, 1965
Mail Today c/o Edison Contest

The follow-up material (on bank check paper):

EDISON SEWING MACHINE CO. NO 3428
2626 Bladensburg Road, Northeast Washington 18, D.C. 526-5950

NOT NEGOTIABLE Date _____
Expires 30 days from date \$ _____

PAY
TO

As a credit to be deducted from
initial purchase of merchan-
dise as indicated by attached
letter

Edison Sewing Machine Co.
(H. A. Bell)

Authorized Signature

EDISON SEWING MACHINE CO.

2626 Bladensburg Road, Northeast Washington 18, D.C. 526-5950

Congratulations:

You were one of the Gift Certificate Winners in the recent Edison Sewing Machine Contest. Enclosed you will find your Gift Certificate. Your Certificate may be applied at its full value on the purchase of any New Edison Automatic Zig-Zag Sewing Machine, either Portable or Cabinet Model.

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

1. That he conducts bona fide contests and that recipients of said gift certificates have won a valuable prize through their participation in said contests entitling them to a discount in the amount stated on the certificate, as a reduction from the price at which such products are usually and customarily sold by respondent.

2. That the higher stated price from which the amount of the gift certificate is deducted is respondent's usual and customary price of the designated sewing machine and that purchasers are afforded savings of the difference between that price and the price at which the sewing machine is being offered.

PAR. 9. In truth and in fact:

1. Respondent does not conduct bona fide contests. His purpose in having persons enter said contests is to obtain leads to prospective purchasers of his sewing machines. And, the purchaser does not receive a prize since the amount of the gift certificate is deducted not from respondent's usual and customary price of the product but from a higher price, and therefore the prize is illusory.

2. The higher stated price is not respondent's usual and customary price of the designated sewing machine and purchasers are not afforded savings of the difference between that price and the price at which the machine is being offered.

Therefore, the statements and representations as set forth in

Complaint

71 F.T.C.

Paragraphs Seven and Eight hereof were, and are, false, misleading and deceptive.

PAR. 10. In the course and conduct of his business and for the purpose of inducing the purchase of his sewing machines respondent conducts a door-to-door canvass under the name of Consumer Advertising and Research Service, 4221 71st Avenue, Hyattsville, Maryland. Respondent uses a questionnaire seeking information regarding the appliances presently in the home and those wished to be acquired. Persons contacted are told that their participation entitles them to a chance in a drawing being held by Consumer Advertising and Research Service and they are given a stub of the questionnaire with a corresponding number which states thereon "Retain this stub. It may be valuable to you." Next, the participant receives the following letter:

CONSUMER ADVERTISING AND RESEARCH SERVICE
4221 71st Avenue Hyattsville, Maryland

NATIONAL SURVEY

(Name and address of participant)

(date)

Dear Customer:

Recently we conducted a survey in your area. Through one of the manufacturers we represent, your name has been selected to receive one of their products as a free gift.

Take this letter and your yellow stub given to you at the time of the survey, to Edison Sales, 2626 Bladensburg Road, N.E., Washington, D.C. and receive your gift.

This valuable GIFT LETTER is not transferable and must be presented in person within ten days upon receipt of this letter.

PAR. 11. By and through the use of the aforementioned statements and representations, by oral statements of respondent or his salesmen, and by other written statements and representations of similar import and meaning not specifically set out herein, respondent represents and has represented, directly or by implication:

Through the use of the name Consumer Advertising and Research Service and in connection with other statements and representations and activities in conducting ostensible surveys, that it is an independent agency representing manufacturers in making surveys to determine whether certain appliances are being used in the home and if not whether they will be acquired in future and that names would be drawn from those interviewed to determine the winners of prizes given by the manufacturer.

In truth and in fact respondent is solely a retailer of sewing

machines, vacuum cleaners and other appliances and uses the name Consumer Advertising and Research Service, makes other statements and representations, and conducts the purported surveys merely as an artifice to obtain names and addresses of prospective purchasers of his products. The names of prize-winners are not drawn but are selected by respondent and a letter is sent to them announcing that they are winners to lure them into the store so that respondent can attempt to sell sewing machines or other appliances to said persons.

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

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

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

DECISION AND ORDER

The Commission having issued its complaint in this proceeding on September 14, 1966, charging respondent named in the caption hereof with violation of the Federal Trade Commission Act, and the respondent having been served with a copy of that complaint; and

The respondent having thereafter filed with the hearing examiner a motion requesting waiver of Rule 2.4(d) of the Commission's Rules, to which motion was attached a consent agreement executed by respondent; and

The hearing examiner having certified to the Commission the said motion, with agreement, along with the answer thereto by counsel supporting complaint joining in said motion and requesting counsel's opportunity to execute the agreement as certified; and

The Commission, by order of December 20, 1966, having granted said motion and having thereby afforded counsel supporting complaint opportunity to execute the said agreement; and

The Commission now having considered the aforesaid agreement which has been executed by all the parties, and now having determined that the agreement constitutes an adequate basis for appropriate disposition of this proceeding, the agreement is hereby accepted, the following jurisdictional findings are made, and the following order is entered:

1. Respondent Francis E. Mastbrook is an individual doing business as Edison Sewing Machine and Vacuum Cleaner Co., Edison Sewing Machine Co., Sewing Machine Exchange, Coles Adjustment Service, Edison Sales, and Consumer Advertising and Research Service, with his office and principal place of business located at 2626 Bladensburg Road, NE., Washington, D.C. 20710.

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 Francis E. Mastbrook, an individual, doing business as Edison Sewing Machine and Vacuum Cleaner Co., Edison Sewing Machine Co., Sewing Machine Exchange, Coles Adjustment Service, Edison Sales, and Consumer Advertising and Research Service, or under any other name or names, and respondent's agents, representatives and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of sewing machines, vacuum cleaners, or any other products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that merchandise has been repossessed or that it is being offered for the balance of the purchase price unpaid by a previous pur-

chaser; or misrepresenting, in any manner, the status, kind, quality or price of the merchandise being offered.

2. Using the names or designations "EXCH. Credit Dept.," "Credit Mgr. Cole Adj." or "Coles Adj. Serv." or other names or designations of similar import or meaning to designate or refer to respondent's enterprise, or otherwise representing, directly or by implication, that respondent is engaged in the business of collecting debts or of adjusting or settling accounts; or misrepresenting in any manner the nature or status of respondent's business.

3. Representing, directly or by implication, that purchasers save the paid-in amount on repossessed merchandise; or misrepresenting in any manner the savings afforded purchasers of respondent's products.

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

5. Representing, directly or by implication, that any products or services are offered for sale when such offer is not a bona fide offer to sell said products or services on the terms and conditions stated; or using any advertising, sales plan or procedure involving the use of false, deceptive or misleading statements to obtain leads or prospects for the sale of other merchandise.

6. Disparaging in any manner or discouraging the purchase of any products advertised.

7. Representing, directly or by implication, that contests are being conducted to determine winners of a prize; or misrepresenting in any manner the way in which names of prospective purchasers are selected.

8. Representing, directly or by implication, that awards or merchandise certificates are of a certain value or worth when recipients thereof are not in fact benefited by or do not save the amount of the represented value thereof.

9. Representing, directly or by implication, that any savings, discount or allowance is given purchasers from respondent's selling price for specified merchandise unless said selling price is the amount at which such merchandise has been sold or offered for sale in good faith by respondent for a reasonably substantial period of time in the recent regular course of his business.

10. Using the name "Consumer Advertising and Research

Service," to designate or refer to respondent's enterprise, or representing that he or his representative is conducting a survey; or using any scheme or device, involving the use of false, deceptive or misleading statements, representations or practices by which the names or addresses of prospective purchasers are obtained or by which they are enticed to place themselves in a position where respondent can attempt to sell them merchandise.

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

GALAXY COSTUME CORPORATION ET AL.

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

Docket C-1183. Complaint, Mar. 14, 1967—Decision, Mar. 14, 1967

Consent order requiring a New York City manufacturing furrier to cease misbranding and falsely invoicing its fur products.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Galaxy Costume Corporation, a corporation, and Sam Weil, individually and as an officer of said corporation, and Louis Baron, individually and as an employee of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Fur Products Labeling Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Galaxy Costume Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York.

Respondent Sam Weil is an officer of said corporation and respondent Louis Baron is an employee of said corporation. They

formulate, direct and control the policies, acts and practices of said corporation.

Respondents are manufacturers of fur products with their office and principal place of business located at 225 West 37th Street, New York, New York.

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

PAR. 3. Certain of said fur products were misbranded in that they were falsely and deceptively labeled to show that fur contained therein was natural, when in fact such fur was pointed, bleached, dyed, tip-dyed, or otherwise artificially colored, in violation of Section 4(1) of the Fur Products Labeling Act.

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

Among such misbranded fur products, but not limited thereto, were fur products with labels which failed to disclose that the fur contained in the fur product was bleached, dyed, or otherwise artificially colored, when such was the fact.

PAR. 5. Certain of said fur products were misbranded in violation of the Fur Products Labeling Act in that they were not labeled in accordance with the Rules and Regulations promulgated thereunder inasmuch as required item numbers were not set forth on labels, in violation of Rule 40 of said Rules and Regulations.

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

Among such falsely and deceptively invoiced fur products, but not limited thereto, were fur products covered by invoices which failed to disclose that the fur contained in the fur products was

bleached, dyed, or otherwise artificially colored when such was the fact.

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

PAR. 8. Certain of said products were falsely and deceptively invoiced in violation of the Fur Products Labeling Act in that they were not invoiced in accordance with the Rules and Regulations promulgated thereunder inasmuch as required item numbers were not set forth on invoices, in violation of Rule 40 of said Rules and Regulations.

PAR. 9. The aforesaid acts and practices of respondents, as herein alleged, are in violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder and constitute unfair and deceptive acts and practices and unfair methods of competition in commerce under the Federal Trade Commission Act.

DECISION AND ORDER

The 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 Fur Products Labeling 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 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 Galaxy Costume Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 225 West 37th Street, New York, New York.

Respondent Sam Weil is an officer of said corporation and respondent Louis Baron is an employee 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 Galaxy Costume Corporation, a corporation, and its officers, and Sam Weil, individually and as an officer of said corporation, and Louis Baron, individually and as an employee of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, or manufacture for introduction, into commerce, or the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce, of any fur product; or in connection with the manufacture for sale, sale, advertising, offering for sale, transportation or distribution, of any fur product which is made in whole or in part of fur which has been shipped and received in commerce, as the terms "commerce," "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

A. Misbranding any fur product by:

1. Representing directly or by implication on a label that the fur contained in such fur product is natural when the fur contained therein is pointed, bleached, dyed, tip-dyed, or otherwise artificially colored.

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

3. Failing to set forth on a label the item number or mark assigned to such fur product.

B. Falsely or deceptively invoicing any fur product by:

1. Failing to furnish an invoice, as the term "invoice" is defined in the Fur Products Labeling Act, showing in words and figures plainly legible all the information required to be disclosed by each of the subsections of Section 5(b)(1) of the Fur Products Labeling Act.

2. Representing directly or by implication on an invoice that the fur contained in such fur product is natural when such fur is pointed, bleached, dyed, tip-dyed, or otherwise artificially colored.

3. Failing to set forth on an invoice the item number or mark assigned to such 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

C.W.F. CORPORATION D/B/A SUN RADIO
DISCOUNT CENTER ET AL.

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

Docket C-1184. Complaint, Mar. 16, 1967—Decision, Mar. 16, 1967

Consent order requiring a Washington, D.C., appliance dealer to cease using bait advertisements and misrepresenting used items as new.

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 C.W.F. Corporation, a corporation doing business as Sun Radio Discount Center and Sun Radio Discount Warehouse, and William Warsaw, Marcus Warsaw and Joseph M. Warsaw, 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 C.W.F. Corporation is a corporation

organized, existing and doing business under and by virtue of the laws of the State of Virginia with its principal office located at 3300 Kenilworth Avenue, Hyattsville, Maryland, and has places of business located at Bailey's Crossroads, Fairfax, Virginia, 120 Ingraham Street, NE., Washington, D.C., and 2321 University Boulevard West, Wheaton, Maryland.

William Warsaw, Marcus Warsaw and Joseph M. Warsaw are officers of the corporate respondent. They formulate, direct and control the acts and practices hereinafter set forth. Their business address is the same as that of the principal office of 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 electrical appliances and other merchandise at retail 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 places of business in the States of Virginia and Maryland and in the District of Columbia, to purchasers thereof located in various other States of the United States and in the District of Columbia, and maintain, and at all times mentioned herein have maintained a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their aforesaid business, and for the purpose of inducing the purchase of their products, respondents have made numerous statements and representations in advertisements appearing in newspapers of general circulation, respecting the character of their offer to sell and the merchandise included in such offer.

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

Frigidaire 1 H.P. 6000 BTU	\$144
* * * * *	*
RCA Victor 19-IN. PORTABLE TV tuner, carrying handle, telescoping antenna built in	\$112
PHILCO 19-IN. UHF PORTABLE TV. Exclusive Cool Chassis Design, easy carrying handle, telescoping built-in antenna	\$112
WESTINGHOUSE 19-IN. PORTABLE TV. Front controls and front sound; carrying handle, built-in telescoping antenna	\$99
* * * * *	*
GE 9" Transistorized TV Set	\$117.00

PAR. 5. By and through the use of the above quoted statements and representations, and others of similar import and meaning, but not specifically set out herein, the respondents have represented, directly or by implication, that they are making a bona fide offer to sell the advertised merchandise at the prices and on the terms and conditions specified in the advertisements.

PAR. 6. In truth and in fact, respondents' offers are not bona fide offers to sell the said merchandise at the aforesaid advertised prices and on the terms and conditions therein stated but are made for the purpose of obtaining leads and information as to persons interested in purchasing respondents' products, and members of the purchasing public who appear at respondents' places of business, in response to said advertisements are discouraged from purchasing the advertised articles of merchandise, and attempts are made to sell them higher priced products. Said members of the purchasing public are also advised, in many cases, that the advertised items were in limited supply and are no longer available.

