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

HOFFMAN-MORTON CO. TRADING AS HOFFMAN-MORTON FURRIERS ET AL.

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

Docket C-1264. Complaint, Oct. 25, 1967—Decision, Oct. 25, 1967

Consent order requiring a Chicago, Ill., furrier to cease misbranding, falsely advertising and deceptively 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 Hoffman-Morton Co., a partnership, trading under its own name and as Hoffman-Morton Furriers, and Morton H. Hoffman, Mabel Hoffman, Ida Hoffman and David Veltman, individually and as copartners trading as Hoffman-Morton Co., 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 Hoffman-Morton Co. is a partnership existing and doing business in the State of Illinois and trading under its own name and as Hoffman-Morton Furriers. Respondents Morton H. Hoffman, Mabel Hoffman, Ida Hoffman and David Veltman are copartners in the said partnership.

Respondents are manufacturers and retailers of fur products with their office and principal place of business located at 679 North Michigan Avenue, Chicago, Illinois.

PAR. 2. Respondents are now, and for some time last past have been, 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 or otherwise falsely or deceptively identified with respect to the name of the country of origin of furs contained in such fur products, in violation of Section 4(1) of the Fur Products Labeling Act.

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

PAR. 4. 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 "Opossum," when fur contained in such fur products was, in fact, "Australian Opossum."

Also among such misbranded fur products, but not limited thereto, were fur products labeled as "Broadtail" thereby implying that the furs contained therein were entitled to the designation "Broadtail Lamb," when in truth and in fact, the furs contained therein were not entitled to such designation.

PAR. 5. Certain of said fur products were misbranded in that they were not labeled as required under the provisions of Section 4(2) of the Fur Products Labeling Act and in the manner and form prescribed by the Rules and Regulations promulgated thereunder.

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

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

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

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

PAR. 6. Certain of said fur products were misbranded in that labels attached thereto, set forth the name of an animal other than the name of the animal that produced the fur from which the said fur products had been manufactured, in violation of Section 4(3) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder.

PAR. 7. Certain of said fur products were misbranded in violation of the Fur Products Labeling Act in that they were not labeled in accordance with the Rules and Regulations promulgated thereunder in the following respects:

(a) The term "Persian-broadtail Lamb" was not set forth on labels in the manner required by law, in violation of Rule 8 of said Rules and Regulations.

(b) The term "Dyed Broadtail-processed Lamb" was not set forth on labels in the manner required by law, in violation of Rule 10 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 set forth in handwriting on labels, in violation of Rule 29(b) of said Rules and Regulations.

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

PAR. 8. Certain of said fur products were falsely and deceptively invoiced by the respondents in that they were not invoiced as required by Section 5(b)(1) of the Fur Products Labeling Act and the Rules and Regulations promulgated under such Act.

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

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

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

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

(a) The term "Persian Lamb" was not set forth on invoices in the manner required by law, in violation of Rule 8 of said Rules and Regulations.

(b) The term "Persian-broadtail Lamb" was not set forth on invoices in the manner required by law, in violation of Rule 8 of said Rules and Regulations.

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

(d) 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.

PAR. 10. Certain of said fur products were falsely and deceptively advertised in violation of the Fur Products Labeling Act in that certain advertisements intended to aid, promote and assist, directly or indirectly, in the sale and offering for sale of such fur products were not in accordance with the provisions of Section 5(a) of the said Act.

Among and included in the aforesaid advertisements but not limited thereto, were advertisements of respondents which appeared in issues of the Chicago Daily News, a newspaper published in the city of Chicago, State of Illinois and having a wide circulation in Illinois and in other States of the United States.

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

PAR. 11. By means of the aforesaid advertisements and others of similar import and meaning not specifically referred to herein, respondents falsely and deceptively advertised fur products in violation of the Fur Products Labeling Act in that the said fur products were not advertised in accordance with the Rules and Regulations promulgated thereunder in the following respects:

(a) The term "Persian Lamb" was not set forth in the manner required, in violation of Rule 8 of the said Rules and Regulations.

(b) The term "Broadtail Lamb" was not set forth in the manner required, in violation of Rule 8 of the said Rules and Regulations.

(c) The term "Persian-broadtail Lamb" was not set forth in the manner required, in violation of Rule 8 of the said Rules and Regulations.

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

(e) All parts of the information required under Section 5(a) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder were not set forth in type of equal size and conspicuousness and in close proximity with each other, in violation of Rule 38(a) of the aforesaid Rules and Regulations.

PAR. 12. The aforesaid acts and practices of respondents, as herein alleged, are in violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder and constitute unfair methods of competition and unfair and deceptive acts and 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 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 respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Acts, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in § 2.34(b) of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Hoffman-Morton Co. is a partnership existing and doing business in the State of Illinois and trading under its own name and as Hoffman-Morton Furriers, with its office and principal place of business located at 679 North Michigan Avenue, Chicago, Illinois.

Respondents Morton H. Hoffman, Mabel Hoffman, Ida Hoffman and David Veltman are individuals and copartners in said partnership and their address is the same as that of said partnership.

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

ORDER

It is ordered, That respondents Hoffman-Morton Co., a partnership, trading under its own name or as Hoffman-Morton Furriers or any other name or names, and Morton H. Hoffman, Mabel Hoffman, Ida Hoffman and David Veltman, individually and as copartners trading as Hoffman-Morton Co., 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. Falsely or deceptively labeling or otherwise identifying any such fur product as to the country of origin of furs contained in such fur product.

2. Falsely or deceptively labeling or otherwise identifying such fur product as to the name or designation of the animal or animals that produced the fur contained in the fur product.

3. 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.

4. Setting forth on a label attached to such fur product the name or names of any animal or animals other than the name of the animal producing the fur contained in the fur product as specified in the Fur Products Name Guide, and as prescribed by the Rules and Regulations.

5. Failing to set forth the term "Persian-broadtail Lamb" on a label in the manner required where an elec-

tion is made to use that term instead of the word "Lamb."

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

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

8. Failing to set forth information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder on 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 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 the term "Persian Lamb" in the manner required where an election is made to use that term instead of the word "Lamb."

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

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

5. 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.

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

1. Fails to set forth in words and figures plainly legible all the information required to be disclosed by

each of the subsections of Section 5(a) of the Fur Products Labeling Act.

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

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

4. Fails to set forth the term "Persian-broadtail Lamb" in the manner required where an election is made to use that term instead of the word "Lamb."

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

6. Fails to set forth all parts of the information required under Section 5(a) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder in type of equal size and conspicuousness and in close proximity with each other.

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

GLADSTONE-ARCUNI, INC.

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

Docket 8664. Complaint, July 30, 1965—Decision, Nov. 2, 1967

Order requiring a New York City manufacturer of women's dresses to cease discriminating among its customers in the payment of promotional allowances.

COMPLAINT

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

PARAGRAPH 1. Respondent, Gladstone-Arcuni, 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 71 Fifth Avenue, New York, New York, 10003.

PAR. 2. Respondent is now and has been engaged in the manufacture, sale and distribution of "women's and misses'" dresses under the trade names of "Hattie Leeds," "Miss Smith," "Diane Carter," and "Active Woman." Respondent sells its products to retail specialty and department stores located throughout the United States. Respondent's sales of its products are substantial having exceeded $4,800,000 for the calendar year ending December 31, 1960.

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

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

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

Illustrative of such practices, but not limited thereto, respondent, during the period 1961 through 1963, made payments and allowances to various customers in various cities, including Chicago, Illinois; Cleveland, Ohio, and Baltimore, Maryland, for, or for the purpose of, advertising its products as follows:

Chicago, Illinois

Customer	Amount of Allowance		
	1961	1962	1963
Carson, Pirie, Scott & Co.	$8,565.00	$5,250.00	$5,350.00
Wieboldt Stores, Inc.	1,028.44	1,211.66	4,003.71

Cleveland, Ohio

Customer	Amount of Allowance		
	1961	1962	1963
The Halle Bros. Co.	$500.00	$350.00	$1,050.00
The May Company	500.00	100.00	450.00

Baltimore, Maryland

Customer	Amount of Allowance	
	1961	1962
Hutzler Bros.	$846.00	$395.60
Stewart & Co.	96.00	60.00

Respondent did not offer or otherwise make available such promotional allowances on proportionally equal, or any, terms to all other customers in Chicago, Illinois; Cleveland, Ohio, and Baltimore, Maryland, competing with those who received such allowances.

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

Mr. Benjamin H. Vogler supporting the complaint.

Mr. Erwin Feldman, New York, N.Y., for the respondent.

INITIAL DECISION BY LEON R. GROSS, HEARING EXAMINER

FEBRUARY 10, 1967

PRELIMINARY STATEMENT

This is a proceeding under Section 2(d) of the Clayton Act, as amended.[1] The complaint was issued July 30, 1965. Respondent's answer was filed August 30, 1965.

Respondent Gladstone-Arcuni, Inc., a New York corporation, is a manufacturer of "daytime" dresses that sell at wholesale for $45, $51 and $69 per dozen. It seeks to defend its admittedly nonproportionalized advertising payments and promotional allowances to customers in Chicago, Illinois; Cleveland, Ohio; and Baltimore, Maryland, during the years 1961, 1962 and 1963, by asserting that its payments and allowances (1) in fact did not violate Section 2(d) of the amended Clayton Act; (2) were made in good faith to "meet competition";[2] and (3) were granted for the purpose of "defending respondent's position" with its customers. In addition, it asserts that this proceeding is not in the public interest.

Substantially the same defenses were asserted by the same counsel before the same hearing examiner in a similar Section 2(d) proceeding, *Rabiner & Jontow, Inc.*, Docket 8629 [70 F.T.C. 638]. These defenses were rejected by the hearing examiner and the Federal Trade Commission in *Rabiner & Jontow* (slip opinion dated September 19, 1966 [70 F.T.C. 638, 683]). *Rabiner & Jontow* is now on appeal to the United States Court of Appeals for the Second Circuit. At page 9 of its proposed findings in the instant proceeding, respondent states: "We are fully aware of the fact that a majority of the Commission has already decided this issue against the contentions of this respondent but this respondent takes the position that as long as the *Rabiner & Jontow, Inc.*, case is on appeal, it will adhere to its position until the matter is finally adjudicated."

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1 § 2(d) "That it shall be unlawful for any person engaged in commerce to pay or contract for the payment of anything of value to or for the benefit of a customer of such person in the course of such commerce 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 any products or commodities manufactured, sold, or offered for sale by such person, unless such payment or consideration is available on proportionally equal terms to all other customers competing in the distribution of such products or commodities."

2 Section 2(b) of the Clayton Act, as amended, provides:

"Provided * * * That nothing * * * shall prevent a seller * * * showing that his * * * furnishing of services or facilities * * * was made in good faith to meet * * * the services or facilities furnished by a competitor."

On page 11 of his proposed findings, respondent's counsel asserts:

It is the duty of the Commission to go to Congress and point out the inequities created by its inability to enforce the Act and in the case of industry-wide action should have the right to issue an order, after a single public hearing, against the entire industry which it could enforce without having to take up each case individually.

Under such circumstances, no one would be heard to complain as the Act would then be uniformly enforceable against all persons in the industry. But to single out a handful because the Commission does not know of any other way of handling the situation is hardly an appropriate answer.

Implicit in this argument are assumptions that are not supported by this record. There is no evidence of "inequities" nor of the Commission's "inability" to enforce Sec. 2(d) of the Clayton Act against daytime dress manufacturers who violate the law. If respondent's counsel knows of any manufacturer who is violating the law, such information would be welcomed by the Commission. If, on the other hand, respondent's counsel feels that the present law should be changed, his long association with the daytime dress industry should assure him a respectful hearing by the Congress.

His suggestion that Congress authorize the Federal Trade Commission to issue a blanket cease and desist order against the "more than 500" manufacturers of daytime dresses without according each manufacturer his "day in court" is novel to say the least. The appropriate place to urge such a proceeding is before the Congress of the United States or the Federal Trade Commission, not before this hearing examiner.

The Commission has adequately dealt with all of this respondent's arguments in its opinion in *Rabiner & Jontow,* and no useful purpose would be served by repeating here *in extenso* what the Commission said in that case.