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

PAR. 7. In the course and conduct of their aforesaid business, and for the purpose of inducing the purchase of their articles of merchandise, respondents represent and have represented, directly or by implication, in oral sales solicitations made by their representatives or salesmen that articles of merchandise being offered for sale by them are new.

PAR. 8. In truth and in fact, many of the articles of merchandise which respondents sell are floor samples, used for demonstration purposes, as a result of which they are used, abused and damaged, and therefore not new merchandise when sold to the public.

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

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

and into the purchase of substantial quantities of respondents' products by reason of said erroneous and mistaken belief.

PAR. 11. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair methods of competition, 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 C.W.F. Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Virginia, with its principal office located at 3300 Kenilworth Avenue, Hyattsville, Maryland, and has places of business located at Bailey's Crossroads, Fairfax, Virginia, 120 Inghram Street, NE., Washington, D.C., and 2321 University Boulevard West, Wheaton, Maryland. Respondent C.W.F. Corporation does business as Sun Radio Discount Center and Sun Radio Discount Warehouse.

Respondents William Warsaw, Marcus Warsaw and Joseph M. Warsaw are officers of the corporate respondent and their address is the same as that of the principal office of the corporate respondent.

2. The Federal Trade Commission has jurisdiction of the sub-

ject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

It is ordered, That respondents C.W.F. Corporation, a corporation, and its officers, and William Warsaw, Marcus Warsaw and Joseph M. Warsaw, 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 advertising, offering for sale, sale or distribution of electrical appliances, or any other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using, in any manner, a sales plan, scheme or device wherein false, misleading or deceptive statements or representations are made in order to obtain leads or prospects for the sale of merchandise.

2. Making representations purporting to offer merchandise for sale when the purpose of the representation is not to sell the offered merchandise but to obtain leads or prospects for the sale of other merchandise at higher prices.

3. Discouraging the purchase of, or disparaging, any merchandise which is advertised.

4. Representing, directly or by implication, that any merchandise is offered for sale when such offer is not a bona fide offer to sell such merchandise.

5. Advertising any item of merchandise for sale, which is not available at all stores in sufficiently substantial quantities to meet reasonably anticipated demands: *Provided, however*, That items available only in limited supply may be advertised, if such advertising clearly and conspicuously discloses the number of units available and at which store.

6. Representing as new, articles of merchandise which have been used for demonstration purposes or used in any other manner; or advertising or offering for sale any such article, unless a clear and conspicuous disclosure is made in the advertising in immediate conjunction with any such advertised item, and on the item itself, that it has been so used.

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

Complaint

IN THE MATTER OF

SUSAN THOMAS, INC.*

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

Docket C-1185. Complaint, Mar. 20, 1967—Decision, Mar. 20, 1967

Consent order requiring a New York City wearing apparel firm to cease discriminating in payment of promotional allowances among its retail customers competing in the resale of its products.

COMPLAINT

The Federal Trade Commission, having reason to believe the respondent named in the caption hereof has violated and is now violating the provisions of subsection (d) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act (U.S.C., Title 15, Section 13), and it appearing to the Commission that a proceeding by it in respect thereto is in the interest of the public, the Commission hereby issues its complaint stating its charges as follows:

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

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

PAR. 3. Included among, but not limited to, the practices alleged herein, respondent has granted substantial promotional payments or allowances for the promoting and advertising of its wearing apparel products to certain department stores and others who purchase respondent's said products for resale. These afore-said promotional payments or allowances were not offered and

* Formerly Susan Thomas Specialties, Inc.

made available on proportionally equal terms to all other customers of respondent who compete with said favored customers in the sale of respondent's wearing apparel products.

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

DECISION AND ORDER

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

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

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

1. Respondent Susan Thomas, Inc., formerly Susan Thomas Specialties, Inc., is a corporation organized and existing under the laws of the State of New York, with its office and principal place of business located at 498 Seventh Avenue, New York, New York.

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

ORDER

It is ordered, That respondent Susan Thomas, Inc., formerly Susan Thomas Specialties, Inc., a corporation, its officers, directors, agents and representatives and employees, directly or through any corporate or other device, in the course of its business

in commerce, as "commerce" is defined in the Clayton Act, as amended, do forthwith cease and desist from:

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

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

IN THE MATTER OF

GULF COAST ALUMINUM SUPPLY, INC., ET AL.

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

Docket 8662. Complaint, June 30, 1965—Decision, March 24, 1967

Order requiring a Tampa, Fla., distributor and installer of residential aluminum siding materials to cease misrepresenting that purchasers are offered special terms for the use of their premises as model homes, that its products are revolutionary or different, and making deceptive guarantee 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 Gulf Coast Aluminum Supply Corporation, a corporation, and Don DePalma, 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. Gulf Coast Aluminum Supply Corporation is a

Respondent Gulf Coast Aluminum Supply, Inc., erroneously referred to in complaint as Gulf Coast Aluminum Supply Corporation.

corporation organized, existing and doing business under and by virtue of the laws of the State of Florida, with its principal office and place of business located at 7800 Florida Avenue, Tampa, Florida.

Respondent corporation also maintains an office located at 2010 North Industrial Boulevard, Dallas 7, Texas, from which it transacts a substantial volume of business.

Respondent Don DePalma is an officer of the corporate respondent, and he formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His address is 7800 Florida Avenue, Tampa, Florida.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the offering for sale, sale and distribution and installation of residential aluminum siding material 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 places of business in the States of Florida and Texas 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 products, in direct mail circulars and in oral sales solicitations by their representatives or salesmen, respondents have represented, directly or by implication, to prospective customers:

1. That the homes of prospective purchasers have been specially selected as model homes for the installation of respondents' siding, and that after installation such homes would be used as points of reference for demonstration and advertising purposes by respondents and that as a result of allowing their homes to serve as models, purchasers would receive reduced prices for respondents' products.

2. That respondents have opened or will soon open a branch office in the city where the customer's home is located and that respondents need to install siding on several homes in the area for advertising purposes.

3. That respondents' siding materials are entirely new and revolutionary and differ substantially from other siding materials available on the market.

4. That respondents' siding materials will last a lifetime and

will not require repainting or repair for the life of the structure on which they are applied.

5. That respondents' materials are "unconditionally guaranteed" in every respect.

PAR. 5. In truth and in fact:

1. The homes of prospective purchasers were not specially selected as model homes, and respondents did not use purchasers' homes as points of reference for advertising or demonstration purposes. In addition, respondents did not give reduced prices or other compensation to purchasers who agreed to have their homes used as models.

2. Respondents have opened no offices in cities other than Tampa and Dallas.

3. Respondents' siding materials are neither entirely new and revolutionary nor do they substantially differ from other siding materials available on the market.

4. Respondents' siding materials will not last a lifetime and will require repainting and repair.

5. Respondents' materials are not unconditionally guaranteed in any respect.

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

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 aluminum siding material of the same general kind and nature as that sold by respondents.

PAR. 7. 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. 8. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

Mr. John T. Walker for the Commission.

Mr. Donald O. McFarland, Clearwater, Fla., for respondents.

INITIAL DECISION BY JOHN B. POINDEXTER, HEARING EXAMINER
FEBRUARY 10, 1967

By a complaint issued June 30, 1965, Gulf Coast Aluminum Supply, Inc., a corporation (erroneously named in the complaint and caption hereof as "Gulf Coast Aluminum Supply Corporation"), and Don DePalma, individually and as an officer of said corporation, hereinafter called respondents, were charged with using false claims to sell and install residential aluminum siding material, in violation of Section 5 of the Federal Trade Commission Act.

The complaint, in substance, alleges that:

PARAGRAPH 1. Gulf Coast Aluminum Supply Corporation is a corporation organized and doing business under the laws of the State of Florida, with an office and place of business located at 7800 Florida Avenue, Tampa, Florida, and that the individual respondent, Don DePalma, is an officer of said corporation and formulates, directs and controls the acts and practices of said corporate respondent, and that his address is the same as that of corporate respondent.

Corporate respondent also maintains an office located at 2010 North Industrial Boulevard, Dallas 7, Texas, from which it transacts a substantial volume of business.

PAR. 2. Respondents are engaged in the offering for sale, sale, distribution, and installation of residential aluminum siding material to the public.

PAR. 3. In the course and conduct of their business, respondents cause and have caused their said products, when sold, to be shipped from their places of business in the States of Florida and Texas to purchasers thereof located in various other States of the United States, and maintain a substantial course of trade in said products, in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their said business, and for the purpose of inducing the purchase of their products, in direct mail circulars and in oral sales solicitations by their representatives or salesmen, respondents have represented, directly or by implication, to prospective customers:

1. That the homes of prospective purchasers have been specially selected as model homes for the installation of respondents' siding, and that after installation such homes would be used as points of reference for demonstration and advertising purposes by respondents and that as a result of allowing their homes to

serve as models, purchasers would receive reduced prices for respondents' products.

2. That respondents have opened or will soon open a branch office in the city where the customer's home is located and that respondents need to install siding on several homes in the area for advertising purposes.

3. That respondents' siding materials are entirely new and revolutionary and differ substantially from other siding materials available on the market.

4. That respondents' siding materials will last a lifetime and will not require repainting or repair for the life of the structure on which they are applied.

5. That respondents' materials are "unconditionally guaranteed" in every respect.

In Paragraph Five, the complaint further alleges that, in truth and in fact:

1. The homes of prospective purchasers were not specially selected as model homes, and respondents did not use purchasers' homes as points of reference for advertising or demonstration purposes. In addition, respondents did not give reduced prices or other compensation to purchasers who agreed to have their homes used as models.

2. Respondents have opened no offices in cities other than Tampa and Dallas.

3. Respondents' siding materials are neither entirely new and revolutionary nor do they substantially differ from other siding materials available on the market.

4. Respondents' siding materials will not last a lifetime and will require repainting and repair.

5. Respondents' materials are not unconditionally guaranteed in any respect.

Therefore, it was alleged, the statements and representations set forth in Paragraph Four above are false, misleading and deceptive.

PAR. 6. It was further alleged that, in the conduct of their business, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of aluminum siding material of the same general kind and nature as that sold by respondents.

PAR. 7. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices, as alleged, 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. 8. The use by respondents of the aforesaid acts and practices, as therein 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.

On September 2, 1965, attorneys Gilbert B. Lessenco and Nicholas N. Kittrie, of the firm of Wilner & Bergson, Washington, D.C., filed an answer on behalf of respondents. In said answer, respondents admitted, in substantial part, the allegations set forth in Paragraphs One and Two, and subparagraphs 1, 3, 4, and 5 of Paragraph Five of the complaint, and all of Paragraph Six of the complaint; and denied the allegations contained in Paragraphs Three, Four, subparagraph 2 of Paragraph Five, and Paragraphs Seven and Eight of the complaint. The answer also denied that the statements and representations set forth in Paragraph Four of the complaint were false, misleading or deceptive.

A prehearing conference was held before the undersigned hearing examiner on September 23, 1965, at which time counsel for the parties appeared and indicated a desire to reach an agreement as to the facts and matters in dispute and thus avoid lengthy hearings. Respective counsel requested an opportunity to explore such possibilities. Thereafter, counsel continued such discussions and an informal conference with the hearing examiner was had regarding the same. Eventually, such discussions proved fruitless, and the hearing examiner set the matter for hearing for November 10, 1966, in Tampa, Florida.

On October 18, 1966, respondents' original counsel of record, Messrs. Lessenco and Kittrie, of Wilner & Bergson, filed notice of their withdrawal as counsel for respondents. Thereafter, on October 21, 1966, Donald O. McFarland, an attorney of Clearwater, Florida, filed his notice of appearance as counsel for respondents.

At the outset of the hearing, which convened in Tampa, Florida, on November 10, 1966, at which hearing John T. Walker appeared in support of the complaint, and Donald O. McFarland appeared for respondents, counsel announced that they had arrived at a stipulation with regard to the facts which had not

been admitted in the answer filed by original counsel for respondents, but which had expressly been denied. It was pointed out that the correct name of the corporate respondent is Gulf Coast Aluminum Supply, Inc., a corporation, rather than Gulf Coast Aluminum Supply Corporation, as alleged in the complaint. The stipulation was dictated into the record by counsel supporting the complaint and is contained in the transcript on pages 20 through 24. However, by written stipulation dated January 23, 1967, and approved by the hearing examiner on January 30, 1967, the transcript was corrected so as to make clear in the record the correct name of the corporate respondent and to make it clear in the stipulation, which was dictated into the record by complaint counsel, that respondents represented that they had opened or would soon open a branch office in Corpus Christi, Texas, and Baton Rouge, Louisiana, respectively, as alleged in subparagraph 2 of Paragraph Four of the complaint, whereas, as a matter of fact, respondents did not open branch offices in said cities.

Under the terms of the stipulation, it was agreed that the correct name of the corporate respondent is Gulf Coast Aluminum Supply, Inc., and that the complaint should be amended to so read.

It was further agreed that, if twenty customers, who reside in Corpus Christi, Texas, and Baton Rouge, Louisiana, respectively, and have previously entered into separate contracts with respondents for the purchase of their aluminum siding, were called as witnesses in this proceeding, they would testify as follows:

They received an advertisement in the mail from corporate respondent, Gulf Coast Aluminum Supply, Inc., to which was attached a business reply card to be filled out if they were interested in information concerning the respondent's aluminum siding. Said advertisement was similar to Commission's Exhibit No. 1, and received in the record. Said advertisement was mailed from Tampa, Florida, and the address on the reply card was corporate respondent's business address in Tampa, Florida. After the reply card was mailed by the witness to corporate respondent's business address in Tampa, Florida, a salesman called upon the witness and introduced himself as respondent's sales representative.

Under the terms of the stipulation, respondents have admitted the truth of the allegations contained in Paragraph Three of the complaint, which they had previously denied in their answer filed on September 2, 1965; respondents also have admitted each of subparagraphs 1 through 5 of Paragraph Four of the complaint,

which respondents had denied in their original answer; respondents also have admitted the allegations contained in subparagraph 2 of Paragraph Five, which they had denied in their answer, and also have admitted the allegations contained in Paragraphs Seven and Eight of the complaint, which they had denied in their answer. Commission's Exhibits Nos. 1 through 4 were received and incorporated in the record by agreement. Counsel for the parties waived the filing of proposed findings of fact and conclusions of law, and agreed that the hearing examiner may enter an order such as that requested in the complaint, or such order as he may consider appropriate in the circumstances.

Upon the basis of the entire record, including the allegations of the complaint which respondents admitted in their answer and the stipulation, the hearing examiner makes the following findings of fact and conclusions of law, and issues the following order:

FINDINGS OF FACT

1. Gulf Coast Aluminum Supply, Inc., is the correct name of the corporate respondent, and is a corporation organized and doing business under the laws of the State of Florida, with its office and principal place of business located at 7800 Florida Avenue, Tampa, Florida. Respondent Don DePalma is an officer of the corporate respondent, and formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices herein found. His address is the same as that of the corporate respondent (Paragraph One of Answer).

2. Respondents are now, and for some time last past have been, engaged in the offering for sale, sale, distribution and installation of residential aluminum siding material to the public (Paragraph Two of Answer).

3. In the course and conduct of their business, and for the purpose of inducing the purchase of their products, in direct mail circulars and in oral sales solicitations by their representatives or salesmen, respondents have represented, directly or by implication, to prospective purchasers:

(1) That the homes of prospective purchasers have been specifically selected as model homes for the installation of respondents' siding, and that after installation such homes would be used as points of reference for demonstration and advertising purposes by respondents and that as a result of allowing their homes to serve as models, purchasers would receive reduced prices for respondents' products (Stipulation, Tr. 21-2); whereas, in their

answer, respondents admitted that said homes had not been selected as models, and respondents did not use said homes as points of reference for advertising or demonstration purposes. Further, respondents did not give reduced prices or other compensation to purchasers who agreed to have their homes used as models.

(2) That respondents had opened or would soon open a branch office in Corpus Christi, Texas, and in Baton Rouge, Louisiana, where the customer's home was located, and that respondents needed to install siding on several homes in the area for advertising purposes (Stipulation, Tr. 22); whereas, respondents did not open branch offices in Corpus Christi and Baton Rouge, and respondents have opened no offices in cities other than Tampa, Florida, and Dallas, Texas (also see stipulation correcting transcript, approved by the hearing examiner on January 30, 1967).

(3) That respondents' siding materials are entirely new and revolutionary and differ substantially from other siding materials available on the market (Stipulation, Tr. 22); whereas, in respondents' answer, they admitted that said siding materials are neither entirely new and revolutionary, nor do they substantially differ from other siding materials available on the market.

(4) That respondents' siding materials will last a lifetime and will not require repainting or repair for the life of the structure on which they are applied (Stipulation, Tr. 22); whereas, in respondents' answer, they admitted that such siding materials will not last a lifetime and will require repainting and repair.

(5) That respondents' materials are "unconditionally guaranteed" in every respect (Stipulation, Tr. 22); whereas, in respondents' answer, they admitted that such siding materials are not unconditionally guaranteed in any respect.

4. Respondents furnished guarantees to each of said witnesses similar to Commission's Exhibit No. 2. During the sales presentation to each of said twenty witnesses, respondents' representative represented that he was selling aluminum siding for the corporate respondent, Gulf Coast Aluminum Supply, Inc., and exhibited samples of corporate respondent's aluminum siding.

5. The written contract entered into between each of the twenty witnesses and corporate respondent's sales representative were on forms bearing the name of corporate respondent, Gulf Coast Aluminum Supply, Inc., and were similar to Commission's Exhibits Nos. 3 and 4.

6. Respondents accepted the contract of each of said witnesses and undertook performance thereunder, and they or their assigns accepted and received payments in discharge therefor.

7. Respondents furnished each of their sales representatives with a sample case and samples of their aluminum siding to be used in the sales presentations.

8. In the course and conduct of their business, and for some time last past, respondents have caused their products, when sold, to be shipped from their places of business in the States of Florida and Texas to purchasers thereof located in various other States of the United States.

9. In the conduct of their business, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of their aluminum siding material of the same general kind and nature as that sold by respondents from July 1, 1962, to the present.

10. Upon the basis of said stipulation, it is found that the statements and representations set forth and alleged in Paragraph Four of the complaint are false, misleading and deceptive.

CONCLUSIONS

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

ORDER

It is ordered, That respondents Gulf Coast Aluminum Supply, Inc., a corporation, and its officers, and Don DePalma, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, distribution, or installation of residential aluminum siding materials or other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that the home

of any of respondents' customers or prospective customers has been selected as a model home to be used as a point of reference for demonstration or advertising purposes.

2. Representing, directly or by implication, that any special price, allowance, discount or commission is granted by respondents to purchasers in return for permitting the premises on which respondents' products are installed to be used for model home demonstration purposes.

3. Representing that respondents have opened or are in the process of opening a branch office in any community and need to install siding on several homes in the area for advertising purposes.

4. Representing that respondents' siding materials are entirely new or revolutionary or differ substantially from other siding materials available on the market.

5. Representing that respondents' siding materials will last a lifetime or will not require repainting or repair for the life of the structure on which they are applied.

6. Representing, directly or by implication, that any of respondents' products 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.

FINAL ORDER

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

It is ordered, That the initial decision of the hearing examiner shall, on the 24th day of March, 1967, become the decision of the Commission.

It is further ordered, That Gulf Coast Aluminum Supply, Inc., a corporation (erroneously named in the complaint and caption hereof as "Gulf Coast Aluminum Supply Corporation"), and Don DePalma, individually and as an officer of said corporation, shall, within sixty (60) days after service of this order upon them, file with the Commission a report in writing, signed by each respondent named in this order, setting forth in detail the manner and form of their compliance with the order to cease and desist.

Complaint

71 F.T.C.

IN THE MATTER OF

ROBERTSON SALES CO. ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket C-1186. Complaint, Mar. 24, 1967—Decision, Mar. 24, 1967*

Consent order requiring an Oklahoma City, Okla., manufacturer of tents and tarpaulins to cease using deceptive pricing claims for its products in catalogs furnished to retailers.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Robertson Sales Co., a corporation, and W. R. Pape, 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 Robertson Sales Co. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Oklahoma with its principal office and place of business located at 1016 N. Oklahoma, Oklahoma City, Oklahoma.

Respondent W. R. Pape is an officer of said corporation. He formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His business address is the same as that of said corporation.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the manufacture, advertising, offering for sale, sale and distribution of tents, tarpaulins and other merchandise to retailers for resale to the public.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, said products, when sold, to be shipped from their place of business in the State of Oklahoma to retailers 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. Respondents, for the purpose of inducing the purchase of their products, have engaged in the practice of using fictitious prices in connection therewith by the following methods and means:

By distributing, or causing to be distributed to retailers and others, catalogs which depict and describe their aforesaid products and contain a stated price for each.

In the manner aforesaid respondents thereby represent, directly or indirectly, that the amounts shown are respondents' bona fide estimate of the actual retail prices of said products in respondents' trade area and that they do not appreciably exceed the highest prices at which substantial sales of said products are made at retail in said trade area.

In truth and in fact said amounts shown are not respondents' bona fide estimate of the actual retail prices of said products in respondents' trade area and they appreciably exceed the highest prices at which substantial sales of said products are made at retail in said trade area.

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

PAR. 5. By the aforesaid acts and practices, respondents place in the hands of retailers the means and instrumentalities by and through which they may mislead the public as to the usual and regular retail price of said products.

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

PAR. 7. The use by the respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of respondents' products by reason of said erroneous and mistaken belief.

PAR. 8. 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 Robertson Sales Co. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Oklahoma, with its office and principal place of business located at 1016 N. Oklahoma, Oklahoma City, Oklahoma.

Respondent W. R. Pape is an officer of said corporation and his address is the same as that of said corporation.

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

ORDER

It is ordered, That respondents Robertson Sales Co., a corporation, and its officers, and W. R. Pape individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale, or distribution of tents, tarpaulins, or other merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Order

1. Advertising, disseminating or distributing any purported retail price unless (a) it is respondents' bona fide estimate of the actual retail price of the product in the area where respondents do business and (b) it does not appreciably exceed the highest price at which substantial sales of said product are made in said trade area.

2. Misrepresenting in any manner the prices at which respondents' merchandise is sold at retail.

3. Furnishing to others any means or instrumentalities whereby the purchasing public may be misled as to the retail prices of respondents' products.

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

IN THE MATTER OF

GRAND CAILLOU PACKING COMPANY, INC., ET AL.,
TRADING AS THE PEELERS COMPANYMODIFIED ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket 7887. Complaint, May 13, 1960—Decision, Mar. 27, 1967

Order modifying an earlier order dated June 4, 1964, 65 F.T.C. 799, in compliance with a decision of the Court of Appeals, Fifth Circuit, dated Sept. 13, 1966, 366 F. 2d 117, in connection with the sale and lease of patented shrimp-processing machinery, by omitting the prohibition of sales to domestic shrimp processors on the same terms afforded foreign processors, and affirming the prohibition against discriminatory rental terms to domestic processors.

MODIFIED ORDER TO CEASE AND DESIST

Respondents having filed in the United States Court of Appeals for the Fifth Circuit a petition to review and set aside the order to cease and desist issued herein on June 4, 1964 [65 F.T.C. 799]; and the court on September 13, 1966 [8 S. & D. 343], having rendered its decision and on December 15, 1966, having entered its final decree affirming and enforcing paragraph one (1) of said order to cease and desist but setting aside paragraph two (2); and the time allowed for filing a petition for certiorari having expired and no such petition having been filed;

Now therefore, it is hereby ordered, That the aforesaid order to cease and desist be, and it hereby is, modified in accordance with the said final decree of the court of appeals to read as follows:

It is ordered, That the respondents, Emile M. Lapeyre, Fernand S. Lapeyre, James M. Lapeyre, Felix H. Lapeyre, and Emile M. Lapeyre, Jr., individually, as copartners trading and doing business as The Peelers Company, and as representatives of all of the partners in The Peelers Company, and their agents, representatives, and employees, directly or indirectly, through any existing or succeeding corporation, partnership, sole proprietorship, or other device, in connection with the distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of any shrimp peeling, cleaning and separating machinery or improvements thereto now or hereafter controlled by respondents, do forthwith cease and desist from:

Discriminating between lessees of such machinery by charging higher rental or use rates to any lessee than are charged to any other lessee.

For the purposes of this proceeding, lease or rental terms which result in any lessee paying a higher rate than the rate charged any other lessee for use of respondents' machines for the same period of time or through the same number of mechanical revolutions or operations shall be deemed discriminatory.

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

IN THE MATTER OF

ATD CATALOGS, INC., ET AL.

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

Docket 8100. Complaint, Aug. 25, 1960—Decision, Mar. 27, 1967

Order reopening proceeding, setting aside consent order and dismissing complaint against The S & M Company, a correspondent in a consent order entered into with ATD Catalogs, Inc., et al. on April 3, 1964, 65 F.T.C. 71.

ORDER REOPENING PROCEEDING, SETTING ASIDE CONSENT ORDER
AND DISMISSING COMPLAINT

This matter is before the Commission upon the petition of respondent The S & M Company, a corporation, filed October 24, 1966, to reopen the proceeding pursuant to § 3.28 (b) (2) of the Commission's Rules of Practice and as to it, to set aside the consent order issued April 3, 1964 [65 F.T.C. 71], and to dismiss the complaint. The Director of the Bureau of Restraint of Trade has filed an answer thereto, stating that in view of the Commission's action herein in setting aside the consent order and dismissing the complaint as to respondents James V. Cariddi and Southland Distributors, Inc., he did not oppose the petition.

As grounds for its request, respondent The S & M Company, a wholesaler, asserts that the Commission dismissed the complaint herein against litigating wholesalers where it was shown that they had no stock interest in ATD and their officers or principals did not concurrently hold positions in the publishing corporation and where the record did not support a finding that these wholesalers were acquainted with the internal administration of ATD or with the details of the latter's negotiations leading up to the payments under consideration. Such respondent further points out that the consent order was set aside and the complaint dismissed upon a similar showing as to respondents Southland Distributors, Inc., and James V. Cariddi.

In an affidavit accompanying the motion respondent asserts that at no time did it own any stock in ATD or receive any dividends, that no representative of it was ever a director, officer or employee of ATD, and that neither it nor any of its representatives had any specific knowledge of the internal administration of ATD or the details of the latter's negotiations leading up to the payments under consideration. The Director, Bureau of Restraint of Trade, does not dispute the assertions in the affidavit.

The Commission, in consideration of the petition filed by The S & M Company and the answer thereto by the Director of the Bureau of Restraint of Trade, has determined that in the public interest this matter should be reopened as to The S & M Company, the consent order set aside and the complaint dismissed as to such corporation. Accordingly,

It is ordered, That this matter be, and it hereby is, reopened as to The S & M Company.

It is further ordered, That the order of the Commission issued April 3, 1964, adopting the initial decision of the hearing exam-

Complaint

71 F.T.C.

iner of June 13, 1962 [65 F.T.C. 71, 77], containing an order to cease and desist, be, and it hereby is, set aside as to respondent The S & M Company and that the complaint as to this respondent be, and it hereby is, dismissed.

IN THE MATTER OF

CHARLES A. OLSON DOING BUSINESS AS
CONSOLIDATED SEWING MACHINE CO., ETC.