In confirming a Section 2(d) cease and desist order in *Ace Books, Inc., et al,* Docket 8557 (slip opinion of June 18, 1965, 67 F.T.C. 1073, 1129–1130), the Federal Trade Commission, *inter alia,* said:

It has been recognized that the burden of establishing the Section 2(b) defense is upon the proponent. *Federal Trade Commission* v. *Sun Oil Co.,* 371 U.S. 505 (1963). Since the defense has the effect of exculpating a discrimination which would otherwise be forbidden, the evidence upon which the defense is predicated must be of sufficient preciseness to permit an informed determination. [citing cases] We think the evidence presented here does not permit such a determination. The evidence does not show when respondents' competitors began granting allowances * * * or when respondents themselves initiated the practice. The record fails to establish the rates used by respondents' competitors to compute their allowances or the amounts of such allowances. No conclusive determination can be made with regard to the rates used by respondents. Respondents failed to show any of the circumstances surrounding the initiation of their allowances to these retailers and made no effort to establish that their allowances did not in fact exceed those of competitors, by reference either to the rates or the total amounts of these allowances. Without evidence of a more specific nature, the Commission is unable to make an informed determination on the various questions which must be resolved and, as a result, is compelled to reject respondents' contention that they have met their burden in establishing the defense.

In *Exquisite Form Brassiere Inc.* v. *Federal Trade Commission*, 360 F. 2d 492 (D.C. Cir. 1965), *certiorari denied*, 384 U.S. 959, a Section 2(d) proceeding wherein a meeting competition defense was rejected, the Court, *inter alia*, said:

Exquisite Form in the present case essentially premises its position upon the proposition that in a Section 2(d) case, if the accused company establishes that its competitors have plans or systems whereby they make advertising allowances to their customers, any company in the industry can combat such systems by inventing and operating a system or plan of its own. Exquisite Form states a number of points, but all of them arise from or are enveloped in the proposition just stated. This, as it phrases the matter, is the crux of the case. Admittedly the Supreme Court has held [*F.T.C.* v. *A. E. Staley Co.*, 324 U.S. 746 (1945).] that in a price discrimination case (a Section 2(a) case) it is not an effective protection for an accused company to show that it operated a plan or system in order to combat its competitors' plans or systems; in other words, that in those cases a plan to combat other plans is not an effective defense under the proviso in Section 2(b). The Court held that in such cases the combative act had to be a specific act aimed at a lower price on the part of a competitor in "individual competitive situations, rather than * * * [in] a general system of competition." Exquisite Form argues that that rule cannot apply to the advertising allowance practices in the brassiere industry, because of the factual characteristics of that industry and the practices in it.

We think the doctrine of *Staley* must be applied here. There are differences, of course, between a price discrimination (Section 2(a)) case and a case involving advertising allowances. But we are not shown that any such difference goes to the basic thesis involved in the statute or to the rationale of *Staley*. We are not shown any compelling reason for different treatment.

Exquisite Form also contends that, even if the doctrine of *Staley* applies, its proof satisfied the requirements of that case. The only evidence which related to individual competitive situations consisted of a table which set forth the dates of retailers' advertisements of Exquisite Form products and competitors' products. There was no testimony which explained how this table related to company policy. The Commission found that Exquisite Form's evidence was insufficient to support its contention. We agree with the Commission.

The first prehearing conference [3] in this proceeding, set for

[3] Prehearing conferences were held on October 11, 1965, December 1, 1965, and January 25, 1966.

September 15, 1965, was continued to October 5, 1965, at the request of respondent's counsel. In the meantime, on September 18, 1965, Joseph P. Arcuni, the sole stockholder and chief executive officer of Gladstone-Arcuni, was critically injured in an automobile accident. He suffered such severe injuries that he was unable to confer for any extended period of time with his counsel concerning the defense of this proceeding and was unable to be present at the hearings. After the first prehearing conference was held, respondent's counsel himself was confined to the hospital on two separate occasions for surgery. Because of Mr. Joseph P. Arcuni's state of health and the health of respondent's counsel, generous extensions of time have been granted to respondent.

The evidentiary record in this proceeding consists of a stipulation filed on April 13, 1966, the stenographic transcript of hearings in New York, New York, on September 26 and 27, 1966, and the exhibits received in evidence at such hearings.

Proposed findings, conclusions, and order have been submitted to and given careful consideration by the hearing examiner. Findings that are not made in this initial decision in the form proposed, or in substantially that form, are hereby rejected. Any motions heretofore made but not ruled upon are hereby denied. Respondent's proposed findings contain few findings of fact that are relevant to its "meeting competition" or "no public interest" defenses. Respondent's extensive quotations from the dissenting opinion in *Rabiner & Jontow, Inc.* (respondent's proposed findings, pp. 8–9, 13) merely reiterate arguments that had been considered by the majority of the Commission and had been rejected.

Based upon the stipulation filed herein on April 13, 1966, the hearing examiner makes the following:

FINDINGS OF FACT

1. Respondent, Gladstone-Arcuni, 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 71 Fifth Avenue, New York, New York, 10003.[4]

2. Respondent is now and has been engaged in the manufacture, sale and distribution of women's and misses' dresses under the trade names of "Hattie Leeds," "Miss Smith," "Diane Carter," and "Active Woman." These products sell for $45, $51 and $69 per dozen. The style numbers identifying respondent's dresses gen-

[4] Findings 1–9 constitute the stipulation of counsel *in haec verba.*

erally refer to differences in color and print design rather than style. Further, respondent's dresses that sell for $51 per dozen are only larger sizes of the identical dresses selling for $45 per dozen. Respondent, Gladstone-Arcuni, Inc., sells its products to retail specialty and department stores located throughout the United States. The sales of its products are substantial having exceeded $4,800,000 for the calendar year ending December 31, 1960.[5]

3. In the course and conduct of its business, respondent has engaged and is now engaging in commerce, as "commerce" is defined in the Clayton Act, as amended, in that respondent sells and causes its products to be transported from its place of business located in the State of New York, to customers located in other States of the United States and in the District of Columbia. At all times mentioned in the complaint in this matter there has been a continuous course and conduct of trade in commerce in respondent's products across State lines between the respondent and its customers.[6]

4. During the years 1961, 1962, and 1963, respondent, in the course and conduct of its business in commerce as described above, paid the following promotional payments, allowances or extended credits or discounts to or for the benefit of the following retail department store customers of respondent located in the cities of Chicago, Illinois, Cleveland, Ohio, and Baltimore, Maryland, as compensation or in consideration for newspaper advertising of respondent's products:

Chicago, Illinois

Customer	Date Of Ad	Amount Paid	Date of Credit Memo
		1961	
Carson, Pirie, Scott & Company	2/19/61	$1,500.00	3/16/61
	2/19/61	500.00	3/16/61
	3/26/61	1,500.00	3/22/61
	5/21/61	1,500.00	5/18/61
	5/10/61	315.00	6/26/61
	3/19 & 22/61	250.00	6/26/61
	7/9/61	1,500.00	7/10/61
	12/3/61	1,500.00	12/18/61
Total 1961 Allowances		$8,565.00	

[5] See footnote 4, *supra.*

[6] See footnote 4, *supra.*

Chicago, Illinois—Continued

Customer	Date Of Ad	Amount Paid	Date of Credit Memo
	—1962—		
Carson, Pirie, Scott & Company	1/22/62	$ 500.00	2/16/62
	2/25/62	1,500.00	3/20/62
	4/8/62	1,500.00	5/21/62
	5/27/62	1,750.00	6/15/62
Total 1962 Allowances		$5,250.00	
	—1963—		
	7/12/62	$1,500.00	3/18/63
	4/28/63	1,750.00	5/6/63
	7/12/63	350.00	8/14/63
	8/25/63	1,750.00	9/30/63
Total 1963 Allowances		$5,350.00	

Wieboldt Stores, Inc. .... Note: Only total allowance payments to Wieboldt Stores, Inc. are presently available. Detailed information concerning dates of advertisements and credit memos not furnished by respondent.

Total 1961 Allowances		$1,028.44	
" 1962 "		1,211.66	
" 1963 "		4,003.71	

Cleveland, Ohio

Customer	Date Of Ad	Amount Paid	Date of Credit Memo
	—1961—		
The May Co.	1/16/61	$ 204.21	1/24/61
	7/23/61	100.00	7/19/61
	*	100.00	7/13/61
	7/24/61	100.00	8/21/61
	Sept. '61	100.00	10/13/61
	10/27/61	100.00	11/9/61
Total 1961 Allowances		$ 704.21	
	—1962—		
	8/15/62	$ 100.00	9/10/62
	Xmas Cat.	250.00	1/22/63
Total 1962 Allowances		$ 350.00	
	—1963—		
	6/3/63	$ 100.00	7/16/63
	6/3/63	100.00	6/27/63
Total 1963 Allowances		$ 200.00	
	—1961—		
The Halle Bros. Co.	4/30/61	$ 200.00	6/20/61
	12/3/61	300.00	12/28/61
Total 1961 Allowances		$ 500.00	

*See footnote on p. 813.

Cleveland, Ohio—Continued

Customer	Date Of Ad	Amount Paid	Date of Credit Memo
	—1962—		
The Halle Bros. Co.	3/11/62	$ 350.00	4/30/62
	5/17/62	250.00	*
	9/26/62	250.00	*
Total 1962 Allowances		$ 850.00	
	—1963—		
	2/25/63	$ 350.00	3/21/63
	4/1/63	350.00	5/6/63
	4/18/63	100.00	
	5/15/63	250.00	6/7/63
	7/26/63 or 7/27/63	200.00	8/30/63
	11/6/63	150.00	*
	12/4/63	350.00	*
	12/26/63	200.00	*
Total 1963 Allowances		$1,950.00	

Baltimore, Maryland

Customer	Date Of Ad	Amount Paid	Date of Credit Memo
	—1961—		
Stewart & Company	12/5/61	$ 60.00	12/1/61
	12/5/61	36.00	1/17/61
Total 1961 Allowances		$ 96.00	
	—1962—		
	12/13/62	$ 60.00	1/16/63
Total 1962 Allowances		$ 60.00	
	—1961—		
Hutzler Bros. Co.	3/16/61	$ 60.90	3/24/61
	4/11/61	123.90	5/10/61
	4/25/61	123.90	5/12/61
	5/4/61	123.90	6/21/61
	10/22/61	414.00	10/12/61
Total 1961 Allowances		$ 846.60	
	—1962—		
	10/21/62	$ 395.60	11/9/62
Total 1962 Allowances		$ 395.60 [7]	

5. The promotional payments, allowances, credits or discounts listed in paragraph four, *supra,* were made by respondent to its favored customers on a continuing, regular basis and in the normal

* Whenever blanks appear, the information has not been furnished by respondent.

[7] See footnote 4, *supra.*

course of respondent's business throughout each of the years 1961, 1962, and 1963.[8]

6. Respondent's employees negotiated with its favored customers, listed in paragraph four, *supra,* for the stated promotional payments, allowances, credits or discounts on an individual basis and without any reference to competing customers or to any standards for proportionalizing said promotional compensation. Said promotional payments, allowances, credits or discounts were made as compensation or in consideration for advertising services or facilities furnished by them in connection with their offering for sale or the sale of products sold to them by respondent. Further, they, the favored customers, selected the dress styles to be promoted and the advertising was designed to promote the entire line of respondent's products rather than just the particular dress style depicted.[9]

7. During the period 1961, 1962, and 1963, the respondent did not offer or otherwise make available on proportionally equal terms, or on any terms, the aforesaid promotional payments, allowances, credits or discounts to all other customers located in Chicago, Illinois, Cleveland, Ohio, and Baltimore, Maryland, competing in the resale of respondent's products of like grade and quality with those customers who received said allowances and listed in paragraph four, *supra.* Further, respondent's said promotional payments, allowances, credits or discounts were not offered or made available to all of its favored customers on proportionally equal terms. Respondent during the period 1961, 1962, and 1963, did not grant or offer any promotional payments, allowances, credits or discounts of any kind to the following retail department and/or specialty store customers:

Chicago, Illinois

Wolke and Kolter, Inc.,
4811 North Milwaukee Avenue.
The Home Store Co.,
11800 South Michigan Avenue.
Gassmans Incorporated,
3014 East 92nd Street.
Peoples Store of Roseland Inc.,
112–01 South Michigan Ave.
Friedman's Department Store,
5321 North Clark Street.
Cragin Department Store,
5018 Armitage Avenue.
Shulman's Apparel Shop,
5100 West Madison Street.