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

Docket 8705. Complaint, Aug. 25, 1966—Decision, Mar. 27, 1967

Order requiring a Washington, D.C., retailer of sewing machines and vacuum cleaners to cease misrepresenting the nature of his business, making false pricing, savings and guarantee claims, conducting fictitious "drawings," and using bait tactics.

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 Charles A. Olson, an individual, doing business as Consolidated Sewing Machine Co. and Consolidated Sewing Machine Co. of Washington, D.C. 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 Charles A. Olson is an individual doing business as Consolidated Sewing Machine Co. and Consolidated Sewing Machine Co. of Washington, D.C., with his office and principal place of business located at 207 Kennedy Street, NW., Washington, D.C., 20011. He also uses the names New Home Sewing Center, Home Sewing Center, Consolidated Adj., National Adj., Consolidated Adj. Office, Credit Dept. and Collection Dept. in connection with his business.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the advertising, offering for sale, sale and distribution of new and used sewing machines and vacuum cleaners to the public.

PAR. 3. In the course and conduct of his business, respondent

maintains his place of business wholly within the geographical confines of the District of Columbia and now causes, and for some time last past has caused, his said products, when sold, to be shipped from his place of business in the District of Columbia to purchasers thereof located within the District of Columbia and 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. 4. In the course and conduct of his business as aforesaid, and for the purpose of inducing the purchase of his said products, respondent has made various statements and representations in advertisements in newspapers of general circulation respecting the price, savings and guarantees of his merchandise and the nature of his business.

Among and typical, but not all inclusive of such statements and representations, are the following:

SEW. MACH.—1965 SINGER

Touch 'n Sew * * * *

Reposs. Balance \$86.40.

New Mach. guar. Dealer,

Credit Dept.—726-3342.

SEW. MACH.—Dealer. 1965

SINGER - - - Bal. \$76.80—

Collection Department.

SEW. MACH.—UNCLAIMED LAYAWAYS

YOUR CHOICE FOR \$65. SINGER

NECCHI, PFAFF ZIG-ZAG MODELS

CONSOLIDATED ADJ. OFFICE

726-3342.

SEW. MACH.—1965 SINGER

TOUCH 'N SEW - - -

BAL. \$38.75

NATIONAL ADJ.—726-7200.

PAR. 5. By and through the use of said statements and representations, and others of similar import and meaning but not specifically set out herein, separately and in connection with the oral statements and representations of salesmen, respondent represents and has represented, directly or by implication:

1. Through the use of the statement "Unclaimed Layaways" and the words "bal.," "repossessed" and words or statements of similar import, that sewing machines, partially paid for by a previous purchaser, are being offered for the unpaid balance of the purchase price, affording savings to purchasers.

2. Through the use of the names "Credit Dept.," "Collection Department," "Consolidated Adj. Office," "National Adj." and names of similar import, that his principal business is that of lending money and settling and collecting accounts.

3. That in the guise of such business he is making a bona fide offer to sell repossessed machines or machines left in layaway for reason of default in payments by the previous purchaser, and on the terms and conditions stated.

4. That sewing machines are guaranteed without conditions or limitations.

PAR. 6. In truth and in fact:

1. Said sewing machines are not being offered for the unpaid balance of the purchase price and the represented savings are not afforded purchasers.

2. Respondent is not engaged in the business of lending money or of collecting and settling accounts but is engaged in the business of the retail sale of new and used sewing machines and vacuum cleaners to the public.

3. Respondent is not making bona fide offers to sell the said sewing machines and on the terms and conditions stated but said offers to sell are made for the purpose of obtaining leads as to persons interested in the purchase of sewing machines. After obtaining leads through response to said advertisements, respondent or his salesmen, call upon such persons, but make no effort to sell said advertised sewing machines. Instead, they exhibited sewing machines which were in such poor condition as to be unuseable, and disparaged the advertised product to discourage its purchase, and attempted to and frequently did, sell much higher priced sewing machines.

4. The guarantee of said sewing machine contains numerous conditions and limitations which are not disclosed in the advertising.

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

PAR. 7. In the course and conduct of his business and for the purpose of inducing the purchase of his product, respondent holds ostensible "drawings" in which persons are invited to register their names and addresses for the chance to win a free sewing machine and other prizes. The participants in said drawings then receive further promotional material by mail. Typical, but not all

inclusive of the statements and representations made in said registration blanks and followup material, are the following:

FREE DRAWING TICKET NO. 2999

Compliments of

CONSOLIDATED SEWING MACHINE COMPANY OF WASHINGTON, D.C.

(address)

WIN A FREE SEWING MACHINE PLUS OTHER PRIZES

—NOTHING TO BUY—

YOU NEED NOT BE PRESENT TO WIN

NAME _____
ADDRESS _____
CITY _____
PHONE _____

Entry Blank No. 2999

CONGRATULATIONS:

Your drawing ticket was selected in the FIRST AWARD GROUP in our drawing at the WASHINGTON INTERNATIONAL HOME SHOW.

Enclosed is your \$150 MERCHANDISE CERTIFICATE which may be applied toward the purchase of the 1966 DELTA SEWING MACHINE of your choice.

For example our DeLuxe Semi Push Button Budget Model Sells at219.95 LESS Award Certificate150.00 is YOURS FOR ONLY 69.95

This check is redeemable at your local store. We would like to take this opportunity to thank you for your interest and participation.

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

1. That he conducts bona fide drawings and that recipients of said merchandise certificates have won a valuable prize through their participation in said drawing entitling them to a discount or bonus in the amount stated on the certificate, as a reduction from the price at which such products are usually and customarily sold by respondent.

2. That the higher stated price is respondent's usual and customary price of the designated sewing machine and that purchasers are afforded savings of the difference between that price and the price at which the machine is being offered.

PAR. 9. In truth and in fact:

1. Respondent does not conduct bona fide drawings. His purpose in having persons register for drawings is to obtain leads to prospective purchasers of his sewing machines. And, the purchaser does not receive an award since the amount of the award certificate is deducted not from respondent's usual and customary price of the product but from higher price, and therefore the award is illusory.

2. The higher stated price is not respondent's usual and customary price of the designated sewing machine and purchasers are not afforded savings of the difference between that price and the price at which the machine is offered.

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

PAR. 10. In the conduct of his business, and at all times mentioned herein, the respondent has been in substantial competition in commerce with corporations, firms and individuals engaged in the sale of sewing machines and vacuum cleaners of the same general kind and nature as those sold by respondent.

PAR. 11. The use by the 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. 12. The aforesaid acts and practices of the 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. Charles W. O'Connell and Mr. Edward F. X. Ryan, Jr., supporting the complaint.

Kunes & Feirstein, by Mr. Gerald Kunes, Laurel, Md., for respondent.

INITIAL DECISION BY DONALD R. MOORE, HEARING EXAMINER

FEBRUARY 14, 1967

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PRELIMINARY STATEMENT

The complaint in this proceeding was issued by the Federal Trade Commission on August 25, 1966, and was duly served on respondent. It charges misrepresentation in the sale of sewing machines and vacuum cleaners in violation of Section 5 of the Federal Trade Commission Act.

After being served with the complaint, respondent appeared in person, as well as by counsel, and filed answer making certain admissions but denying generally any violation of law. Although the answer was filed on October 10, 1966, subsequent to the 30-day period specified in Rule 3.5(a) of the Commission's Rules of Practice for Adjudicative Proceedings, it was ordered received and filed in view of the explanations made by respondent and his counsel (Order Receiving Answer and Setting Prehearing Conference, October 11, 1966).

A prehearing conference was held in Washington, D.C., on October 20, 1966, the result of which was a narrowing of the issues. Not only did respondent make certain admissions supplemental to those made in his answer, but by virtue of a stipulation between counsel (Tr. 29-30, 278-80), the number of witnesses was materially reduced, with a consequent reduction in the time of hearing.

Hearings for the presentation of testimony and other evidence in support of and in opposition to the allegations of the com-

plaint were then held in Washington, D.C., on November 15 and 16, 1966.

Throughout this proceeding, both sides were represented by counsel and were afforded full opportunity to be heard, to examine and to cross-examine witnesses, and to introduce evidence bearing on the issues. The evidence so presented was duly recorded and was filed in the office of the Commission.

Proposed findings of fact and conclusions of law, accompanied by a proposed form of order and a memorandum brief, were filed by counsel supporting the complaint, but no similar submissions were made on behalf of respondent.

Proposed findings not adopted, either in the form proposed or in substance, are rejected as not supported by the evidence or as involving immaterial matters.

After carefully reviewing the entire record in this proceeding, together with the proposed findings, conclusions, and order filed by complaint counsel, the hearing examiner finds that this proceeding is in the interest of the public and, on the basis of such review and his observation of the witnesses, makes findings of fact, enters his resulting conclusions, and issues an appropriate order.

As required by Section 3.21 (b) (1) of the Commission's Rules of Practice, the findings of fact include references to principal supporting items in the record. Such references to testimony and exhibits are thus intended to comply with the rule and to serve as convenient guides to the principal items of evidence supporting the findings of fact, but these record references do not necessarily represent complete summaries of the evidence considered in arriving at such findings. Where reference is made to proposed findings submitted by complaint counsel, such references are intended to include their citations to the record.

References to the record are made in parentheses, and certain abbreviations are used:

- CB—Brief of Complaint Counsel ¹
- CPF—Proposed Findings of Complaint Counsel ¹
- CX—Commission exhibits
- Par.—Paragraph
- p.—page
- pp.—pages
- RX—Respondent's exhibits
- Tr.—Transcript ²

¹ References to submittals of counsel are to page number—for example, CPF 32.

² Sometimes, references to testimony cite the name of the witness and the transcript page number without the abbreviation Tr.—for example, Olson 239.

FINDINGS OF FACT

I. Respondent and His Business

Respondent Charles A. Olson is an individual doing business as Consolidated Sewing Machine Co. and Consolidated Sewing Machine Co. of Washington, D.C., with his office and principal place of business at 207 Kennedy Street, NW., Washington, D.C., 20011. He also uses or has used in connection with his business the names New Home Sewing Center, Home Sewing Center, Consolidated Adj., National Adj., Consolidated Adj. Office, Credit Dept., and Collection Dept. (Admitted, Answer, Par. 1; Tr. 6-8, 242-44; CXs 1 A-21.)

Respondent is now, and for some time has been, engaged in the advertising, offering for sale, sale, and distribution of new and used sewing machines and vacuum cleaners to the public. (Admitted, Answer, Par. 1; Tr. 231-34, 236.)

Respondent maintains his place of business in the District of Columbia. In the course and conduct of his business, he causes, and for some time has caused, his products, when sold, to be shipped from his place of business not only to purchasers located within the District of Columbia but also to purchasers located in various States of the United States. He maintains and has maintained a substantial course of trade in such products in commerce, as "commerce" is defined in the Federal Trade Commission Act. (Admitted, Answer, Par. 1.)

Olson has been doing business under the Consolidated name since March 1965. Previously, he had operated the business at the Kennedy Street address under the name New Home Sewing Centers. Before opening this store, he operated from his home in West Hyattsville, Maryland, as "an independent agent," selling new sewing machines (New Home brand), as well as used sewing machines of various makes. He had been in the sewing machine business for about 16 years as an employee of another company.

Gross sales of Consolidated in 1965 totalled about \$89,000, with sewing machines accounting for 95 percent of this amount. The trade area served by Olson is the District of Columbia and the neighboring States of Maryland and Virginia within a 50-mile radius. His advertisements have been published in newspapers circulating in the District of Columbia, Maryland, and Virginia. (Olson 231-38.) He employs two salesmen who primarily engage in "outside" sales, involving home demonstrations, and also has a salesman-bookkeeper at the store (Olson 244-45; Forgy 154-55).

In the conduct of his business, respondent is and has been in substantial competition in commerce with corporations, firms, and individuals engaged in the sale of sewing machines and vacuum cleaners of the same general kind and nature as those sold by respondent. (Admitted, Answer, Par. 7.)

II. *The Challenged Representations and Practices*

Summary Findings

On the basis of his consideration of the testimony and other evidence, the examiner makes summary findings as follows:

In the course and conduct of his business, and for the purpose of inducing the purchase of his products, respondent has made various statements and representations in advertisements in newspapers of general circulation respecting the nature of his business and the prices, savings, and guarantees offered in the sale of his merchandise.

Among and typical, but not all-inclusive, of such statements and representations, are the following:

SEW. MACH.—1965 Singer
Touch 'n Sew * * *
Reposs. Balance \$86.40.
New mach. guar. Dealer,
Credit Dept. * * * (CX 10)
SEW. MACH.—Dealer. 1965
Singer * * * Bal. \$76.80.
Collection Dept. * * * (CX 6 C)
SEW. MACHS.—Unclaimed, layaways,
your choice for \$65. Singer,
Necchi or Pfaff, zig-zag models.
CONSOLIDATED ADJ. OFFICE (CX 5 A-B)
SEW. MACH.—1965 Singer
Touch 'n sew * * * \$72.45.
Also 1965 auto. zig-zag * * *
Bal. \$38.75.
National Adj. (CX 16)

By and through the use of such statements and representations, and others of similar import and meaning not specifically set out herein, either separately or in connection with the oral statements and representations of salesmen, respondent represents and has represented, directly or by implication:

1. Through the use of such terms (sometimes abbreviated) as "Unclaimed," "Layaways," "balance," and "repossessed," and words or statements of similar import, that sewing machines,

partially paid for by a previous purchaser, are being offered for the unpaid balance of the purchase price, affording savings to purchasers.

2. Through the use of the names "Credit Dept.," "Collection Department," "Consolidated Adj. Office," and "National Adj.," and names of similar import, that his principal business is lending money and settling and collecting accounts.

3. That in the guise of such business he is making a bona fide offer to sell repossessed machines or machines left in layaway for reason of default in payments by the previous purchaser, and on the terms and conditions stated.

4. That sewing machines are guaranteed without conditions or limitations.

In truth and in fact:

1. Such sewing machines are not being offered for the unpaid balance of the purchase price, and the represented savings are not afforded purchasers.

2. Respondent is not engaged in the business of lending money or (except incidentally) of collecting and settling accounts but is engaged in the business of selling at retail new and used sewing machines and vacuum cleaners to the public.

3. Respondent is not making bona fide offers to sell such sewing machines on the terms and conditions stated, but his offers to sell are made for the purpose of obtaining leads as to persons interested in the purchase of sewing machines. After obtaining leads through responses to his advertisements, respondent or his salesmen call upon such persons but make no effort to sell the advertised sewing machines. Instead, they exhibit sewing machines which are in such poor condition as to be unusable; they disparage the advertised product to discourage its purchase; and they attempt to, and frequently do, sell much higher priced sewing machines.

4. The guarantee of respondent's sewing machines contains numerous conditions and limitations which are not disclosed in the advertising.

Therefore, the statements and representations set forth (*supra*, pp. 364-365) were and are false, misleading and deceptive.

In the course and conduct of his business and for the purpose of inducing the purchase of his products, respondent holds ostensible "drawings" in which persons are invited to register their names and addresses for the chance to win a free sewing machine and other prizes. The participants in such drawings then receive further promotional material by mail. Typical but not all-inclusive of

the statements and representations made in registration blanks and followup material are the following:

FREE DRAWING TICKET NO. 2999
 Compliments of
 CONSOLIDATED SEWING MACHINE CO. OF WASHINGTON, D.C.
 [address]
 WIN A FREE SEWING MACHINE
 PLUS OTHER PRIZES
 —NOTHING TO BUY—
 YOU NEED NOT BE PRESENT TO WIN
 All Makes Sewing Machines and Vacuum Cleaners

NAME _____
 ADDRESS _____
 CITY _____
 PHONE _____

Entry Blank No. 2999 (CX 22)

CONGRATULATIONS:

Your drawing ticket was selected in the FIRST AWARD GROUP in our drawing at the WASHINGTON INTERNATIONAL HOME SHOW.

Enclosed is your \$150 MERCHANDISE CERTIFICATE which may be applied toward the purchase of the 1966 DELTA SEWING MACHINE of your choice.

For example our De luxe
 Semi Push Button Budget
 Model Sells at\$219.95
 LESS Award Certificate 150.00
 IS YOURS FOR ONLY 69.96

This check is redeemable only at our local store * * *.

We would like to take this opportunity
 to thank you
 for your interest and participation. (CX 23)

By and through the use of the foregoing statements, by oral statements of respondent or his salesmen, and by other written statements of similar import and meaning not specifically set out herein, respondent represents and has represented, directly or by implication:

1. That he conducts bona fide drawings and that recipients of merchandise certificates have won a valuable prize through their participation in such drawing, entitling them to a discount or bonus in the amount stated on the certificate as a reduction from the price at which such products are usually and customarily sold by respondent.

2. That the higher stated price is respondent's usual and customary price of the designated sewing machine and that pur-

chasers are afforded savings of the difference between that price and the price at which the machine is being offered.

In truth and in fact:

1. Respondent does not conduct bona fide drawings. His purpose in having persons register for drawings is to obtain leads to prospective purchasers of his sewing machines. The purchaser does not receive an award since the amount of the award certificate is deducted, not from respondent's usual and customary price of the product, but from a higher price, and therefore, the award is illusory.

2. The higher stated price is not respondent's usual and customary price of the designated sewing machine, so that purchasers are not afforded savings of the difference between that price and the price at which the machine is offered.

Therefore, the statements and representations set forth (*supra*, pp. 366-367) were and are false, misleading, and deceptive.

Evidentiary Support for Summary Findings

The record fully supports the summary findings, which are virtually identical to the allegations of the complaint. The analysis that follows includes detailed findings on the material issues of fact and law, together with record references and an exposition of the reasons or basis for such findings.

1. Extent and Nature of Advertising

The dissemination of such advertising was admitted by respondent (Answer, Par. 1), and a sampling of his advertising is in the record as CXs 1 A-21. Olson advertises primarily in the classified advertising pages, using the Washington Star and The Washington Post daily, pursuant to lineage contracts. He previously used the Washington Daily News, the Northern Virginia Sun, the McLean (Virginia) Free Press, and The Montgomery County (Maryland) Sentinel.

Each advertisement appears daily for from three to seven days. His advertising costs average about \$400 a month. (Tr. 237-39.)

Although Olson testified that he has advertised new machines as well as used machines, the record establishes that his practice is to advertise used machines (Tr. 240-42; CXs 1 A-21).

2. Layaways, Unclaimed Machines, and Repossessions

The record leaves no doubt of the falsity of Olson's representations that sewing machines partially paid for by previous purchasers were being offered for the unpaid balance of the purchase

price, thus affording savings to subsequent purchasers (*supra*, p. 364). Respondent admits making the challenged representations (Tr. 7-9), but he denies their falsity (Answer, Par. 3; Tr. 19).

The attorney-investigator testified that during his investigation of this case he asked Olson to explain the use in his advertisements of such terms as "unclaimed," "layaways," and "balance." Olson explained that customers would leave deposits of from \$5 to \$15 on sewing machines to hold them for future delivery; that when the time for claiming such machines had expired, he listed and advertised them as "layaways" or as "unclaimed"; and that the price was stated as "Balance" or "Balance owed" (for example, CXs 1 A, 15). Despite the clear meaning of such representations (Espeut 66; Pittman 87), Olson did not defend them as true, but he told the Commission attorney that in his advertisements such terms as "balance" and "left to pay" were not meant to represent that this was the balance of the purchase price left unpaid by a previous purchaser but simply constituted a method of quoting a price for which the machine could be purchased (Forgy 153-54).

Olson testified that the deposits paid by the original purchasers were not forfeited; that although he made no cash refunds, the amount paid as a layaway deposit could be applied to the purchase of other merchandise (Olson 304-05). Thus, although Olson testified that he "would normally cut the price" when a layaway was put back into stock (Tr. 304), it is evident that deception was present either in the representation of savings to the subsequent purchaser or in the purported credit of the layaway deposit on the purchase of other merchandise by the original purchaser.

In any event, the attorney-investigator was unable to find any documentary evidence to substantiate Olson's contentions that the advertised machines were unclaimed and layaway merchandise (Forgy 153-54, 171-76). It is also significant that, with one dubious exception, Olson failed to produce any such evidence at the hearing. That exception came to light during the cross-examination of the attorney-investigator, when respondent's counsel referred to a sales slip (CX 30-Z-1) bearing the notation "Left in Lay way" as evidence of a layaway record that the investigator had missed in his examination of Olson's records. This sales slip was dated February 5, 1966—subsequent to the conclusion of the investigation (Tr. 144)—and thus was not something that had been overlooked by the investigating attorney.

(Forgy 171-76.) Moreover, the fact that this notation appeared after the question of layaways had been raised by the investigator makes its validity suspect. Even accepting the entry at its face value, its presence among respondent's records suggests that it was the practice of respondent to note layaway sales on sales slips. The absence of any similar notations on sales slips before February 1966 leads to an inference that there had been no such transactions previously.

Moreover, the customer involved in this transaction did not understand that she was buying a "layaway" item. She had not noticed the "left in lay way" notation until she looked at the sales slip before she testified (Pittman 98-99). Her recollection was that although it was advertised as a "repossession," the salesman told her that the machine had been won in a contest but that the winner had never picked it up, so that Consolidated was selling it as a layaway or a repossession (Pittman 83, 86-87, 94, 98).

Similarly, the Commission's attorney-investigator vainly sought records indicating that machines advertised as "repossessed" had in fact been repossessed. Olson was unable to produce, either in the investigation or at the hearing, any such records or any other evidence relating to repossessions. (Forgy 152, 154, 185.)

It is not necessary to rely on any restricted technical definition of the term "repossessed" or "repossession" (Forgy 182-85; Olson 303-04) to conclude that Olson's use of such terminology was false, misleading, and deceptive.

The deceptive nature of Olson's use of the "repossession" terminology was aggravated by its association with such fictitious names as collection department, credit department, and adjustment office. (See Section 3, *infra*.)

3. Misrepresentation of Business Status

Although respondent first denied (Answer, Pars. 2 and 3) the allegation that his use of such fictitious names as collection department, credit department, adjustment office, and national adjusters falsely represented that his principal business is lending money and settling and collecting accounts (Complaint, Pars. Five (2) and Six (2)), he withdrew the denials at the prehearing conference. Thus, there is no dispute that respondent made the false, misleading, and deceptive representations alleged. (Tr. 6-8, 19-21; see also Olson 242-44.)

4. "Bait and Switch" Tactics

The record establishes that Olson has engaged in a "bait and switch" operation. His sales scheme clearly fits the definition of this unfair practice in the Commission's Guides Against Bait Advertising (November 24, 1959, CCH Trade Regulation Reporter, Par. 7893):

Bait advertising is an alluring but insincere offer to sell a product or service which the advertiser in truth does not intend or want to sell. Its purpose is to switch consumers from buying the advertised merchandise, in order to sell something else, usually at a higher price or on a basis more advantageous to the advertiser. The primary aim of a bait advertisement is to obtain leads as to persons interested in buying merchandise of the type so advertised.

Let us consider, first, the evidence of respondent's sales operation as recounted by some of his customers.

Of the six consumer witnesses who testified, five of them were switched to machines priced considerably higher than the advertised machine which led them to contact respondent. A brief summary of the testimony of each of these witnesses graphically portrays the nature of respondent's sales scheme:

Mrs. Barbara Espeut. Mrs. Espeut, of Suitland, Maryland, responded to a Consolidated ad in The Washington Post in January 1965. She was attracted by the bargain price of less than \$100 for a used Singer that she knew retailed, when new, for more than \$300. The advertisement represented the machine as repossessed and listed the price in conjunction with the term "balance due." She understood this term to mean that if she bought the machine, she would not have to pay the full price, but merely the balance owed by someone else who had not completed the payments. (Tr. 54-55, 63, 66.)

Then, in one marathon sentence, she provided a capsule description of the bait and switch technique:

Well, the machine he brought, he said it was a Touch 'n Sew, but it was not the same model as the model that I had seen in the Singer Sewing Machine Company, and I told him there was no sense in putting this up or demonstrating the machine, because I was not interested, that it was not the one I thought it was, so he went out—well, he said that he had another machine in the car that was a better machine, that maybe I would like this one, and so I asked him to bring this one in, and he brought this machine in, and he went on to tell me that they had had a lot of complaints against the Singer machines, because they were delicate and the parts were—well, they were not functioning as they should, and this particular machine that he had was a better machine, so he demonstrated it for me, and I was please[d] with the machine, and so I bought it [for \$146.26] (Tr. 56-58).

Mrs. C. M. Young. Mrs. Young is a Silver Spring housewife who went to the Consolidated store in March 1966, accompanied by her husband, after seeing an ad in The Washington Post for a repossessed 1965 or 1966 Touch 'n Sew Singer at a price of \$90 or \$99. She knew the price for a new machine was about \$300. (Tr. 69, 75-76.)

The salesman readily demonstrated the machine, but she was not interested in buying it. The housing was discolored and "beyond repair," and the salesman told her that the Singer machines were subject to "a lot of mechanical difficulties"—that they were in the shop more frequently than others. Mr. and Mrs. Young then became interested in a new Delta machine and bought it instead, paying \$196.55 cash after getting a \$30 allowance on her old machine. (Tr. 71-73, 75, 77-79.)

Mrs. Young said she looked at the Delta of her own volition; it was not anything that the salesman did, although he "helped us [and] turned our attention to it." He did not try to force it upon her, but demonstrated it at her request (Tr. 74, 77).

As for the attitude of the salesman toward the advertised Singer, Mrs. Young put it this way: "He was not pushing it, nor was he pushing the other one. It was just as if almost it was not there, you know. I was not interested, he could see that. I did not want that machine." (Tr. 79-80.)

Mrs. Jane Pittman. Mrs. Pittman, of Beltsville, Maryland, dealt with respondent in February 1966. She was attracted by an ad for a repossessed Singer zigzag for just under \$100. She considered a repossession as being practically a new machine, and she interpreted the ad as meaning she would simply have to pay the balance unpaid by the original owner. (Tr. 82, 84, 87.)

The salesman brought "a limited zigzag." This was not what she wanted, but as far as she knew, it was the machine described in the advertisement. (Tr. 88.)

The advertised special was damaged, and the salesman said that the previous owners "had mistreated it"—that it looked to him like a hot iron had been placed up against the plastic molding. Mrs. Pittman finally bought a Delta 1804-B, paying \$200.85. The salesman told her the usual price was much higher, and this was confirmed to her satisfaction when she called Consolidated to inquire about Delta prices. (Tr. 89-92, 97.) Mrs. Pittman is satisfied with the machine she bought and does not feel she was deceived in the transaction (Tr. 96).

For the "layaway" aspects of this transaction, see *supra*, p. 369.)

Mrs. John N. Suhr. Mrs. Suhr, an Alexandria, Virginia, housewife and teacher, told of calling Consolidated in response to an advertisement for a repossessed 1965 Singer zigzag priced at about \$35. The salesman brought in what was supposed to be a 1965 zigzag—"a portable in a black, battered, beaten old case"—and said, "this is the machine." She described it as an "old beaten up" Singer about 25 or 30 years old, commenting, "I know it was that old, because my mother's is the same." (Tr. 194-95.) The machine was a straight-stitch Singer with no attachments; it was an "awfully old" machine and was scratched and dirty. (Tr. 197.) She would not have paid more than \$5 or \$6 for it; she had "seen machines in better shape at rummage sales" (Tr. 199).

The salesman did not refuse to show or demonstrate the old machine. He did not disparage it; in fact, he referred to it as "a very nice machine." But he confessed that this was his first day on the job; he did not know much about sewing machines and could not actually demonstrate it. When Mrs. Suhr told the salesman she was not interested in the old Singer, he brought in two other machines which he priced at \$289 and \$365. Mrs. Suhr bought the \$289 machine but paid only \$110; the salesman explained that he could discount it because he was new. (Tr. 192-200.)