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[8] See footnote 4, *supra.*

[9] See footnote 4, *supra.*

The 12th Street Store,
3939 North Cicero Avenue.
Goodman's,
6242–44 South Kedzie Avenue.
Kaden's Department Store,
1942 West Monterey Avenue.
Walsdorf's Department Store,
3811 West Fullerton Avenue.

Cleveland, Ohio

Rosenbluth's Incorporated,
11616 Buckeye Road.
Buckeye Shopping Center,
9007 Buckeye Road.
Belmont Department Store,
13309 Miles Avenue.
Rosenblum's Incorporated,
321 Euclid Avenue.
The Higbee Company,
Public Square.

Baltimore, Maryland

Brager-Gutman, Inc.,
Lexington and Park Avenues.
Lee's, Inc.,
3424–26 Eastern Avenue.[10]

8. In each of the respective metropolitan trading areas the favored and nonfavored customers as listed in paragraphs four and seven, *supra,* purchased from respondent identical products at or about the same time throughout each of the years 1961, 1962 and 1963. Further, respondent's unfavored customers made purchases of dresses from respondent at or about the same time the favored customers were receiving promotional payments, allowances, credits or discounts from respondent for advertising such dresses.[11]

9. All of the unfavored customers listed in paragraph seven above compete in the resale of respondent's products of like grade and quality with all of the favored customers, listed in paragraph four, *supra,* in the metropolitan trading areas in which they are located.[12]

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

[10] See footnote 4, *supra.*
[11] See footnote 4, *supra.*
[12] See footnote 4, *supra.*

Two witnesses, Theodore Arcuni and Erwin Feldman, testified on behalf of respondent. Based upon this testimony the following additional findings are made:

11. Theodore Arcuni, the brother of Joseph P. Arcuni, testified that he has been in the garment business since 1931, in the "production end" and that he "styles" respondent's line. He said that Joseph P. Arcuni, who is the president of respondent, Gladstone-Arcuni, Inc., and the sole stockholder since he bought out Mr. Gladstone several years ago, has "headed up" the company for the last 25 years (Tr. 123, *et. seq.*).

12. Theodore Arcuni testified that he came with Gladstone-Arcuni, Inc., in September 1963, after Mr. Gladstone sold his interest, and that he took over Mr. Gladstone's functions.

13. Respondent, Gladstone-Arcuni, Inc., has a stockroom and shipping point at 71 Fifth Avenue and a showroom at 1350 Broadway, both in New York, New York. The company employs Joseph P. Arcuni, its president; Theodore Arcuni, its production manager; Kenneth Kupersmidt, a sales manager; Joseph Arcuni's son, Jon, who is in sales; three girls who do filing and light bookkeeping in the uptown showroom, and between 12 and 15 traveling salesmen. The company employs an accountant on a full time basis (Tr. 175).

14. Respondent sells its garments throughout the United States. Its sales for the years 1960–1966 were:

1960	$4,477,000
1961	$3,699,000
1962	$3,828,000
1963	$3,879,000
1964	$4,047,000
1965	$4,219,000
1966	$4,589,000

The company's fiscal year ends June 30 (Tr. 158–159).

15. Respondent's Exhibit 5(a)–(b) and respondent's Exhibit 7(a)–(g), which are Federal Trade Commission news releases, dated January 3, 1964, and August 12, 1965, respectively, and respondent's Exhibit 8 list the names of garment manufacturers that have signed agreements containing consent orders to cease and desist with the Federal Trade Commission. Based on his examination of these exhibits, Theodore Arcuni testified that 22 of the listed manufacturers made garments of the same general style, character and price as does Gladstone-Arcuni (Tr. 161). The 22 manufacturers named by him are:

Cay Artley	Sy Frankl
Barmon Brothers	Mayflower Dress Company

Cotton Club Frocks	Kathi Originals
House of Perfection	Smoler Brothers
Shelby Manufacturing Company	Cotton City Wash Frocks
Sorority Frocks	Audrey Lee
Wentworth Manufacturing	Diane Young
Gail Byron Frocks	Huntington Manufacturing
Boris Smoler & Sons	Leslie Fay
Sunnyvale, Inc.	Marlene Industries
Adele Fashions	T. P. Industries (Tr. 161.)

16. Although Theodore Arcuni characterized these 22 manufacturers as "competitors" of respondent, the reliable, substantial, and probative evidence in this record does not support a finding that the 22 manufacturers named above did in fact compete with respondent in 1961, 1962 and 1963, in Chicago, Illinois; Cleveland, Ohio; or Baltimore, Maryland, in the sale of respondent's garments. Mr. Arcuni has been with Gladstone-Arcuni only since September 1963, and was not and is not in the selling end of the business. As production manager, he has had no direct contact with respondent's customers (Tr. 172), and he has had no personal knowledge of any of the transactions that are set forth in findings 1–9, inclusive (Tr. 185). Therefore, he was not in a position to testify concerning respondent's practices and procedures in granting the advertising allowances that are the subject matter of this proceeding (Tr. 166, 169–172).

17. Theodore Arcuni admitted that he was not familiar with the advertising allowance practices of respondent either before or after he came with the business (Tr. 166), and his knowledge of advertising allowance practices in the industry generally is based upon "hearsay" (Tr. 166). He does not, and did not, participate in granting respondent's advertising allowances. It was Theodore Arcuni's opinion, not otherwise proven, that "five hundred or more" dress manufacturers made the same general line of dresses as respondent. (See also Mr. Feldman's similar estimate, Tr. 222.)

18. Respondent does not sell to chain stores, mail order houses, or discount houses. It sells to department stores and specialty shops.

19. Theodore Arcuni's testimony fails to support any findings of fact relevant to respondent's defenses that the public interest is not best served by a proceeding such as this one and that Gladstone-Arcuni's nonproportionalized advertising allowances, as found in paragraph four, were given to meet or match identical or similar advertising allowances by specifically identified competitors

of respondent in Chicago, Illinois; Cleveland, Ohio; and Baltimore, Maryland, during the years 1961, 1962 and 1963.

20. In addition to Theodore Arcuni, respondent's other witness, Erwin Feldman, its counsel, testified as an expert. Complaint counsel strenuously objected to Mr. Feldman's being a witness in a proceeding in which he is also the attorney.[13] It was and is the hearing examiner's conclusion that neither party to this proceeding has been prejudiced by Mr. Erwin Feldman's being allowed to testify. Mr. Feldman was and is knowledgeable concerning the history, evolution, and trade practices of the daytime dress manufacturing industry, of which Gladstone-Arcuni is a part. But his testimony does not prove any facts that constitute a good defense to Gladstone-Arcuni's admitted unlawful advertising allowances paid to its favored customers in Chicago, Illinois; Cleveland, Ohio; and Baltimore, Maryland, during the years 1961, 1962, and 1963.

21. Respondent's two witnesses did not identify any specific manufacturer who had competed with respondent during the relevant period for the business of Carson Pirie Scott & Co. and the Wieboldt Stores, Inc., in Chicago; The May Company and Halle Brothers Company in Cleveland; and Stewart & Company and Hutzler Brothers Company in Baltimore.

22. Mr. Feldman's testimony does not support a finding that during the years 1961, 1962, and 1963, Gladstone-Arcuni's discriminatory promotional payments and advertising allowances to its six favored customers were made to meet or match identical or similar advertising allowances or promotional payments paid by any identified Gladstone-Arcuni competitor to the above-named retail establishments.

23. The testimony of respondent's two witnesses did not prove that the 22 daytime dress manufacturers, named in finding 15, *supra,* or any other specifically identified dress manufacturer, competed with Gladstone-Arcuni. The examiner does not mean that Gladstone-Arcuni did not have competition. Gladstone-Arcuni's competition has not been identified with the particularity required in *Ace Books* (p. 808, *supra*).

24. Mr. Feldman, who has practiced law in Maryland and the District of Columbia since 1927, and in New York State since 1935 (Tr. 193), has been director and counsel of the National Association of Daytime Dress Manufacturers since 1934 (Tr. 193). The

[13] Canon 19 of the *Canons of Professional Ethics of the American Bar Association* states: "When a lawyer is a witness for his client, except as to merely formal matters, such as the attestation or custody of an instrument and the like, he should leave the trial of the case to other counsel. Except when essential to the ends of justice, a lawyer should avoid testifying in court in behalf of his client."

National Association of Daytime Dress Manfacturers has approximately 50 members[14] at the present time (Tr. 244). Mr. Feldman has handled industry matters involving the litigation of textile disputes and has appeared before governmental legislative and administrative bodies in behalf of members of the industry (Tr. 194).

25. As counsel for the National Recovery Administration Code Authority of the Cotton Garment Industry, he took part in drafting the code regulations with particular reference to the cotton garment industry (Tr. 194). In 1939, he participated in the preparation of a code of fair competition "approved by the Federal Trade Commission" for the apparel trades (Tr. 195). At that time Mr. Feldman also represented the industry before the Department of Labor in connection with the establishment of minimum rates (Tr. 195). He handled disputes in the textile industry involving working conditions and inspection. He represented the industry before the War Production Board in connection with the establishment of priorities and he represented the industry before the Office of Price Administration (Tr. 196).

26. Mr. Feldman testified that he "handled labor relations extensively" (Tr. 197). He lectured as an expert for the Philadelphia Textile Institute on apparel fabrication (Tr. 197).

27. Around 1940, the press began to refer to the garments as daytime dresses rather than as "housedresses" because they were becoming better styled all the time (Tr. 203). About four or five years ago the "National Association of Housedress Manufacturers" changed its name to "National Association of Daytime Dress Manufacturers" (Tr. 198).

28. Mr. Feldman described the evolution of the daytime dress industry from the time it made only blue denim "Mother Hubbards" through the period in which it made "housedresses" (Tr. 201), and down to and including the present period in which housedresses are styled and worn for all daytime occasions (Tr. 202).

29. Cotton gradually became accepted as a fabric for high-priced garments as well as for the lower priced lines (Tr. 202). Cotton textiles and cotton mixtures have been accepted as fabric for garments of all styles, and "a banker's wife, in an ordinary middle-class town, could wear one of our dresses to the bank, to go shopping in. She could wear it to play golf in. She could wear

[14] If there are, as respondent contends, over 500 daytime dress manufacturers similar to Gladstone-Arcuni (finding 17, *supra*), how valid are generalizations based upon the activities and observations of an organization comprising only 10% of that number?

it around the house. It was never worn as a matter of formal wear, in the evening; but it was during the entire day, the activities permitted the use of our articles" (Tr. 203).

30. Today, daytime dresses are worn by college girls while attending school and by many professional people while at work (Tr. 204). A majority of the daytime dresses are made of cotton (Tr. 204).

31. Housedresses were originally priced and sold by the dozen, whereas other more expensive dresses were priced by the unit (Tr. 206). Today the International Ladies Garment Workers Union makes different labor contracts for the daytime dress industry than it does for the unit price industry (Tr. 207). The manufacturing technique for the daytime dress industry was different from that of the higher priced dresses, but the daytime dress technique (*i.e.*, the sectional system) [15] is now more generally used in the manufacture of higher priced dresses (Tr. 208).

32. Retail establishments that sell daytime dresses today frequently have a separate daytime dress department (Tr. 209). In some stores daytime dresses are displayed alongside other dresses in competition for the consumers' dollars (Tr. 210).

Mr. Feldman testified (Tr. 210–213):

> A buyer, however, entering the store, would visit all departments, because there would be a similarity in price lines, and because the same fabrics and fivers [sic fibers] are used. There could be said to be very active competition between the two groups, and today they are mixed up together in some department stores entirely, you know.
>
> There is no distinction between [a] budget and daytime dress. In other words, some stores divide their departments up by the wholesale—their retail price levels, and they put in there unit-price dresses they buy and dozen-priced dresses, depending on what relationships they have to the seller.
>
> Now, during my upwards of thirty-some years in this industry, the problem of advertising allowances and the Robinson-Patman Act have played a great role.
>
> In 1939, when we applied to and obtained from the Commission a code of fair trade practice regulations, there was included in there a reference to the Robinson-Patman Act, particularly in connection with advertising allowances.
>
> The sections of the Robinson-Patman Act were spelled out by the Commission and placed into the regulations, because we—I must say flatly and for the record, without fear of any contradiction from anybody, that the practice of giving advertising allowances in the women's apparel trade, and particularly the dress industry, in all divisions—unit-priced as well as dozen-priced—was rampant.
>
> I would say that ninety-five percent of every manufacturer who sells to

[15] Each operator makes only one section of a garment, and the sections are then sewed together to form the completed dress.

department and specialty shops has granted, on one occasion or another, allowances of a non—what is the word I want to use?—a non—on a discriminatory basis, on an unregulated—

HEARING EXAMINER GROSS: In other words, the discriminatory—if I understand you, sir, what you are testifying to is that it has been a uniform practice throughout the industry, as to which you are testifying, for the manufacturers to make discriminatory advertising allowances?