Initially, there was some question whether Mrs. Suhr had dealt with respondent (Tr. 192-94), but counsel for respondent conceded on the record that her dealing was with Olson, operating as New Home Sewing Center (Tr. 203, 212-13; but see Olson 306-08).³

Miss Judith Lea Andriot. Miss Andriot, a young clerk-typist from McLean, Virginia, went to respondent's store in the fall of 1965, after seeing an ad for a Singer zigzag priced at \$79 or \$89. Olson and another salesman showed her the advertised machine, but it was blackened with smoke, and she was told that it had been in a fire. She quickly indicated she did not want it, and they showed her another machine, the price of which she did not remember, except that it was less than \$300 and more than \$130. She told them she did not want to pay over \$130, and they sold her a Delta for \$129.50 or \$129.95. (Tr. 217-22.) She was told that she was getting a \$100 discount. They explained that the machine was regularly \$229 but that they were selling it at the

³ Mrs. Suhr is not mentioned by name at Tr. 203 (lines 18-22), but the reference to her is clear. Likewise, the reference to "prior witnesses" at Tr. 212 (lines 18-21) is to Mrs. Suhr. (The word "she" in line 19 should be corrected to read "we," and the word "Homestead" in line 21 should be "Home instead.")

Home Show for \$180, and they would lower the price further for her because she was getting a demonstrator. (Tr. 222-24.)

Miss Andriot is satisfied with the machine she bought, but she is still dubious about the way "they lowered the price so radically for me" (Tr. 228). There were also problems about the financing arrangements (Tr. 229).

Mrs. Gloria Davis. Mrs. Davis, of Alexandria, Virginia, was the only customer witness on whom respondent's salesmanship had been unavailing. She had responded to a Post ad for a three-months-old Singer zigzag priced at about \$55. The salesman showed her such a machine but it had a cracked case and was in very poor condition—"a piece of junk." When she indicated she was not interested, the salesman brought in another machine priced at around \$200. The salesman did not refuse to show or demonstrate the Singer, and she did not remember that he tried to discourage its purchase. (Tr. 201-03, 206-09; Forgy 262.)

As in the case of Mrs. Suhr (*supra*, p. 372), there was initially some question about connecting Mrs. Davis's experience with respondent (Tr. 202-05), but the connection was satisfactorily established through other evidence (CX 44; Tr. 212-16; Forgy 255-62).

When this evidence is considered in conjunction with the stipulation that an additional 20 witnesses would have testified substantially along the same lines (Tr. 29, 278-80), the finding must be that as part of a bait and switch scheme, respondent falsely represented in his advertisements the model of the Singers offered for sale, their condition, and their age, as well as the basis for the purported bargain prices (Sections 2 and 3, *supra*, pp. 367-370).

Thus, the "bait" consists of advertisements of a name-brand machine at bargain prices. Most of Olson's advertisements represent that the used Singers are current models, "like new," and may be purchased for considerably less than \$100. For example:

- 1965 Singer, six wks. old (CXs 1 A, 5 C, 6 C,
7 B, 9 A-B.)
- * * * '65 Singer Touch 'n Sew, like new (CX 1 B.)
- 1965 Touch 'n Sew, Singer * * * 2 mos. old (CXs 2 A-C.)
- 1965 Singer auto. * * *, latest mod (CXs 3 A-C.)
- Late styles (CX 4 A.)
- 1965 Singer auto. * * * Latest style, like new (CX 4 A; see also
CX 8 A.)
- 1965 Singer Touch 'n Sew * * * 3 mo. old CX 6 C, 7 A-B;
see also CXs 5 C
and 9 A-B.)

Similarly, other advertisements consistently referred to 1965 models (CXs 10-21).

The pulling power of these ads has been demonstrated. But what happened when customers responded? The bait was displayed; there was no refusal to sell it. But, one way or another, the "switch" got underway.

First, the machines displayed were not the machines the customers had been led to expect. They were not, for the most part, late-model Singers in virtually new condition. They invariably had some self-disparaging characteristics—"built-in dissuaders"—so that it was seldom necessary for the salesman to persuade the prospect not to buy the first machine displayed—ostensibly the advertised machine. Many prospects rejected it on sight.

Some of the machines so displayed were smoke-blackened (Andriot 221), soiled or dirty (Espeut 57-58; Suhr 197), damaged (Pittman 89-91), discolored (Young 71), and "in very poor condition," with a cracked housing (Davis 203). One was described as 25-30 years old (Suhr 194-95); another as "a piece of junk" (Forgy 262).

Second, overt disparagement was resorted to when necessary to accomplish or to reinforce the switch to another machine. Even in those instances in which the customer had already expressed her disinterest in the bait machine, the salesman might indicate that Singers were "delicate," resulting in complaints concerning their operation (Espeut 54-56; Young 71) or he might otherwise disparage the advertised machine (Pittman 89-91; Andriot 220).

Third, having discouraged the sale of the purported advertised special, respondent or his salesmen inevitably were able to produce a "better," more expensive machine with the result that the purchaser might be and frequently was switched from the advertised product to the higher priced machine.

The inference is inescapable that respondent's advertisements are not a bona fide effort to sell the advertised products. But such a finding need not rest on inference alone. Confirmation comes from respondent's own testimony and his own records.

Although respondent has been spending \$400 a month to daily advertise used Singers (Olson 239), the sales of such machines were minimal in comparison to the sales of other makes and models. In the 21-month period from January 1, 1965, to Septem-

ber 30, 1966, only 36 used Singers were sold, compared to 613⁴ unadvertised higher priced new machines of non-Singer manufacture (CXs 29 A-37-Z-14; Ryan 272-75; Olson 287).⁵

Respondent undertook in his testimony to inflate the 36 Singer sales over a 21-month period as representing an average of two or three a month (Olson 287). At any rate, the decided cases make clear that occasional sales of the advertised product do not exculpate a respondent if they are only a by-product of or an incidental occurrence in a general pattern of bait and switch selling. Such sales may provide "an aura of legitimacy," but it is only an aura, and the law is concerned with reality.

Moreover, Olson's own testimony was to the effect that he regularly advertised used Singer machines in order to obtain leads. He defended this practice—but not on the basis that he was making any effort to sell the used Singers; his own records, as we have seen, foreclosed any contention that the sale of used Singers constituted any significant part of his business.

Rationalizing his advertising and sales operation in response to a series of leading questions, he emphasized that Singer is a well-known brand—a household word for sewing machines. He was then asked if he regularly advertised Singer used sewing machines "in order to obtain leads," and his answer was "Yes." This, he said, is "normal procedure in the business"—"a common practice." It is "selling upwards." (Tr. 283, 288.)

In response to another series of leading questions, Olson testified that he had to engage in this practice to meet competition. He contended that otherwise he could not compete with other dealers and would be put out of business. (Tr. 283.)

Olson also had admitted to the investigating attorney⁶ that he was not interested in selling the advertised Singers (Forgy 150). The investigating attorney described a used Singer that was being advertised during the investigation and characterized

⁴ The total of 613 is exclusive of about 175 machines sold through the Home Show award certificate promotion (Ryan 273-74; Forgy 161). During the same period, respondent sold 30 used machines other than the Singers (Ryan 273-74).

⁵ The origin of the used Singers that respondent did stock and sell is not altogether clear. Respondents purchase records (CXs 38-41) account for only four; presumably, some were trade-ins. (See Forgy 145-47, 180-82; Olson 311.) Whatever their origin, there is no doubt that respondent did not have an inventory of used Singers large enough to warrant his daily advertising of such machines.

⁶ The investigation of this case was conducted by Lawrence E. Forgy, Jr., who was an attorney-investigator for the Commission from April 1965 until early 1966. At the time he testified, he was an attorney for the Joint Congressional Committee on Internal Revenue Taxation. In connection with his investigation of this case, he visited the store, interviewed Olson, and examined records on three occasions in November and December 1965. (Forgy 142-44.)

it as "generally in bad condition" (Forgy 149).⁷ The investigator recounted his discussion with Olson concerning such a machine:

He [Olson] told me * * * that his policy was that he did not want to sell this machine, actually, and that it was a good working business practice * * * to have a machine like this that would not really go, because you could not buy enough of these used Singer sewing machines * * * to supply the * * * people that wanted to get these sewing machines. You can't get enough of them, if you are running these ads daily, to supply the demand for them, so you don't really want to sell your lead. Your lead is there for a particular purpose, to bring prospective customers to you or to make you able to go to them. Then you switch them off on your other * * * more profitable merchandise. (Forgy 150.)

The investigator said that he asked Olson why he kept advertising Singers with so few on hand. He then summarized Olson's reply as follows:

His comment * * * was that this Singer machine was his lead and that what he did with this was that he would take these Singers out and demonstrate them to the people and if the customer, the prospective customer, was not satisfied with the machine, he would then show him one of his Delta line machines and this * * * would lead into another sale.

* * * one statement that he made to me was that it was almost impossible to run a sewing machine business in this town as a small businessman unless you did have a lead, because people actually aren't * * * in the market for new sewing machines. Almost everybody that wants to buy a sewing machine, who does not go to Singer or one of these other outlets, they are looking for a used sewing machine that they can get very inexpensively * * *.

* * * [without] this lead-in merchandise * * * you just don't get the calls. You don't make contact with prospective customers. Forgy 148-49; see also Forgy 165-66; Olson 294.)

Even without the persuasive consumer testimony and the documentary proof, findings as to the bait and switch nature of respondent's business might be based largely on those admissions that respondent made during the investigation and during the hearing. Respondent's counsel suggested that his client's frankness was attributable to the alleged—but unproved—failure of the investigating attorney to properly warn Olson of his constitutional rights (Tr. 263-67). However, the real explanation appears to be that, as expressed by the investigator, Olson had no idea that his bait and switch tactics constituted in any way an unfair business practice (Forgy 263). The investigator stated that Olsen "did not understand that the particular practice * * * of using leads and bait in the sale of sewing machines was illegal or * * *

⁷ When Olson sought to demonstrate this machine, it took him 10 to 15 minutes "to get it in order so it would work * * *" (Forgy 150).

was an unfair trade practice; and, therefore, he made no attempt to conceal the fact that he did use this practice in his business" (Forgy 265). This impression is reinforced by Olson's testimony. His defense of the practice may be summed up in the excuse frequently encountered in Commission proceedings: "Everybody's doing it." Without considering the legal or moral aspects of the practice, Olson simply adopted the practice as competitively necessary to his business survival. The bait and switch technique was "normal" or "standard" procedure—"a common practice" (Olson 283, 288).

Accordingly, the evidence amply supports this general finding:

Respondent does not make a bona fide effort to sell the advertised machines, but uses the advertisements to obtain leads to prospective purchasers in order to switch them to the purchase of higher priced machines. The advertisements are of used Singer sewing machines purporting to be high-priced current models at very low prices. On presentation to the prospective customers responding to such advertisements, the machines prove to be unsightly, damaged, or otherwise unsuitable so that the prospective purchasers reject them on sight. And if necessary to accomplish the switch, the salesman disparages the advertised machine.

Complaint counsel frankly recognize that respondent's operation was not marked by the flagrant disparagement frequently found in earlier cases of this type. But complaint counsel are persuasive in urging that respondent's technique is no less deceptive and no less deserving of an injunctive order.

In their proposed findings, complaint counsel state:

We look in vain for any heavy handedness in the salesman's presentation once he gets his foot in the door. We have little evidence of outright disparagement. Instead, respondent [uses] a subtle almost undetectable approach. * * * The evidence indicates that the prospective purchaser is led on without suspecting the insincerity of the salesman's presentation and the switch is made to a higher priced machine of a different make as though the transition were the suggestion of the prospect and not the salesman. (CPF 17-18.)

Despite such variations and despite the absence of any exact parallel, this case presents the same basic elements and distinctive pattern found in the numerous bait and switch cases decided by the Commission in the past: First, there is heavy advertising of a popular name-brand product at a low price. Second, prospects attracted by such advertising are discouraged in one way or another from purchasing the advertised product and are switched to more expensive merchandise. This may or may not involve disparagement—blatant or subtle—by the sales-

man. Third, sales of the advertised product constitute a small percentage of total sales.

On the negative side, there is no evidence that respondent or his salesmen refused to sell the product offered in accordance with the terms of the offer. But such a refusal is not an essential ingredient for a finding of bait and switch tactics.⁸ In the circumstances disclosed by this record, there was no occasion for respondent to refuse to sell. The technique was to assure, instead, that it was the customer who refused to buy. Through the use of self-disparaging merchandise, sometimes aided and abetted by direct or indirect disparaging comments by respondent or his salesmen, the effect was the same as if respondent refused an offer to purchase.

In a case such as this, involving the demonstration or showing of a product that is defective, unusable, or impractical for the purpose represented in the advertisement, the law does not require evidence of an offer to buy coupled with a refusal to sell.

The Commission has recognized that bait and switch tactics are not cast in any rigid mold—that the pattern may vary from the most heavy-handed to the very subtle. It has noted that the product itself may constitute “a built-in dissuader.” *Household Sewing Machine Company*, 52 F.T.C. 250, 265–67 (1955).

Futhermore, there is no requirement that the salesman must specifically direct the attention of the prospective purchaser to a higher priced machine, although this is usually the case. The switch has been accomplished if the prospective purchaser is discouraged from purchasing the advertised machine by the design of the seller, whether through the appearance or condition of the machine or by words of disparagement uttered about it. It is no less a switch if the customer, having been thus discouraged from purchasing the advertised product, asks the salesman if he has any other such products.