THE WITNESS: Yes. In other words, they are not subject to any plan and not done on a uniform basis.

This practice was developed long before I came with the industry in 1936—1935, and it continued straight through up to the present day. The reason for it is simple.

Because everybody gave these allowances, the one who didn't give it was not likely to get the business from the one who wanted the allowance. Retailers had trained their buyers to ask for and receive the allowance, and the manufacturers gave it because they knew it was part of doing business.

The retailers' reasons were rather clear—and my information comes from dealing with retailers and serving on retail advisory committees where we discussed the question of just how far we are going to go with this allowance problem.

Indeed, I appeared in Washington, many years before the present investigation, to discuss with representatives of the Federal Trade Commission the problems arising out of the demands for these allowances from retailers and how we handled the problem, because the cost of doing business had increased to a point where the granting or giving of allowances was so substantial a part of the manufacturer's operations that, when business wasn't very good, the question of whether he made money or not depended on how much allowance he gave.

The manufacturer's reasons for giving an allowance were two-fold:

His first reason was to meet the competition of those who were giving it. His second reason was that it would increase the popularity of his own garment and increase his own sales. In a sense, he was gaining—while he was not advertising as a national advertiser would, he was nevertheless getting local acceptance of his garments.

It was for that reason that most daytime dress houses sold under brand names, so that the brand system began thirty-five to forty years ago in the daytime dress industry.

When he gave an allowance to a retailer, the retailer featured an ad in which he mentioned the brand name of the maker, and if enough ads appeared throughout the year, and enough dresses were purchased, after a period of time there was universal acceptance of that product in the community and then—to use the expression of the manufacturers—the manufacturer, in that instance, had a position which compelled the store frequently to buy his goods and continue to purchase from him on a regular basis because they had taken part in establishing his name to the local public.

33. Mr. Feldman testified (Tr. 224):

The fact remains, as an expert having been a director of this Association since 1934, I know as a matter of fact that there were virtually no plans of a *legalized* character in existence prior to the issuance of these complaints. (Italic supplied.)

34. Mr. Feldman's testimony will not support any finding that Gladstone-Arcuni's nonproportionalized promotional payments and advertising allowances to its favored customers in Chicago, Illinois; Cleveland, Ohio; and Baltimore, Maryland, during the years 1961, 1962 and 1963, were made to meet or match similar identified or identifiable payments or allowances by specifically identified competitors to the favored customers named in finding 4, pages 811–813, *supra*.

35. Counsel supporting the complaint has proven the material allegations of the complaint by a preponderance of reliable, probative, and substantial evidence in this record.

36. Respondent has failed to prove by reliable, probative, and substantial evidence in this record any facts which constitute good defenses in fact, or in law, to the facts proven by complaint counsel, and the conclusions to be drawn from said facts.

CONCLUSIONS

1. The Federal Trade Commission has jurisdiction over the parties to and the subject matter of this proceeding. This proceeding is in the public interest.

2. Gladstone-Arcuni, Inc., a New York corporation with its principal office and place of business at 71 Fifth Avenue, New York, New York, manufactures, distributes, and sells women's and misses daytime dresses in interstate commerce for resale at retail by department stores and specialty shops throughout the United States. It now is, and at all pertinent times has been, engaged in commerce as "commerce" is defined in the Clayton Act, as amended.

3. In the course and conduct of its business in commerce, in the cities of Chicago, Illinois; Cleveland, Ohio; and Baltimore, Maryland, during the years 1961, 1962, and 1963, respondent made nonproportionalized discriminatory advertising allowances and promotional payments to certain of its customers without making such allowances and payments available on proportionally equal terms to other customers who, in fact, competed with those customers to whom respondent had made its aforesaid payments.

4. Respondent's nonfavored customers in the cities named purchased respondent's merchandise of like grade and quality as did the favored customers at or about the same time that respondent's favored customers were receiving the promotional payments and advertising allowances set forth in finding 4, pages 811–813, *supra*.

5. During 1961, 1962, and 1963, all of respondent's favored customers competed in the cities named with respondent's non-favored customers in the resale at retail of respondent's products of like grade and quality in their respective trade areas.

6. Respondent's promotional payments and advertising allowances were not granted or offered on proportionally equal terms to all of its favored customers.

7. Respondent's discriminatory promotional payments and advertising allowances, as herein found, were not made to meet or match an identified or identifiable similar payment or allowance by an identified or identifiable manufacturer who did, in fact, compete with respondent in the cities named during the years 1961, 1962, and 1963.

8. Respondent's discriminatory promotional payments and advertising allowances, as herein found, constituted and now constitute violations of Section 2(d) of the amended Clayton Act, and should be enjoined.

ORDER

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

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

OPINION OF THE COMMISSION

This matter is before the Commission on the appeal of respondent, Gladstone-Arcuni, Inc., from an initial decision of the hearing examiner holding that respondent had violated Section 2(d) of the amended Clayton Act and ordering respondent to cease and desist from the practices found to be unlawful.

Respondent does not contest the finding that it granted discriminatory advertising allowances nor does it challenge the examiner's ruling rejecting its "meeting competition" defense. It contends, however, that it would be disadvantaged by an order to cease and desist unless all other industry members are placed under a similar restriction. We have previously considered and rejected the same argument made by the same counsel in the matter of *Rabiner & Jontow, Inc.*, Docket 8629 (1966) [70 F.T.C. 638]. The argument is again rejected for the reasons given in our decision in that matter.

The hearing examiner's initial decision will be adopted as the decision of the Commission. An appropriate order will be entered.

Commissioner Elman dissented for the reasons set forth in his dissenting opinion in Docket 8629—*Rabiner & Jontow, Inc.* [70 F.T.C. 638, 690].

Final Order

This matter having been heard by the Commission upon respondent's appeal from the hearing examiner's initial decision, and upon briefs and oral argument in support thereof and in opposition thereto, and the Commission having rendered its decision denying the appeal:

It is ordered, That the initial decision of the hearing examiner be, and it hereby is, adopted as the decision of the Commission.

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

Commissioner Elman dissenting for the reasons set forth in his dissenting opinion in Docket 8629—*Rabiner & Jontow, Inc.* [70 F.T.C. 638, 690].

In the Matter of

WENDY COAT CO., INC., ET AL.

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

Docket C-1265. Complaint, Nov. 3, 1967—Decision, Nov. 3, 1967

Consent order requiring a New York City manufacturer of ladies' coats to cease misbranding its wool products.

COMPLAINT

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

PARAGRAPH 1. Respondent Wendy Coat Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York. Its office and principal place of business is located at 266 West 37th Street, New York, New York.

Individual respondent Myles Rose is an officer of said corporate respondent. He formulates, directs and controls the acts, practices and policies of said corporate respondent, including those complained of herein. His office and principal place of business is the same as that of the corporate respondent.

Said respondents manufacture and distribute wool products among which are ladies' coats.

PAR. 2. Now and for some time last past, respondents have manufactured for introduction into commerce, introduced into commerce, sold, transported, distributed, delivered for shipment, shipped, and offered for sale in commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939, wool products as "wool product" is defined therein.

PAR. 3. Certain of said wool products were misbranded by the respondents within the intent and meaning of Section 4(a)(1) of the Wool Products Labeling Act of 1939 and Rules and Regulations promulgated thereunder, in that they were falsely and deceptively stamped, tagged, labeled, or otherwise identified with respect to the character and amount of the constituent fibers contained therein.

Among such misbranded wool products, but not limited thereto, were women's coats stamped, tagged, labeled, or otherwise identified by respondents to show that the shells or outer portions thereof were composed of "70% reprocessed wool, 15% fur fibers, 15% nylon," whereas in truth and in fact, said shells or outer portions contained substantially different fibers and amounts of fibers than represented.

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

Among such misbranded wool products, but not limited thereto, were wool products with labels on or affixed thereto, which failed to disclose the percentages of the total fiber weight of the said wool products, exclusive of ornamentation not exceeding 5% of the total fiber 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. 5. Certain of said wool products were misbranded by respondents in violation of the Wool Products Labeling Act of 1939 in that they were not labeled in accordance with the Rules and Regulations promulgated thereunder in the following respects:

A. Samples, swatches or specimens of wool products used to promote or effect sales of such wool products in commerce, were not labeled or marked to show the information required under Section 4(a)(2) of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, in violation of Rule 22 of the aforesaid Rules and Regulations.

B. The fiber content of linings, composed of pile fabrics or of fabrics incorporated into woolen garments or articles of wearing apparel for warmth, was not set forth separately and distinctly in the stamp, tag, label, or other mark of identification of such wool products, in violation of Rule 24 of the aforesaid Rules and Regulations.

PAR. 6. The acts and practices of the respondents as set forth above were, and are, in violation of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, and constituted, and now constitute, unfair methods of competition and unfair and deceptive acts and practices, in commerce, within the intent and meaning of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Textiles and Furs proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, 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 alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Acts, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in § 2.34(b) of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Wendy Coat Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 266 West 37th Street, New York, New York.

Respondent Myles Rose 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 Wendy Coat Co., Inc., a corporation, and its officers, and Myles Rose, 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 ladies' woolen coats, or other wool products, as "commerce" and "wool product" are defined in the Wool Products Labeling Act of 1939, do forthwith cease and desist from:

A. Misbranding such products by:

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

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

3. Failing to affix labels or other markings to samples, swatches and specimens of wool products used to promote or effect sales of such wool products in commerce, showing in words and figures plainly legible all of the information required to be disclosed by each of the subsections of Section 4(a)(2) of the Wool Products Labeling Act of 1939.

4. Failing to set forth the fiber content of linings, composed of pile fabrics or of fabrics incorporated into woolen garments or articles of wearing apparel for warmth, separately and distinctly, in the stamp, tag, label, or other mark of identification of such wool 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

WERTS NOVELTY COMPANY, INC., ET AL.

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

Docket C-1266. Complaint, Nov. 3, 1967—Decision, Nov. 3, 1967

Consent order requiring a Muncie, Ind., corporation to cease using punchboards and other such devices to sell its merchandise by games of chance, gift enterprise, or lottery scheme.

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 Werts Novelty Company, Inc., a corporation, and O. Norman Wilner, 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 Werts Novelty Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Indiana, with its office and principal place of business located at 1520 West 5th Street, in the city of Muncie, State of Indiana.

Respondent O. Norman Wilner is an individual, and is president 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 business address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the manufacturing, offering for sale, sale and distribution of various converted paper products of their own and other firms' manufacture, including punchboards and other devices. Respondents sell such devices to jobbers and distributors for resale to retail customers and also sell to other purchasers.

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

PAR. 4. In the course and conduct of their business as hereinabove described, respondents sell and distribute, and have sold and distributed, to said jobbers, distributors and other purchasers, punchboards and other devices which are designed or intended for use as games of chance, gift enterprises or lottery schemes in selling or distributing merchandise to members of the general public. Many of respondents' said devices have blank spaces on the face thereof so that said purchasers or their customers may place instructions or labels thereon, to explain the manner in which said devices are to be used, or may be used, in the sale or distribution of various articles of merchandise to the general public. Said devices are frequently used by said purchasers or their customers in selling or distributing merchandise to the general public in the following manner:

The price of a punch or selection from a punchboard or other device varies in accordance with the instructions attached thereto. When a printed slip is separated from such device by punching, tearing or other means, a previously concealed number is disclosed. Certain designated numbers entitle the participant to a specified article of merchandise according to the particular instructions attached to the device. Participants who select lucky or winning numbers receive the specified articles of merchandise without additional cost. Participants who do not select such lucky or winning numbers receive nothing for their money other than the privilege of selecting a slip from said punchboard or other device. The various articles of merchandise used in combination with said punchboards or other devices are thus sold or distributed to members of the general public wholly by lot or chance.