There is no need, in a case as clear as this one, for any lengthy references to in-depth legal research. Respondent's practices fall afoul of the Commission's Guides Against Bait Advertising (November 24, 1959, CCH Trade Regulation Reporter, Par. 7893), which essentially represent a codification of ruling case law. The relevant cases—including a large number involving sellers of

⁸ The somewhat confusing evidence relating to salesmen's commissions (Forgy 156; Olson 245–47) affords no basis for a finding that the compensation plan for salesmen is especially designed to discourage the sale of the advertised machines. However, commissions are on a percentage basis, so it is obviously to the salesman's advantage to sell at the highest price possible.

sewing machines and vacuum cleaners—are collected in Par. 7815, CCH Trade Regulation Reporter.

In summary, the respects in which respondent's sales scheme offends the law are these:

1. Respondent's advertising and his showing of the used Singer machines are not bona fide efforts to sell the advertised product.
2. Respondent's advertisements misrepresent the product in such a manner that later, on disclosure of the true facts, the purchaser may be and frequently is switched from the advertised product to another. The first contact or interview is secured by deception.
3. Salesmen disparage the advertised product.
4. The product itself is defective, unusable, impractical, or otherwise unsuitable.
5. Respondent does not have available a sufficient quantity of the advertised product to meet reasonably anticipated demands.

As far as the legal precedents are concerned, it is well settled that the law is violated if the first contact is secured by deception, *Exposition Press, Inc. v. Federal Trade Commission*, 295 F. 2d 869, 873 (2d Cir. 1961), and it is no defense that customers may be satisfied with the purchases they ultimately make, *Lifetime, Inc.*, 59 F.T.C. 1231, 1242 (1961). Nor is it necessary to list any long line of authorities for the proposition that it is no defense for the respondent that his competitors engage in the same practice or that it is necessary for him to engage in the practice in order to stay in business. *International Art Company v. Federal Trade Commission*, 109 F. 2d 393 (7th Cir. 1940), *cert. denied*, 310 U.S. 632.

5. Guarantee Representations

There is no question that respondent advertised sewing machines as being fully guaranteed or as being covered by new machine guarantees (CXs 2 A, 10), but respondent's counsel contended at the prehearing conference that these representations do not imply an unconditional guarantee (Tr. 9-10, 13). That contention is rejected, and the examiner finds that respondent's advertising representations were to the effect that his sewing machines were guaranteed without qualification, limitation, or condition.

Contrary to such representations, the guarantee referred to (C X 42; *Forgy* 156-58)—entitled "25 Year Guarantee Bond"—is limited, conditional, and qualified. It is limited in time; it excepts numerous parts and attachments; it contains a provision that the

defect must not be the fault of the purchaser or user; it is conditioned on specified use, care, service, and maintenance; and, despite the title, it limits the guarantee of the motor, the motor accessories, and all electrical equipment to one year.

Moreover, there is a serious question whether the purported guarantee (CX 42) is applicable to used machines, as advertised (CX 10). Although respondent told the attorney-investigator (Forgy 157-58) that he guaranteed used machines as if they were new—that this is what he meant by new machine guarantee (CX 10)—the guarantee that he referred to (CX 42) specifies that it “applies only to the original purchase of this machine when new * * *.”

The case law respecting the advertising of guarantees has been synthesized in the Commission’s Guides Against Deceptive Advertising of Guarantees (April 26, 1960, CCH Trade Regulation Reporter, Par. 7895). The fundamental principle is that a bare representation that a product is guaranteed is interpreted as involving an unconditional guarantee. Guarantee representations must disclose the identity of the guarantor, the nature and extent of the guarantee, and the manner in which the guarantor will perform. If there are any conditions or limitations in the guarantee, they must be disclosed in advertising.

Respondent’s representations that machines are fully guaranteed or that they are covered by a new machine guarantee fail to make the required disclosures.

Thus, respondent’s guarantee representations are false, misleading, and deceptive.

There is some confusion whether the record contains all the guarantees reputedly used by respondent, but this does not detract from the basic finding that respondent’s guarantee representations are deceptive.

The investigator testified Olson told him that the guarantee referred to in his advertisements was the “25 Year Guarantee Bond,” which is in the record as CX 42. This was Olson’s personal guarantee (Forgy 156-57). Olson specifically stated, according to the investigator, that CX 42 was the new machine guarantee advertised in CX 10 (Forgy 157-58).

On the witness stand, however, Olson testified that he had “many guarantees”—that “There is no one particular guarantee for everything” (Tr. 305). He said the 25-year guarantee bond (CX 42) was representative of his guarantee of new Deltas, but not of used machines (Tr. 305-06). He indicated that each new

machine carries a factory guarantee, but that CX 42 represents his dealer guarantee on Deltas (Tr. 305-06).

The guarantee applicable to used machines, he said, is specified on the sales slip. He indicated that such guarantees may range from 90 days to 20 years, but that "normally," late-model used machines carry a guarantee of one year, and that this is unconditional, covering "labor, service, parts, everything, unless otherwise specified" (Tr. 306).

Although neither respondent nor complaint counsel cited any specific examples of guarantees on the advertised Singers, the sales slips (CXs 37 A-Z-13) include about a dozen on which there were handwritten guarantee notations—for example, CX 37 K ("5 yr. on Parts"), CX 37 0 ("10 Year Guarantee All Parts"), and CX 37 Q ("5 years Parts & Service"); see also CXs 37 G and 37 V, W, Z, Z-3, Z-4, Z-7, Z-9, Z-10, and Z-12.

Thus, in those instances also, the actual guarantee involved time limitations and other qualifications that were undisclosed in the advertisements.

Whatever the facts may be regarding additional guarantees that respondent may have furnished, the fact remains that the evidence here supports an order against his deceptive advertising of guarantees.

6. Prizes and Prices

Respondent admitted in his answer (Pars. 4 and 5), that he represented (as alleged in Pars. Seven and Eight of the complaint):

1. That he conducts bona fide drawings and that recipients of "award certificates" have won a valuable prize through their participation in such drawings, entitling them to a discount or bonus, in the amount stated on the certificates, as a reduction from the price at which such products are usually and customarily sold by respondent.

2. That the higher stated price is respondent's usual and customary price of the designated sewing machine and that purchasers are afforded savings of the difference between that price and the price at which the machine is being offered.

The answer (Par. 4) states that respondent did not regularly hold drawings—that he had sponsored only one in connection with the National Home Furnishing Show. The answer (Par. 6) also denies the falsity of the representations made and defends (Par. 5) the offer as "a bona fide offering * * * made at list price * * *."

The evidence relating to respondent's use of "drawings" to

promote sales by representing that prospective customers were entitled to substantial discounts (Complaint, Pars. Seven-Nine) demonstrates beyond any doubt the deceptive nature of this operation. The fact that such promotional activities had not been repeated as of the date of trial is immaterial.

There were two so-called drawings—both in connection with the Washington International Home Show⁹ held at the D.C. Armory between September 25 and October 3, 1965:

(1) Respondent sponsored a booth at the Show, at which those in attendance were invited to register for a free sewing machine¹⁰ and other prizes (CX 22). Some 3,500 persons (perhaps 5,500) registered in this drawing, and follow-up letters (CX 23) were sent to approximately 2,000. (Olson 249-54, 296-99, 320-21; Forgy 158-63, 185-91.) They were told that their tickets had been "selected in the FIRST AWARD GROUP" in the drawing, as a result of which they were being sent \$150 merchandise certificates that might be applied toward the purchase of a 1966 Delta Sewing Machine (CXs 23, 24).

(2) In addition, Olson purchased the registration cards of those registering for free door prizes at the Home Show. To some 2,000-2,500 of these registrants, he sent an announcement that they had been "selected in the DOOR PRIZE GROUP" in the Home Show drawing, as a result of which they were entitled to a \$100 merchandise certificate which might be applied toward the purchase of various sewing machines or vacuum cleaners. (Olson 251-52; CXs 25-27.)

Respondent also utilized in connection with this promotion a so-called "Bonus Certificate" (CX 28) that purportedly entitled the bearer to a free cabinet with the purchase of a 1966 Delta sewing machine (Forgy 161-63). Approximately 200 persons received Bonus Certificates (Forgy 161).

The registration form used at the Consolidated booth at the Home Show (CX 22) was entitled "Free Drawing Ticket" and made these representations: "Win a Free Sewing Machine Plus Other Prizes—Nothing to Buy." The door prize registration blank (CX 27) bore a heading "Register for Free Prizes."

One interesting aspect of these awards is that the ostensible

⁹ The show in connection with which respondent conducted drawings is variously referred to in the record—"National Home Furnishing Show" (Answer, Par. 4); "Washington International Home Show" (Olson 247; CXs 23, 26); and "Home Furnishings Show" (CX 27). However denominated, it is the same exhibition. Frequently, the witnesses referred simply to the Home Show (for example, Forgy 158, 160; Olson 251, 297).

¹⁰ Respondent evidently did deliver a free sewing machine (see CX 23); the complaint raises no issue regarding this aspect of the drawing.

price of the sewing machine represented as subject to a discount of \$100 or \$150 was tailored according to the amount of the so-called award certificate:

(1) To the recipients of the \$150 certificate, the example given of the merchandise toward which it might be applied was a "De luxe Semi Push Button Budget Model," priced at \$219.95, resulting in a net price of \$69.95 (CX 23).

(2) To the door prize winners of the \$100 certificates, the same "De luxe Semi Push Button Budget Model" was represented as selling at \$159.95, resulting in a net price of \$59.95 (CX 26).

Although the evidence concerning the manner in which the "award" winners were selected (Olson 247-54, 296-99; Forgy 161-62, 185-89) is not as clear-cut as it might be, it appears doubtful that there were actual drawings. In any event, the record as a whole supports the summary finding (*supra*, pp. 366-67) that "Respondent does not conduct bona fide drawings. His purpose in having persons register for drawings is to obtain leads to prospective purchasers of his sewing machines."¹¹

Even if the recipients of the so-called awards *were* actually selected by chance in a drawing, this would not vitiate the foregoing finding, which is based in part on the fact that, as developed *infra*, the "awards" were fictitious. Therefore, the purpose of the drawing was not to determine "winners," as registrants were led to believe, but to develop leads for sales. By no stretch of the imagination can the operation be characterized as bona fide.

During the period of these "prize" promotions, respondent sold four different models of the Delta line—Delta 1804, Delta SZC, Delta 690, and Delta 1604—toward the purchase of which an award certificate might be applied. The sales slips evidencing respondent's sales of these sewing machines between January 1, 1965, and September 30, 1966, are in the record, together with tabulations that permit comparison of the price representations and the actual prices paid with or without the use of award certificates (CXs 29 A-36 E; Ryan 101-21). Respondent conceded the substantial correctness of these tabulations (Olson 299).

Comparison of the actual prices charged for the various Delta models in non-certificate sales with the purported customary price

¹¹ Respecting that part of the order to cease and desist (Pars. 7-9, *infra*, pp. 387-88) dealing with "drawings" and "awards," a caveat should be noted that compliance by respondent with these provisions may still leave open the question whether such promotional activities constitute unlawful lottery merchandising. (See Par. 7123, CCH Trade Regulation Reporter.) This is not an issue raised in the complaint; hence, the proposed order appended to the complaint has not been broadened to cover such a contingency. But respondent should not be misled into believing that failure to deal with the possible lottery aspects affords immunity.

appearing on the "with certificate" sales slips demonstrates that the prices represented to be the usual selling prices to holders of award certificates were not in fact the customary retail prices but were greatly in excess thereof. With rare exceptions, certificate holders paid as much as—sometimes more than—the prices paid for the same machines by ordinary purchasers who had no award certificates.

For example, the purported price of the Delta 1804 and 1804-B was \$349.95, but subject to some variations involving trade-ins, etc., most of the certificated "winners" (whether for \$150 or \$100) paid \$199.95 (CX 29 Z-2).¹² The tabulation of non-certificate sales of the same Delta models during the same period (CX 30 Z-23) discloses an occasional sale at \$349.95, but it demonstrates not only that this was not the regular price but that in fact there was no regular price.¹³ Non-certificate sales not involving trade-ins or various types of discounts ranged generally from \$149.95 to \$249.95.

The regular price of the Delta SZC was purportedly \$269.95, but certificate holders with some exceptions, paid only \$119.95 (CX 31 U).

Although the \$269.95 price shows up twice in the tabulation of non-certificate sales of model SZC (CX 32 M), it is clear that this was not the customary price. As a matter of fact, the usual price before trade-in allowances ranged between \$100 and \$139.95. The result was that many certificate holders paid net prices that were as high as if not higher than the net prices paid by customers who had not been so "favored."

A similar pattern emerges in the tabulation of Delta 690¹⁴ sales (CX 34 L). To certificate holders the price was represented as \$219.95, and their net price after deducting the \$150 award certificate was \$69.95.

Non-certificate sales of this model disclosed no such regular price of \$219.95 but ranged between \$50 and \$69.95 (CX 33 D).

Four certificate holders bought the Delta 1604. In two cases, the price was represented as \$289.95, with a net of \$139.95

¹² But see CX 29 W, indicating a purported price of \$390, to which a \$100 certificate was applied, for a net price of \$290—which was then further reduced to \$270.

¹³ Although Olson testified that he had not sold Deltas before the Home Show, which began September 25, 1965 (Olson 248, 249; CX 27), the record shows three sales of the Delta 1804 at \$249 on September 17 and 18, 1965. There also were later sales at that price. (CX 30 Z-23.) Thus, if there was a "regular" price, it was \$249; and even though the \$199.95 price did afford certificate holders a discount from the \$249 price, the purported "regular" price was still fictitious.

¹⁴ This apparently is the "De luxe Semi Push Button Budget Model" listed at \$219.95 on CX 23 and at \$159.95 on CX 26 (*supra*, p. 383).

after allowance of the \$150 discount. To a third holder of a \$150 certificate, the price was represented as \$299.95, so that this customer paid \$149.95. Finally, the stated price to a holder of a \$100 certificate was \$259.95, and he paid \$159.95. (CX 36 E.)

Again, no regular price for the Delta 1604 appeared in non-certificate sales (CX 35 J). Prices ranged from \$100 to \$299.95.

Thus, in summary, it is evident that the so-called awards were illusory. The prices represented as the respondent's usual retail prices were actually inflated and fictitious prices—greatly in excess of any price that could be construed as respondent's usual price. Generally speaking, holders of the award certificates did not receive any discounts or deductions from actual going prices but paid approximately the same net prices as those who purchased the same model in the ordinary course of respondent's business without the use of such certificates. In no case did they realize the savings purportedly represented by the certificates. The crowning irony is that some of the "winners" paid even higher prices than respondent customarily charged customers without certificates for the same makes and models.

Moreover, there was deception at the outset in connection with both the promotional "drawing" at respondent's Home Show booth and the Home Show door prize.

On the application blank used for the Delta award drawing is the statement "Nothing to Buy." Similarly, the door prize registrations were accomplished through a representation that "free prizes" were being offered. Nevertheless, holders of the award certificates and bonus certificates got no "free" prizes. These certificates were worthless unless and until they were applied toward the purchase of a sewing machine from respondent.

Recipients of the award and bonus certificates were thus led to believe that they might win free prizes with no strings attached, whereas they became entitled only to fictitious discounts on purchases from respondent.

Therefore, respondent's representations regarding the prize and price aspects of his Home Show promotions were false, misleading, and deceptive.

III. Conclusionary Findings

This record presents few factual conflicts that are dependent on a credibility evaluation. Some of respondent's self-serving statements have been rejected, particularly where they were contradicted by other evidence. But actually, as has been indicated, respondent's own statements and business records virtually es-

tablish a prima facie case in support of the complaint. When such evidence is coupled with the vivid consumer testimony, the result is a convincing basis for the findings that the law has been violated as charged and for the entry of an injunctive order to prevent further violations. There is no occasion here for any special comment on credibility or on the weight of the evidence.

This is a clear case on both the facts and the law. An order to cease and desist is required to protect the public interest.

CONCLUSIONS OF LAW

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

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

3. The use by the respondent of the false, misleading, and deceptive statements, representations, and practices, as found herein, has had and now has the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that such statements and representations were and are true and into the purchase of substantial quantities of respondent's products by reason of such erroneous and mistaken belief.

4. The acts and practices of the respondent, as herein found, 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.

5. Having found the facts to be as alleged in the complaint, the examiner has entered an order substantially the same as that appended to the complaint. This represents the form of order that the Commission had reason to believe should issue if the allegations of the complaint were proved.¹⁵

ORDER

It is ordered, That respondent Charles A. Olson, an individual, doing business as Consolidated Sewing Machine Co. or Consolidated Sewing Machine Co. of Washington, D.C., or under any other name or names, and respondent's agents, representatives, and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale, or distribution of sewing machines, vacuum cleaners, or any other

¹⁵ Some minor editorial changes were made.

products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that merchandise has been left in layaway or that it is being offered for the balance of the purchase price unpaid by a previous purchaser; or misrepresenting in any manner the status, kind, quality, or price of the merchandise being offered.

2. Using the names "Credit Dept.," "Collection Department," "Consolidated Adj. Office," "National Adj.," or other names of similar import or meaning; or otherwise representing, directly or by implication, that respondent is engaged in the business of collecting debts or of adjusting or settling accounts; or misrepresenting in any manner the nature or status of respondent's business.

3. Representing, directly or by implication, that purchasers save the paid-in amount on unclaimed layaway merchandise; or misrepresenting in any manner the savings afforded purchasers of respondent's products.

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

5. Representing, directly or by implication, that any products or services are offered for sale when such offer is not a bona fide offer to sell such products or services on the terms and conditions stated; or using any advertising, sales plan, or procedure involving the use of false, deceptive, or misleading statements to obtain leads or prospects for the sale of other merchandise.

6. Disparaging in any manner or discouraging the purchase of any products advertised.

7. Representing, directly or by implication, that names of winners are obtained through "drawings" or by chance when all of the names selected are not chosen by lot; or misrepresenting in any manner the method by which names are selected.

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

9. Representing, directly or by implication, that any savings, discount, or allowance is given purchasers from respondent's selling price for specified merchandise unless such

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selling price is the amount at which such merchandise has been sold or offered for sale in good faith by respondent for a reasonably substantial period of time in the recent regular course of his business.

FINAL ORDER

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

It is ordered, That the initial decision of the hearing examiner shall, on the 27th day of March, 1967, become the decision of the Commission.

It is further ordered, That Charles A. Olson, an individual, doing business as Consolidated Sewing Machine Co. and Consolidated Sewing Machine Co. of Washington, D.C., shall, within sixty (60) days after service of this order upon him, file with the Commission a report in writing, signed by the respondent, setting forth in detail the manner and form of his compliance with the order to cease and desist.

 IN THE MATTERS OF

EARL MARCUS (Docket C-1187)
 SAMUEL KAMENS (Docket C-1188)
 HERMAN MARCUS (Docket C-1189)

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

*Complaints, Mar. 30, 1967—Decisions, Mar. 30, 1967**

Consent orders requiring three retailers of fur and wool products to cease misbranding and falsely invoicing their fur products and unlawfully removing required labels from their wool products.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, the Fur Products Labeling Act and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said

* Similar complaints and orders were consolidated by compiler.

Acts, the Federal Trade Commission, having reason to believe that each respondent named in the caption hereof, individually and as a former copartner in the firm of Peyton & Marcus, hereinafter referred to as respondent, has violated the provisions of said Acts and the Rules and Regulations promulgated under the Fur Products Labeling Act and the Wool Products Labeling Act of 1939, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Earl Marcus, Docket No. C-1187, is an individual and former copartner in the firm of Peyton & Marcus, which was sold in February 1966.

Respondent is a retailer of fur products and wool products presently doing business as Earl's Inc., with his office and principal place of business located at 311 West Main Street, Oklahoma City, Oklahoma.

Respondent Samuel Kamens, Docket No. C-1188, is an individual and former copartner in the firm of Peyton & Marcus, which was sold in February 1966. His present address is 6341 Diamond Head, Dallas, Texas.

Respondent Herman Marcus, Docket No. C-1189, is an individual and former copartner in the firm of Peyton & Marcus, which was sold in February 1966.

Respondent is a retailer of fur products and wool products presently doing business as Herman Marcus, Inc., with his office and principal place of business located at 1709 North Market, Dallas, Texas.

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

PAR. 3. Certain of said fur products were misbranded in that they were falsely and deceptively labeled or otherwise falsely or deceptively identified with respect to the name or designation of the animal or animals that produced the fur from which the said fur products had been manufactured, in violation of Section 4(1) of the Fur Products Labeling Act.

Among such misbranded fur products, but not limited thereto, were fur products which were labeled as "Mink" when the fur contained in such products was, in fact, "Japanese Mink."

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

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

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

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

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

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

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

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

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

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

Among such falsely and deceptively invoiced fur products, but not limited thereto, were fur products covered by invoices which failed to show the true animal name of the fur used in such fur product.

PAR. 7. Certain of said fur products were falsely and deceptively invoiced in violation of the Fur Products Labeling Act in that they were not invoiced in accordance with the Rules and Regulations promulgated thereunder inasmuch as required item numbers were not set forth on invoices, in violation of Rule 40 of said Rules and Regulations.

PAR. 8. Each of the respondents advertised fur products in the Oklahoma City Times, a newspaper published in the city of Oklahoma City, State of Oklahoma and having a wide circulation in Oklahoma and in other States of the United States.

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

PAR. 9. The aforesaid acts and practices of respondents, as herein alleged, are in violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder and constitute unfair and deceptive acts and practices and unfair methods of competition in commerce under the Federal Trade Commission Act.

PAR. 10. Each of the respondents, subsequent to the effective date of the Wool Products Labeling Act of 1939, and with the intent of violating the provisions of the said Act, after shipment to him in commerce of such products, has, in violation of Section 5 of said Act, removed or caused or participated in the removal of the stamp, tag, label or other identification required by said Act to be affixed to wool products subject to the provisions of such Act, prior to the time such wool products were sold and delivered to the ultimate consumer, without substituting therefor labels conforming to Section 4(a)(2) of said Act.

PAR. 11. The acts and practices of the respondents as set forth in Paragraph Ten, were and are, in violation of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder and constituted, and now constitute, unfair and deceptive acts and practices and unfair methods of com-

petition in commerce, within the interest 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 each of the respondents named in the caption hereof, and each of 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 each of the respondents with violation of the Federal Trade Commission Act, the Fur Products Labeling Act and the Wool Products Labeling Act of 1939; and

Each of the respondents 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 each of the respondents has violated said Acts, and having determined that complaint should issue stating its charges in that respect, hereby issues its complaints, accepts said agreements, makes the following jurisdictional findings, and enters the following orders:

1. Respondent Earl Marcus, Docket No. C-1187, is an individual and former copartner in the firm of Peyton & Marcus, which was sold in February 1966. He presently does business as Earl's Inc., with his office and principal place of business located at 311 West Main Street, Oklahoma City, Oklahoma.

Respondent Samuel Kamens, Docket No. C-1188, is an individual and former copartner in the firm of Peyton & Marcus, which was sold in February 1966. His present address is 6341 Diamond Head, Dallas, Texas.

Respondent Herman Marcus, Docket No. C-1189, is an individual and former copartner in the firm of Peyton & Marcus, which was sold in February 1966. He presently does business as Herman Marcus, Inc., with his office and principal place of business located at 1709 North Market Street, Dallas, Texas.

2. The Federal Trade Commission has jurisdiction of the subject matter of these proceedings and of respondents, and the proceedings are in the public interest.

ORDER

It is ordered, That each of the respondents named in the caption hereof, individually and as a former copartner in the firm of Peyton & Marcus, and respondent's representatives, agents and employees, directly or through any corporate or other device, do forthwith cease and desist from introducing into commerce, selling, advertising or offering for sale in commerce, or transporting or distributing in commerce any fur product; or from selling, advertising, offering for sale, transporting or distributing any fur product which is made in whole or in part of fur which has been shipped and received in commerce, as the terms "commerce," "fur" and "fur products" are defined in the Fur Products Labeling Act:

A. Which is falsely or deceptively labeled or otherwise identified as to the name or designation of the animal or animals that produced the fur contained in such fur product.

B. Unless there is securely affixed to each such product a label showing in words and in figures plainly legible all the information required to be disclosed by each of the subsections of Section 4(2) of the Fur Products Labeling Act.

C. To which fur product is affixed a label required by Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder:

1. Which sets forth information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder in abbreviated form.

2. Which fails to set forth the term "natural" as part of the information required to be included on such label to describe any such product which is not pointed, bleached, dyed, tip-dyed, or otherwise artificially colored.

3. That does not comply with the minimum size requirements of one and three-fourths inches by two and three-fourths inches.

4. Which sets forth information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder in handwriting.

5. Which fails to set forth information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder in the

sequence required by Rule 30 of the aforesaid Rules and Regulations.

6. Which fails to set forth the item number or mark assigned to each such fur product.

It is further ordered, That each of the respondents named in the caption hereof, individually and as a former copartner in the firm of Peyton & Marcus, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce, of any fur product; or in connection with the sale, advertising, offering for sale, transportation or distribution, of any fur product which is made in whole or in part of fur which has been shipped and received in commerce, as the terms "commerce," "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

A. Falsely or deceptively invoicing any fur product by:

1. Failing to furnish an invoice, as the term "invoice" is defined in the Fur Products Labeling Act, showing in words and figures plainly legible all the information required to be disclosed by each of the subsections of Section 5(b) (1) of the Fur Products Labeling Act.

2. Failing to set forth on an invoice the item number or mark assigned to such fur product.

B. Failing to maintain full and adequate records disclosing the facts upon which pricing claims and representations of the types described in subsections (a), (b), (c) and (d) of Rule 44 of the Rules and Regulations promulgated under the Fur Products Labeling Act, are based.

It is further ordered, That each of the respondents named in the caption hereof, individually and as a former copartner in the firm of Peyton & Marcus, and respondents' agents, representatives and employees, directly or through any corporate or other device, do forthwith cease and desist from removing, or causing or participating in the removal of, the stamp, tag, label, or other identification required by the Wool Products Labeling Act of 1939 to be affixed to wool products subject to the provisions of such Act, prior to the time any wool product subject to the provisions of said Act is sold and delivered to the ultimate consumer without substituting therefor labels conforming to Section 4(a) (2) of said Act.

It is further ordered, That each of the respondents 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
NATIONAL PORTLAND CEMENT COMPANY

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

Docket 8654. Complaint, Jan. 22, 1965—Decision, Mar. 31, 1967

Order dismissing complaint, vacating initial decision and terminating a divestiture proceeding against a Philadelphia manufacturer of portland cement, because the respondent no longer owns any of the assets or stock of the Ryan Ready Mixed Concrete Corporation whose acquisition by the respondent was the basis for this proceeding.

COMPLAINT

The Federal Trade Commission has reason to believe that National Portland Cement Company has acquired the stock and assets of Ryan Ready Mixed Concrete Corporation and its affiliate N. Ryan Company, Incorporated in violation of Section 7 of the Clayton Act (U.S.C., Title 15, Section 18) as amended, and therefore, pursuant to Section 11 of said Act, it issues this complaint, stating its charges in that respect as follows:

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DEFINITIONS

1. For the purpose of this complaint the following definitions shall apply:
 - a. "Portland cement" includes Types I through V of portland cement as specified by the American Society for Testing Materials. Neither masonry nor white cement is included.
 - b. "Ready-mixed concrete" includes all portland cement concrete which is manufactured and delivered to a purchaser in a plastic and unhardened state. Ready-mixed concrete includes central-mixed concrete, shrink-mixed concrete and transit-mixed concrete.
 - c. "The New York City metropolitan area" consists of the