The use to be made of such punchboards or other such devices, and the manner in which they are used by purchasers from respondents or their customers, is in combination with various articles of merchandise, so as to enable them to sell or distribute said merchandise by means of lot or chance as herein alleged.

PAR. 5. Many persons, firms and corporations engaged in the sale and distribution of merchandise, pack and assemble, or have packed and assembled, various articles of merchandise into assortments combining such articles with punchboards or other devices sold and distributed by respondents. Many retail dealers have exposed said assortments to the general public and have sold or distributed said articles of merchandise by means of said devices to members of the general public in the manner hereinabove described. Because of the element of chance involved in connection with the sale and distribution of said merchandise by means of said devices, many members of the general public have been induced to trade or deal with retail dealers selling or distributing said merchandise by means thereof. As a result thereof many of said retail dealers have been induced to deal with respondents' jobbers and distributors who sell and distribute said merchandise in combination with respondents' said devices.

PAR. 6. The sale and distribution of merchandise to the general public through the use of, or by means of, such punchboards or other devices in the manner above alleged involves a game of chance or the sale of a chance to procure articles of merchandise at prices lower than the normal retail price thereof and teaches and encourages gambling among members of the public, all to the injury of the public. The sale of said devices for use in the sale or distribution of said merchandise is a practice which is contrary to an established public policy of the Government of the United States and constitutes unfair acts and practices in said commerce.

The sale and distribution of said punchboards and other devices by respondents, as hereinabove alleged, supplies to and places in the hands of others the means of conducting lotteries, games of chance or gift enterprises, in the sale or distribution of said merchandise. Respondents, through their jobbers, distributors and their other customers thus supply to, and place in the hands of, said persons, firms and corporations, the means of, and instrumentalities for, engaging in unfair methods of competition and unfair acts and practices within the intent and meaning of the Federal Trade Commission Act.

PAR. 7. The aforesaid acts and practices of respondents, as hereinabove alleged, are all to the prejudice and injury of the public and constitute unfair 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 the 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 alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission, having considered the agreement and having accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of 30 days, now in further conformity with the procedure prescribed in § 2.34(b) of its Rules, the Commission hereby issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Werts Novelty Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Indiana, with its office and principal place of business located at 1520 West 5th Street, in the city of Muncie, State of Indiana.

Respondent O. Norman Wilner is an individual and is president 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 the respondents Werts Novelty Company, Inc., a corporation, and its officers, and O. Norman Wilner, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, do forthwith cease and desist from:

> Selling or distributing in commerce, as "commerce" is defined in the Federal Trade Commission Act, punchboards or other devices, which are designed or intended to be used in the sale or distribution of merchandise to the public by means of a game of chance, gift enterprise, or lottery scheme.

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

JOHN K. BURCH COMPANY ET AL.

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

Docket C-1267. Complaint, Nov. 14, 1967—Decision, Nov. 14, 1967

Consent order requiring a Grand Rapids, Mich., wholesaler of upholstery fabrics to cease misbranding and falsely advertising its textile fiber products.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Textile Fiber Products Identification Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that John K. Burch Company, a corporation, and John L. Kirchoff, Thomas C. Zoellner and Armand F. Burch, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the 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 John K. Burch Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Michigan.

Respondents John L. Kirchhoff, Thomas C. Zoellner and Armand F. Burch are officers of the corporate respondent. They formulate, direct and control the acts, practices and policies of said corporate respondent, including the acts and practices hereinafter set forth.

Respondents are wholesalers of upholstery fabrics and supplies, with their office and principal place of business located at 40 Cherry Street, S.W. Grand Rapids, Michigan.

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

PAR. 3. Certain of said textile fiber products were misbranded by respondents within the intent and meaning of Section 4(a) of the Textile Fiber Products Identification Act and the Rules and Regulations promulgated thereunder, in that they were falsely and deceptively stamped, tagged, labeled, invoiced, advertised, or otherwise identified as to the name or amount of the constituent fibers contained therein.

Among such misbranded textile fiber products but not limited thereto, were textile fiber products, namely upholstery fabrics, containing more than one fiber with labels which set forth the generic name of a particular fiber, namely nylon, in such a manner as to over emphasize the nylon content of the product, to detract from the required fiber content disclosure and to represent or imply, that the products were composed entirely of nylon when in truth and in fact the products contained fibers other than nylon.

Also among such misbranded textile fiber products, but not limited thereto, were textile fiber products which were falsely and deceptively advertised by means of price lists which set forth the fiber content as, for example, "Horizon Nylon Frieze," in such a manner as to represent or imply that the products were composed entirely of nylon when in truth and in fact such products contained fibers other than nylon.

PAR. 4. Certain of such textile fiber products were further misbranded by respondents in that they were not stamped, tagged, labeled or otherwise identified as required under the provisions of Section 4(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 with labels which failed:

1. To disclose the true generic names of the fibers present; and

2. To disclose the name, or other identification issued and registered by the Commission, of the manufacturer of the product or one or more persons subject to Section 3 of the said Act, with respect to such product.

PAR. 5. Certain of said textile fiber products were 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 the following respects:

A. Nonrequired information was placed on labels in such a manner as to minimize, detract from, and conflict with the required information and in such a way as to be false or deceptive as to fiber content, in violation of Rule 16(c) of the aforesaid Rules and Regulations.

B. Generic names and fiber trademarks were used on labels without a full and complete fiber content disclosure appearing on such labels, in violation of Rule 17(b) of the aforesaid Rules and Regulations.

C. Generic names of fibers were used in nonrequired information on labels in such a manner as to be false, deceptive or misleading as to fiber content, and to indicate, directly or indirectly, that such textile fiber products were composed wholly or in part of a particular fiber, when such was not the case, in violation of Rule 17(d) of the aforesaid Rules and Regulations.

PAR. 6. Certain of said textile fiber products were falsely and deceptively advertised in that respondents in making disclosures or implication as to the fiber content of such textile fiber products in written advertisements used to aid, promote and assist, directly or indirectly, in the sale or offering for sale of said products failed to set forth the required information as to fiber content as specified by Section 4(c) of the Textile Fiber Products Identification Act and in the manner and form prescribed by the Rules and Regulations promulgated under said Act.

Among such textile fiber products, but not limited thereto, were upholstery fabrics which were falsely and deceptively advertised by means of price lists, distributed by respondents throughout the United States in that the true generic name of each fiber present in the products was not set forth.

PAR. 7. By means of the aforesaid advertisements and others of similar import and meaning not specifically referred to herein, respondents falsely and deceptively advertised textile fiber products in violation of the Textile Fiber Products Identification Act in that said textile fiber products were not advertised in accordance with the Rules and Regulations promulgated thereunder in the following respects:

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

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

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

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

PAR. 8. The acts and practices of respondents as set forth above were and are in violation of the Textile Fiber Products Identification Act and the Rules and Regulations promulgated thereunder, and constituted and now constitute unfair methods of competition and unfair and deceptive acts or practices, in commerce, under the Federal Trade Commission Act.

DECISION AND ORDER

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

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

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Acts, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in § 2.34(b) of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent John K. Burch Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Michigan, with its office and principal place of business located at 40 Cherry Street, SW. Grand Rapids, Michigan.

Respondents John L. Kirchhoff, Thomas C. Zoellner and Armand F. Burch are officers of said corporation and their address is the same as that of said corporation.

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

ORDER

It is ordered, That respondents John K. Burch Company, a corporation, and its officers, and John L. Kirchhoff, Thomas C. Zoellner and Armand F. Burch, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, delivery for introduction, sale, advertising, or offering for sale in commerce, or the transportation or causing to be transported in commerce, or the importation into the United States of any textile fiber product; or in connection with the sale, offering for sale, advertising, delivery, transportation or causing to be transported, of any textile fiber product, which has been advertised or offered for sale in commerce; or in connection with the sale, offering for sale, advertising, delivery, transportation or causing to be transported, after shipment in commerce of any textile fiber product, whether in its original state or contained in other textile fiber products, as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act, do forthwith cease and desist from:

A. Misbranding textile fiber products by:

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

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

3. Placing non-required information on labels in such a manner as to minimize, detract from, or conflict with the required information or to be false or deceptive as to fiber content.

4. Using a generic name or fiber trademark on any label, whether required or nonrequired, without making a full and complete fiber content disclosure in accordance with the Act and the Rules and Regulations thereunder

the first time such generic name or fiber trademark appears on the label.

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

B. Falsely and deceptively advertising textile fiber products by:

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

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

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

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

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

It is further ordered, That 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

MAPLE MANUFACTURING CO. ET AL.

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

Docket C-1268. Complaint, Nov. 20, 1967—Decision, Nov. 20, 1967

Consent order requiring a Philadelphia, Pa., manufacturer of athletic uniforms and jackets to cease misbranding its wool products and falsely advertising its textile products.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission 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 Maple Manufacturing Co., a corporation, and Martin Surkin and Natalie Surkin, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the 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 Maple Manufacturing Co. is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Pennsylvania.

Individual respondents Martin Surkin and Natalie Surkin are officers of the corporate respondent. They formulate, direct and control the acts, practices and policies of said corporation, including the acts and practices hereinafter referred to.

The proposed respondents are engaged in the manufacturing of wool and textile athletic uniforms and jackets, with their office and principal place of business located at 1238 Callowhill Street, Philadelphia, Pennsylvania.

PAR. 2. Respondents now, and for some time last past, have manufactured for introduction into commerce, introduced into commerce, sold, transported, distributed, delivered for shipment, shipped and offered for sale, in commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939, wool products as "wool product" is defined therein.

PAR. 3. Certain of said wool products were misbranded by the respondents within the intent and meaning of Section 4(a) (1) of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, in that they were falsely and deceptively stamped, tagged, labeled, or otherwise identified with respect to the character and amount of the constituent fibers contained therein.

Among such misbranded wool products, but not limited thereto, were fabrics stamped, tagged, labeled or otherwise identified as containing all wool whereas in truth and in fact, such fabrics contained substantially different fibers and amounts of fibers than represented.

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

Among such misbranded wool products, but not limited thereto, were certain wool products namely fabrics with labels on or affixed thereto, which failed to disclose the percentage of the total fiber weight of the wool products, exclusive of ornamentation not exceeding 5 per centum of said total fiber 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 per centum or more; and (5) the aggregate of all other fibers.

PAR. 5. The acts and practices of the respondents as set forth above were, and are, in violation of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, and constituted, and now constitute, unfair methods of competition and unfair and deceptive acts and practices, in commerce, within the intent and meaning of the Federal Trade Commission Act.

PAR. 6. Respondents are now, and for some time last past have been, 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. 7. Certain of said textile fiber products were falsely and deceptively advertised in that respondent in making disclosures or implications as to the fiber content of such textile fiber products in written advertisements used to aid, promote, and assist, directly or indirectly, in the sale or offering for sale of said products, failed to set forth the required information as to fiber content as specified by Section 4(c) of the Textile Fiber Products Identification Act and in the manner and form prescribed by the Rules and Regulations promulgated under said Act.

Among such textile fiber products, but not limited thereto, were textile products which were falsely and deceptively advertised by means of a catalogue distributed by respondents throughout the United States in that the said textile products were advertised by means of fiber implying terms such as "flannel," "poplin" and "corduroy," without disclosing the generic name of the fibers contained in the garment.

PAR. 8. By means of the aforesaid advertisements and others of similar import and meaning not specifically referred to herein, respondents falsely and deceptively advertised textile fiber products in violation of the Textile Fiber Products Identification Act in that said textile fiber products were not advertised in accordance with the Rules and Regulations promulgated thereunder in that required information was set forth in the aforesaid advertisements in abbreviated form.

PAR. 9. The acts and practices of the respondents as set forth above in Paragraphs Seven and Eight 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 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 respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Acts, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in § 2.34(b) of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Maple Manufacturing Co. is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Pennsylvania, with its office and principal place of business located at 1238 Callowhill Street, Philadelphia, Pennsylvania.

Respondents Martin Surkin and Natalie Surkin are officers of said corporation and their address is the same as that of said corporation.

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

ORDER

It is ordered, That respondents Maple Manufacturing Co., a corporation, and its officers, and Martin Surkin and Natalie Surkin, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, or manufacture for introduction, into commerce, or the 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 such products by:

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

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

It is further ordered, That respondents Maple Manufacturing Co., a corporation, and its officers, and Martin Surkin and Natalie Surkin, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, delivery for introduction, manufacture for introduction, sale, advertising, or offering for sale, in commerce, or the transportation or causing to be transported in commerce, or in the importation into the United States, of any textile fiber product; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, of any textile fiber product which has been advertised or offered for sale in commerce; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, after shipment in commerce, of any textile fiber product, whether in its original state or contained in other textile fiber products, as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act, do forthwith cease and desist from falsely and deceptively advertising textile fiber products by:

1. Making any representations by disclosure or by implication, as to the fiber content of any textile fiber product in any written advertisement which is used to aid, promote, or assist, directly or indirectly, in the sale or offering for sale of such textile fiber product, unless the same information required to be shown on the stamp, tag, label or other means

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

2. Setting forth information required under the Textile Fiber Products Identification Act and the Rules and Regulations promulgated thereunder in abbreviated form.

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

APPLIANCE PRODUCT SERVICE ET AL.

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

Docket C-1269. Complaint, Nov. 20, 1967—Decision, Nov. 20, 1967

Consent order requiring a Philadelphia, Pa., appliance repair concern to cease misrepresenting the quality of its service, the location of its business, making deceptive guarantees, and removing appliances unnecessarily to its shop for repairs.

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 Appliance Product Service, a partnership, and Leon C. Sack, and Julius C. Sack also known as Jules C. Sack, individually and as copartners trading and doing business as Appliance Product Service, 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 Appliance Product Service is a partnership comprised of the subsequently named individuals who formulate, direct and control the acts and practices of said partnership, including the acts and practices hereinafter set forth. The office and principal place of business of said partnership is located at 2061–2063 East Chelten Avenue, Philadelphia, Pennsylvania.

Respondents Leon C. Sack and Julius C. Sack also known as Jules C. Sack are individuals and copartners trading and doing business as Appliance Product Service with their office and principal place of business located at the same address as that of the said partnership.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the sale of appliances and parts and in the servicing and repairing of refrigerators, freezers, water coolers, air conditioners, and other appliances for 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 and services and repairs to be advertised in the classified business section of the telephone directories of Philadelphia, Pennsylvania and other areas, some of which are located in States other than the State of Pennsylvania and in other advertising media having and being circulated and distributed in and between the State of Pennsylvania and various other States of the United States; and when sold to be shipped from their place of business in the State of Pennsylvania to purchasers thereof located in various other States of the United States; and in a substantial number of instances caused the appliances and products of their customers on which repairs were to be made to be shipped from said customers' residence or place of business in States other than the State of Pennsylvania to respondents' said place of business in the State of Pennsylvania and returned. Respondents, therefore, maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products, parts, services and repairs 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 sale of their services and repairs, respondents have made numerous statements and representations in advertisements inserted in the yellow pages of telephone directories, as aforesaid, with respect to the character and quality of their services, repairs, the guarantees given in connection therewith, and the location of their business and facilities.

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

EMERGENCY
SERVICE
REFRIGERATORS
FREEZERS

RADIO DISPATCHED SERVICEMEN
COVERING ENTIRE CAMDEN COUNTY
Genuine Factory Parts
Service on

Frigidaire	General Electric
Westinghouse	Amana
Hotpoint	Admiral
Norge	Philco
Kelvinator	Jordon
Crosley	Coldspot

RCA-Whirlpool
Written Guarantee with every repair
966-7300 Covering Entire Camden County
Appliance Product Service
120 N. 8th Street, Camden

* * * * * * *

Each customer of the respondents receives a sales slip which contains the following representation:

GUARANTEE: All repairs listed above are guaranteed for a period of 90 days from date.

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 represent, and have represented, directly or by implication, that:

1. They provide satisfactory service or repairs on the above appliances.

2. They unconditionally guarantee all products, repairs, or services and that respondents in fact fulfill all of their requirements and obligations under the terms of such guarantees.

3. They operate a "Local" service and repair business at 120 N. 8th Street, Camden, New Jersey, for the public who reside in Camden, New Jersey, and surrounding areas.

PAR. 6. In truth and in fact:

1. Respondents do not provide satisfactory service or repairs on said appliances.

2. Respondents do not unconditionally guarantee all products, repairs, and services and do not in fact fulfill all of their requirements and obligations under such guarantees. In fact, such guarantees have conditions and limitations as to parts, labor and other service charges not specifically set out therein.

3. Respondents do not operate a "Local" service and repair business on major appliances at 120 N. 8th Street, Camden, New

Jersey, for the public who reside in Camden, New Jersey, and surrounding areas. In fact, 120 N. 8th Street is an address for a commercial answering service in Camden, New Jersey. Their only place of business is at 2061–2063 East Chelten Avenue, Philadelphia, Pennsylvania.

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 their business, respondents' servicemen orally represent and have represented to prospective customers that their said appliances or parts thereof could not be serviced or repaired on the premises and that it would be necessary to take said appliances or parts thereof to the respondents' place of business for service and repairs.

PAR. 8. In truth and in fact, most service and repairs of such appliances or parts thereof can and could have been made on the premises and it was not necessary to take said appliances or parts thereof to the respondents' place of business for service and repairs. Such acts by respondents greatly inconvenienced the owners, added substantial additional charges and frequently resulted in damage to the appliances and to the owners' premises.

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

PAR. 9. In the conduct of their business, at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals who sell, service or repair products of the same general kind and nature as those sold, serviced or repaired 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' goods and services by reason of said erroneous and mistaken belief.

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

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 the 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 alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission, having considered the agreement and having accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of 30 days, now in further conformity with the procedure prescribed in § 2.34(b) of its Rules, the Commission hereby issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Appliance Product Service is a partnership comprised of Leon C. Sack and Julius C. Sack, with its office and principal place of business located at 2061–2063 East Chelten Avenue, Philadelphia, Pennsylvania.

Respondents Leon C. Sack and Julius C. Sack, also known as Jules C. Sack, are individuals and copartners of said partnership and their address is the same as that of said partnership.

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

ORDER

It is ordered, That respondents Appliance Product Service, a partnership, and Leon C. Sack, and Julius C. Sack, also known as Jules C. Sack, individually and as copartners trading and doing business as Appliance Product Service, or under any other name or names, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution or servicing or repairing of refrigerators, freezers, water coolers, air conditioners, or other appliances 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 they perform satisfactory services or repairs on all appliances serviced or repaired by them: *Provided, however,* That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that all services and repairs on said appliances were in fact satisfactorily performed as represented;

2. Representing, directly or by implication, that any service or repair of any product 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;

3. Failing to perform fully and with reasonable promptness all of their requirements and obligations under the terms of the guarantee as represented;

4. Representing, directly or by implication, that they operate a local service or repair business at 120 N. 8th Street, Camden, New Jersey, or at any other address: *Provided, however,* That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that in fact they maintain a repair and service business at the address or addresses represented;

5. Representing, directly or by implication, that services or repairs of customers' appliances or parts thereof can not be performed on the premises where the appliances or parts thereof are located or that it is necessary to take said appliances or parts thereof from the premises where the appliances or parts thereof are located to another location for services or repairs; or from taking said appliances or parts thereof from the premises where the appliances or parts thereof are located to another location: *Provided, however,* That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that the aforesaid removal was required to perform the services or repairs made by them.

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

CONTINENTAL OIL COMPANY ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION ACT AND SEC. 7 OF THE CLAYTON ACT

Docket C-1270. Complaint, Nov. 21, 1967—Decision, Nov. 21, 1967

Consent order requiring two corporations with headquarters in New York City to terminate a joint venture in the manufacture and sale of vinyl chloride monomer (VCM) and requiring Continental to sell two acquired affiliated producers of polyvinyl chloride resins (PVC).

COMPLAINT

The Federal Trade Commission, having reason to believe that Continental Oil Company and Stauffer Chemical Company have violated the provisions of Section 7 of the Clayton Act and Section 5(a) (1) of the Federal Trade Commission Act, 15 U.S.C. § § 18 and 45(a) (1), and that a proceeding in respect thereof would be to the interest of the public, issues this complaint stating its charges as follows:

I. DEFINITIONS

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

(a) Vinyl chloride monomer—a chemical identity, $CH_2{=}CHC1$, also called monochloroethylene;

(b) Polyvinyl chloride resin—polyvinyl chloride homopolymers and polyvinyl chloride copolymers:

(1) Polyvinyl chloride homopolymer—a resin produced by the polymerization of vinyl chloride monomer;

(2) Polyvinyl chloride copolymer—a resin which by weight contains 50 percent or more vinyl chloride monomer copolymerized with other comonomers such as vinyl acetate or vinylidene chloride;

(c) Polyvinyl chloride compound—polyvinyl chloride resin mixed physically, usually under heat and pressure, with plasticizers, fillers, stabilizers, pigments or other additives.

II. THE RESPONDENTS

A. Continental Oil Company

2. Respondent Continental Oil Company ("Continental") is a corporation organized and existing under the laws of the State of Delaware, with its principal office and principal place of business at 30 Rockefeller Plaza, New York, New York 10020.

3. Continental, in 1965, was the 37th largest industrial corporation in the United States in terms of sales and the 28th

largest in terms of assets. Continental's total sales in 1965, excluding excise taxes, were almost $1.5 billion; its assets, as of December 31, 1965, were more than $1.6 billion; and its retained earnings exceeded $660 million.

4. Continental, together with its consolidated subsidiaries, is a fully integrated oil company which distributes petroleum products in almost every State of the United States. Its operations include exploration for and production of crude oil and natural gas; the refining, transporting and marketing of petroleum; and the manufacture and marketing of petrochemical chemical products.

5. In December, 1964, Continental acquired the assets of Carlon Products Corporation, previously a 53.8 percent owned subsidiary, which manufactures plastic pipe and fittings from various materials including polyvinyl chloride resins and compounds.

6. Continental produces in its own plants and through affiliates a variety of chemical and plastics products, most of which are petroleum based. Sales of chemicals, carbon blacks and plastics were $132 million in 1965.

7. Continental is and for many years has been extensively engaged in the purchase, sale and shipment across State lines of petroleum, chemicals and other products. Continental is engaged in "commerce" within the meaning of the Clayton and Federal Trade Commission Acts.

B. Stauffer Chemical Company

8. Respondent Stauffer Chemical Company ("Stauffer") is a corporation organized and existing under the laws of the State of California, with its principal office and principal place of business at 380 Madison Avenue, New York, New York 10017.

9. Stauffer, in 1965, was the 210th largest industrial corporation in the United States in terms of sales and the 161st largest in terms of assets. Stauffer's total sales in 1965 exceeded $326 million; its assets, as of December 31, 1965, were approximately $324 million; and its retained earnings were more than $117 million.

10. Stauffer is principally a producer of industrial and agricultural chemicals. The products of its Plastics Division, one of Stauffer's seven domestic operating divisions, include polyvinyl chloride resins and vinyl film and sheeting.

11. Stauffer is a significant producer of polyvinyl chloride resins. Its new plant at Delaware City, Delaware went on stream in the spring of 1966 and has a projected capacity of 60 million pounds of polyvinyl chloride resins per year by 1967.

12. Toscony-Kayetex, a wholly owned subsidiary of Stauffer, produces flexible vinyl film and sheeting, printed vinyl fabrics and laminates of vinyl with other materials. In the first six months of 1965, Toscony-Kayetex processed almost 9 million pounds of polyvinyl chloride resins.

13. Stauffer produces substantial amounts of chlorine, a basic raw material for vinyl chloride monomer. In 1964, Stauffer produced nearly 388 million pounds of chlorine.

14. Stauffer is a participant with Atlantic Richfield Company in American Chemical Corporation, a joint venture established in 1958 for the production of vinyl chloride monomer, polyvinyl chloride and other products. Stauffer is also a participant with American Hoechst Corporation, a wholly owned subsidiary of Farbwerke Hoechst A. G. of West Germany, in Stauffer Hoechst Polymer Corporation, a joint venture established in 1964 for the production of rigid vinyl film and sheeting.

15. Stauffer is and for many years has been extensively engaged in the purchase, sale and shipment across State lines of industrial and agricultural chemicals, plastics and other products. Stauffer is engaged in "commerce" within the meaning of the Clayton and Federal Trade Commission Acts.

III. THE NATURE OF TRADE AND COMMERCE

A. Vinyl Chloride Monomer

16. The vinyl chloride monomer industry has grown rapidly. Between 1960 and 1965 production of vinyl chloride monomer doubled. In 1965, over two billion pounds of vinyl chloride monomer, valued at approximately $121 million, were produced.

17. Vinyl chloride monomer is manufactured for principally one use, the production of polyvinyl chloride resins. For this reason, the growth of the vinyl chloride monomer industry is closely related to the increasing use of polyvinyl chloride resins and compounds.

18. Vinyl chloride monomer may be produced by cracking ethylene dichloride or by reacting acetylene with hydrogen chloride in the presence of a catalyst. The essential raw materials for the first process are ethylene and chlorine and for the second process, acetylene. Present indications are that domestic ethylene-based plants produce more economically than acetylene-based plants.

19. The vinyl chloride monomer industry is highly concentrated. In 1965, there were 13 companies producing vinyl chloride

monomer. In that year, the top four and nine firms accounted for 62.9 and 91.2 percent, respectively, of total industry production.

20. Barriers to entry into the production of vinyl chloride monomer are significant. One of these entry barriers is economies of scale. The average sized plant in 1965 had a capacity of approximately 150 million pounds per year and the smallest had a capacity of about 40 million pounds per year. Another entry barrier results from the widespread vertical integration of vinyl chloride monomer producers forward into the production of polyvinyl chloride resins and backward into the production of essential raw materials.

B. Polyvinyl Chloride Resin

21. The polyvinyl chloride resin industry has been characterized by rapid growth. Since 1960, production of polyvinyl chloride resins has almost doubled. In 1965, over 1.8 billion pounds of polyvinyl chloride resins, valued at approximately $312 million, were produced.

22. A variety of products can be made from polyvinyl chloride resins and compounds, including pipe, pipe fittings, rigid sheet, containers, phonograph records, floor tile, wall coverings, shower curtains, raincoats, tubing and, more recently, bottles.

23. The polyvinyl chloride resin industry is highly concentrated. In 1965, there were 28 companies producing polyvinyl chloride resins, but the top four companies accounted for 47.3 percent of total production of these resins, and the top eight companies accounted for 70.7 percent.

24. Widespread backward and forward vertical integration of polyvinyl chloride resin producers provides significant barriers to entry into the polyvinyl chloride resin industry.

IV. ACQUISTION OF THE THOMPSON COMPANIES

A. Description of The Thompson Companies

25. On September 18, 1964, Continental entered into a contract with the stockholders of Thompson Chemical Company and Apex Tire and Rubber Company, both Rhode Island corporations, and Monroe Manufacturing Company, a Mississippi corporation (hereinafter referred to collectively as the "Thompson Companies"), whereby Continental acquired all the issued and outstanding capital stock of the Thompson Companies and certain real estate utilized by the Thompson Companies and owned by Hay Realty Corporation, a Rhode Island corporation. The consideration paid by Continental was $30 million plus an additional

sum, contingent on the earnings of the acquired companies, not to exceed $6 million.

26. At the time of acquisition, the Thompson Companies were the largest producers of polyvinyl chloride resins without a captive source of vinyl chloride monomer. They ranked among the eight largest producers of polyvinyl chloride resins in 1963, the year prior to acquisition by Continental.

27. In 1963, the Thompson Companies sold over 94 million pounds of polyvinyl chloride resins for more than $12.5 million. Total sales by the Thompson Companies in 1963 were in excess of $33 million.

28. At the time of their acquisition by Continental and continuing until their dissolution, Thompson Chemical Company, Apex Tire and Rubber Company and Monroe Manufacturing Company were engaged in the purchase of vinyl chloride monomer and/or other chemical and nonchemical products and in the sale and shipment of polyvinyl chloride resins and compounds and/or other chemical and nonchemical products across State lines. Each of the aforesaid companies was engaged in "commerce" within the meaning of the Clayton and Federal Trade Commission Acts.

B. Background of the Acquisition

29. As early as 1961, officials of Continental planned a vinyl chloride petrochemical complex for the production of both vinyl chloride monomer and polyvinyl chloride resins.

30. At the time that the acquisition of the Thompson Companies was under study, the determination of the value of the Thompson Companies to Continental was predicated on the premise that Continental would soon be a basic manufacturer of vinyl chloride monomer.

31. The Thompson Companies were liquidated into Continental in December 1964. The former assets of the Thompson Companies are now being operated by Thompson Apex Company, a Delaware corporation wholly owned by Continental.

C. Violations

32. Continental's acquisition of all the capital stock of the Thompson Companies and certain realty owned by Hay Realty Corporation may substantially lessen competition or tend to create a monopoly in the vinyl chloride monomer and/or polyvinyl chloride resin industries in the United States in violation of Section 7 of the Clayton Act, and the contract whereby such acquisition was made and the combination between Continental and the Thompson Companies are in unreasonable restraint of trade and

commerce and may hinder or have a dangerous tendency to hinder competition unduly in the vinyl chloride monomer and/or polyvinyl chloride resin industries thereby constituting an unfair act or method of competition in commerce in violation of Section 5 of the Federal Trade Commission Act, in that the following effects, among others, may result:

(a) Actual or potential foreclosure may result from the elimination of the Thompson Companies as independent customers of vinyl chloride monomer, thus depriving competitors of Continental of a fair opportunity to compete;

(b) The elimination of a significant independent producer of polyvinyl chloride resins may have a tendency to accelerate the trend toward vertical integration and elimination of independent producers of vinyl chloride monomer and of other independent producers of polyvinyl chloride resins;

(c) Potential competition in the production and sale of polyvinyl chloride resins may be substantially lessened; but for the acquisition, Continental was a significant potential entrant into the production of polyvinyl chloride resins;

(d) Actual and potential competition in the production and sale of vinyl chloride monomer and polyvinyl chloride resins may be substantially lessened by reason of the heightened barriers to entry resulting from the acquisition;

(e) Already high concentration levels in the production and sale of vinyl chloride monomer and polyvinyl chloride resins may be substantially increased and the possibility of deconcentration lessened;

(f) Continental will have competitive advantages over nonintegrated producers of vinyl chloride monomer and polyvinyl chloride resins to the detriment of actual and potential competition; and

(g) Nonintegrated producers of polyvinyl chloride resins will be deprived of a noncompeting source of supply of vinyl chloride monomer.

V. JOINT VENTURE OF CONTINENTAL AND STAUFFER

A. Description of the Joint Venture

33. On April 1, 1966, Continental and Stauffer executed a "Monomer Agreement," effective February 1, 1966, establishing a joint venture. By this agreement each firm acquired an equal undivided interest in a vinyl chloride monomer plant being jointly constructed by the companies. The plant is being built at a projected cost of $18.5 million on a site at Lake Charles, Louisiana which, prior to the effective date of the agreement, was wholly

owned by Continental. Pursuant to "Related Agreements" to the "Monomer Agreement," Stauffer acquired from Continental an undivided one-half interest in the plant site and also agreed to operate the plant utilizing Stauffer technology. Continental, pursuant to the "Related Agreements," acquired from Stauffer all of the latter's "Technical Information" and an option to license "Stauffer's Technical Information," both of which relate to vinyl chloride monomer. (The "Monomer Agreement" and "Related Agreements" are hereinafter referred to collectively as the "contract.")

34. The vinyl chloride monomer plant will have a capacity of 600 million pounds per year; Continental and Stauffer each has a right to purchase one-half of the output. Operations are projected at 75 percent capacity in 1968 and 100 percent capacity in 1970, thus creating one of the largest producers in the industry.

B. Background of the Establishment of the Joint Venture

35. For several years prior to the establishment of this joint venture, Continental had been working on developing a process for the production of vinyl chloride monomer on a commercial scale. The process Continental was developing served as one of the bases for its evaluation of the profitability of an integrated vinyl chloride monomer complex when acquisition of the Thompson Companies was under consideration. Stauffer, through its participation in American Chemical Corporation, had already developed a commercial process for producing vinyl chloride monomer.

36. At the time of the establishment of the joint venture, Stauffer was building a polyvinyl chloride resin plant at Delaware City, Delaware, which was expected to consume 60 million pounds of vinyl chloride monomer in its first year of operation. On the basis of an inquiry into the nature of the market for vinyl chloride monomer, Stauffer personnel firmly maintained that Stauffer could secure enough business to warrant building a vinyl chloride monomer plant with an annual capacity of 300 million pounds. On the basis of Stauffer's projections, a 300 million pound plant would not be large enough to satisfy its requirements after 1970.

37. Continental's acquisition of the Thompson Companies in 1964 provided Continental with an outlet which was estimated would consume more than 200 million pounds of vinyl chloride monomer in 1967, the first year of operation of the Continental-Stauffer joint venture plant.

38. Continental is building an ethylene plant at Lake Charles, Louisiana. The plant, expected to be completed in early 1968, will

have an annual capacity of 500 million pounds of olefins, principally ethylene. Part of the output will be utilized by the vinyl chloride monomer joint venture of Continental and Stauffer, part by Continental's industrial alcohol plant at Lake Charles, Louisiana and part by Calcasieu Chemical Company, a producer of ethylene glycol affiliated with Continental. Continental's interest in constructing an ethylene plant to supply existing ethylene requirements afforded it an additional incentive to build a vinyl chloride monomer plant.

C. Violations Charged

39. The acquisition of certain assets and rights of Stauffer by Continental and of certain assets and rights of Continental by Stauffer through the contract which established and through the establishment of a joint venture for the production of vinyl chloride monomer may substantially lessen competition or tend to create a monopoly in the vinyl chloride monomer and/or polyvinyl chloride resin industries in the United States in violation of Section 7 of the Clayton Act, and the contract and combination between Continental and Stauffer are in unreasonable restraint of trade and commerce and may hinder or have a dangerous tendency to hinder competition unduly in the vinyl chloride monomer and/or polyvinyl chloride resin industries thereby constituting an unfair act or method of competition in commerce in violation of Section 5 of the Federal Trade Commission Act, in that the following effects, among others, may result:

(a) Potential competition in the production and sale of vinyl chloride monomer has been eliminated; but for the joint venture of Continental and Stauffer there is a reasonable probability that both Continental and Stauffer would have separately entered into the production of vinyl chloride monomer; at the least, there is a reasonable probability that one company would have separately entered into the production of vinyl chloride monomer while the other company would have remained a significant potential competitor;

(b) The formation and operation of the joint venture has created inducements and incentives for avoidance of competition between Continental and Stauffer in the production and sale of vinyl chloride monomer, polyvinyl chloride resins and other products which Continental and Stauffer may presently or in the future produce or sell;

(c) Competition generally in the production and sale of vinyl chloride monomer and/or polyvinyl chloride resins may be substantially lessened;

(d) Actual and potential competition in the production and sale of vinyl chloride monomer and polyvinyl chloride resins may be substantially lessened by reason of the heightened barriers to entry resulting from the joint venture;

(e) Already high concentration levels in the production and sale of vinyl chloride monomer and polyvinyl chloride resins may be substantially increased and the possibility of deconcentration lessened; and

(f) Competitors in the petrochemical industry and in other industries may be encouraged to participate in joint ventures as a means of avoiding, lessening, restraining or suppressing competition *inter sese.*

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 Section 7 of the Clayton Act, as amended, 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 the 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 alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission, having considered the agreement and having accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of 30 days, now in further conformity with the procedure prescribed in § 2.34(b) of its Rules, the Commission hereby issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Continental Oil Company is a corporation organized and existing under the laws of the State of Delaware, with an office and place of business at 30 Rockefeller Plaza, New York, New York 10020.

Respondent Stauffer Chemical Company is a corporation organized and existing under the laws of the State of Delaware, with an office and place of business at 380 Madison Avenue, New York, New York 10017.

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

I

It is ordered, That, within ninety (90) days from the start-up of vinyl chloride monomer production or six (6) months from the effective date of this Order, whichever is earlier, (A) Stauffer Chemical Company (hereinafter referred to as "Stauffer") shall sell to Continental Oil Company (hereinafter referred to as "Continental"), and Continental shall purchase from Stauffer, all interests held by Stauffer in or relating to the vinyl chloride monomer manufacturing facility constructed by Continental and Stauffer near Lake Charles, Louisiana, and all assets, rights and other interests obtained by Stauffer pursuant to the Monomer Agreement and Related Agreements effective as of February 1, 1966, and (B) Stauffer and Continental shall terminate said Monomer Agreement and Related Agreements.

II

It is further ordered, That Continental, within two (2) years from the effective date of this Order, divest absolutely and in good faith, to a purchaser or purchasers (such purchaser or purchasers being hereinafter referred to as "Purchaser") approved by the Federal Trade Commission, all assets, properties, rights and privileges, tangible and intangible (subject to any outstanding foreign licenses), including, but not limited to, all plants, machinery, equipment, patents, patent rights, know-how and technology, trade names, trademarks, customer lists and good will acquired by Continental as a result of its acquisition of the stock of Thompson Chemical Company and Apex Tire and Rubber Company and of certain real estate utilized by these companies and owned by Hay Realty Corporation, together with all additions and improvements thereto and replacements thereof; such divestiture shall be in good faith to a Purchaser who, insofar as Continental can reasonably determine, will operate such assets as a going concern and effective competitor in the manufacture and sale of polyvinyl chloride resins and compounds and fabricated products processed from such compounds; that the Purchaser of the divested facilities and Continental enter into a purchase and sale contract under which Continental will agree to sell and such Purchaser will agree to buy the divested facilities' total needs of vinyl chloride monomer through December 31, 1969, at a price which is reasonable and in no event less favorable than that then being offered by Continental to, or received by Continental from, any other customer; and that the Purchaser of the divested facilities grant to Continental a nonexclusive, royalty-free license, with the right to sublicense outside the United States, under all patents, patent rights, know-how and technology acquired by said Purchaser from Continental pursuant to this Order which relate to polyvinyl chloride resins and compounds, plasticizers and garden hose.

III

It is further ordered, That, if the consideration received for the divestiture required to be made pursuant to this Order is not entirely cash, nothing in this Order shall be deemed to prohibit Continental or any of its subsidiaries from accepting and enforcing a lien, mortgage, pledge, deed of trust or other security interest for the purpose of securing to Continental full payment of the price, with interest, received by Continental in connection with the divestiture; but if after bona fide divestiture including any disposal of any of the assets, in accordance with the provisions of this Order, Continental, by enforcement of such security interest regains direct or indirect ownership or control of any substantial portion of the assets, said ownership or control regained shall be redivested subject to the provisions of this Order, within such reasonable period as is granted by the Commission for this purpose.

IV

It is further ordered, That, pending divestiture or sale, Continental shall not make or permit any deterioration in any of the plants, machinery, buildings, equipment or other property or assets of the companies and/or plants to be divested or sold pursuant to this Order which may impair their present capacity or market value, unless such capacity or value is restored prior to divestiture or sale.

V

It is further ordered, That Continental shall assist any one (1) firm, not engaged in the production of either vinyl chloride monomer or polyvinyl chloride resin, desiring to enter into the production of vinyl chloride monomer in the United States and approved by the Federal Trade Commission, by any portion or all of the following, at the option of such firm:

(A) Within five (5) years from the effective date of this Order, granting (to the extent it is legally free to do so) a nonexclusive license to such firm under any or all patents, patent rights, know-how and technology and any improvements therein relating to the production of vinyl chloride monomer then owned or controlled by Continental at a price and on terms and conditions which are reasonable and in no event less favorable than those granted to any other domestic licensee of Continental, and/or

(B) Entering into and performing a purchase and sale contract with such firm under which Continental will agree to purchase and such firm will agree to supply, for a period of three (3) years from the startup of production by such firm, but in no event beyond December 31, 1977, a quantity of vinyl chloride monomer estimated to be 20% of Continental's needs of vinyl chloride monomer for internal use in each year of said contract period, or such lesser quantity as such firm may specify in the contract, at a competitive price, provided such firm has been approved by the Federal Trade Commission and has notified Continental, within five (5) years from the effective date of this Order, of its intent to sell under this paragraph.

VI

It is further ordered, That Stauffer shall assist any one (1) firm, not engaged in the production of either vinyl chloride monomer or polyvinyl chloride resin, desiring to enter into the production of vinyl chloride monomer in the United States and approved by the Federal Trade Commission, by any portion or all of the following, at the option of such firm, provided Stauffer has not already committed itself in good faith to build a new plant in the United States for the commercial production of vinyl chloride monomer and notified the Commission of its commitment:

(A) Within five (5) years from the effective date of this Order, granting (to the extent it is legally free to do so) a nonexclusive license to such firm under any or all patents, patent rights, know-how and technology and any improvements therein relating to the production of vinyl chloride monomer then owned or controlled by Stauffer at a price and on terms and conditions which are reasonable and in no event less favorable than those granted to any other domestic licensee of Stauffer, and/or

(B) Entering into and performing a purchase and sale contract with such firm under which Stauffer will agree to purchase and such firm will agree to supply, for a period of three (3) years from the startup of production by such firm, but in no event beyond December 31, 1977, a quantity of vinyl chloride monomer estimated to be 20% of Stauffer's total needs of vinyl chloride monomer in each year of said contract period, or such lesser quantity as such firm may specify in the contract, at a competitive price, provided such firm has been approved by the Federal Trade Commission and has notified Stauffer, within five (5) years from the effective date of this Order, of its intent to sell under this paragraph.

VII

It is further ordered, That for a period of five (5) years from the start-up of its vinyl chloride monomer production or from the effective date of this Order, whichever is later, Continental shall make available to producers of polyvinyl chloride who are not also producers of vinyl chloride monomer (by joint venture or otherwise) and who will enter into a contract of at least one (1) year's duration a quantity of vinyl chloride monomer equal to thirty-three and one-third (33⅓) percent of Continental's production thereof at a price which is reasonable and in no event less favorable than that then being offered by Continental to any other customer, regardless of the quantity purchased or the duration of the contract (For the purposes of this Order, "offered" shall include the voluntary renewal or extension of a contract by action or inaction on the part of Continental.) : *Provided, however,* That if because of its own requirements and contractual commitments with other customers Continental would be required to purchase vinyl chloride monomer in order to satisfy its obligation under this paragraph, Continental shall be obligated to supply vinyl chloride monomer under this paragraph only if and to the extent that it can purchase for resale vinyl chloride monomer, and in such event Continental's resale price shall be determined as provided above in this paragraph but shall not be less than the price actually paid by Continental.

VIII

It is further ordered, That, within ninety (90) days from the effective date of this Order, Stauffer shall grant to Continental a nonexclusive license, on reasonable terms, to Stauffer's vinyl chloride monomer process, patents, patent rights, know-how and technology.

IX

It is further ordered, That for a period of ten (10) years from the effective date of this Order, Continental shall not acquire, directly or indirectly, through subsidiaries, joint venture or otherwise, the whole or any part of the stock, share capital or assets (other than products, machinery or equipment purchased in the ordinary course of business and nonexclusive licenses under patents, know-how and technology) of any domestic concern engaged in the production or sale of vinyl chloride monomer or production, processing, conversion or sale of any polyvinyl chloride resin, compound or fabricated product (except a domestic concern the business activities of which is polyvinyl chloride are limited to the production and sale of polyvinyl chloride fabricated products and which, in the year prior to Continental's acquisition, had total sales of polyvinyl chloride fabricated products of less than one million dollars ($1,000,000)), without the prior approval of the Federal Trade Commission.

X

It is further ordered, That for a period of ten (10) years from the effective date of this Order, Stauffer shall not acquire, directly or indirectly, through subsidiaries, joint venture or otherwise, the whole or any part of the stock, share capital or assets (other than products, machinery or equipment purchased in the ordinary course of business and nonexclusive licenses under patents, know-how and technology) of any domestic concern engaged in the production or sale of vinyl chloride monomer, without the prior approval of the Federal Trade Commission.

XI

It is further ordered, That in the event Continental, despite bona fide efforts to do so, is unable to divest as required by this Order within the specified time, Continental may apply to the Commission at such time for relief from such obligation; and the Commission may issue such order as it deems appropriate regarding such obligation.

XII

It is further ordered, That:

(A) Within twenty (20) days from the sale to Continental of Stauffer's interests in the vinyl chloride monomer manufacturing facility, Continental and Stauffer shall each report in writing to the Federal Trade Commission their compliance with paragraphs I and VIII of this Order;

(B) Within sixty (60) days from the effective date of this Order, and every sixty (60) days thereafter until the divestiture required by paragraph II of this Order has been completed, Continental shall report in writing to the Federal Trade Commission its plans for effecting such divestiture and the action it has taken in implementation thereof, including, (i) the name, address and official capacity of the individual or individuals designated to carry out such divestiture and to negotiate with interested parties, (ii) a brochure, presentation or other writing containing all of the essential information necessary to permit an interested party to evaluate the facilities to be divested, (iii) a summary of any efforts made and to be made in advertising and affirmatively announcing the availability of the facilities to be divested, (iv) the particular efforts made to locate and interest prospective purchasers not previously engaged in the industry, (v) a summary of contacts and negotiations relating to the sale of facilities ordered to be divested, including the identities of all parties expressing interest in the acquisition of any of the facilities to be divested and, subject to any legally recognized privilege, copies of all written communications pertaining to negotiations, offers to buy or indications of interest in the acquisition of the whole or any part of the facilities to be divested and (vi) copies of all agreements and forms of agreement relating directly or indirectly to the proposed sale of the facilities to be divested;

(C) Within sixty (60) days from the effective date of this Order and every six (6) months thereafter, Continental and Stauffer shall each report in writing to the Federal Trade Commission the steps they have taken to comply with paragraphs V, VI and VII of this Order and any steps taken to inform possible interested parties; and

(D) Within sixty (60) days from the effective date of this Order and annually thereafter, Continental and Stauffer shall each report in writing to the Federal Trade Commission the manner and form in which they intend to comply, are complying or have complied with paragraphs IX and X of this Order.

IN THE MATTER OF

THE J. B. WILLIAMS COMPANY, INC., ET AL.

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

Docket 8547. Complaint, Dec. 7, 1962—Decision, Nov. 24, 1967

Order modifying, pursuant to a final decree of the U.S. Court of Appeals, Sixth Circuit, 381 F. 2d 884 (1967) (8 S.&D. 524), a cease and desist order, 68 F.T.C. 481, issued September 28, 1965, against a New York City drug manufacturer by eliminating from paragraph 1(f) of the order the provision prohibiting representations that the presence of iron deficiency anemia can be self-diagnosed or can be determined without a medical test conducted by a physician.

MODIFIED ORDER TO CEASE AND DESIST

Respondents having filed in the United States Court of Appeals for the Sixth Circuit a petition to review and set aside the order to cease and desist issued herein on September 28, 1965 [68 F.T.C. 481]; and the court on August 11, 1967 [8 S. & D. 524], having rendered its decision and entered its final decree affirming and enforcing said order to cease and desist except for paragraph 1(f) of the order; 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 in accordance with the said final decree of the court of appeals, said order to cease and desist be, and it hereby is, modified to read as follows:

It is ordered, That respondents, The J. B. Williams Company, Inc., a corporation, and Parkson Advertising Agency, Inc., a corporation, and their officers, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of the preparation designated Geritol Liquid or the preparation designated Geritol Tablets, or any other preparation of substantially similar composition or possessing substantially similar properties, under whatever name or names sold, do forthwith cease and desist from:

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

(a) Which represents directly or by implication and without qualification that the preparation is an effective remedy for tiredness, loss of strength, run-down feeling, nervousness or irritability;

(b) Which represents directly or by implication that the preparation is a generally effective remedy for tiredness, loss of strength, run-down feeling, nervousness or irritability;

(c) Which represents directly or by implication that the preparation is an effective remedy for tiredness, loss of strength, run-down feeling, nervousness or irritability in more than a small minority of persons experiencing such symptoms;

(d) Which represents directly or by implication that the use of such preparation will be beneficial in the treatment or relief of tiredness, loss of strength, run-down feeling, nervousness or irritability, unless such advertisement expressly limits the claim of effectiveness of the preparation to those persons whose symptoms are due to an existing deficiency of one or more of the vitamins contained in the preparation, or to an existing deficiency of iron or to iron deficiency anemia, and further, unless the advertisement also discloses clearly and conspicuously that: (1) in the great majority of persons who experience such symptoms, these symptoms are not caused by a deficiency of one or more of the vitamins contained in the preparation or by iron deficiency or iron deficiency anemia; and (2) for such persons the preparation will be of no benefit;

(e) Which represents directly or by implication that tiredness, loss of strength, run-down feeling, nervousness or irritability are generally reliable indications of iron deficiency or iron deficiency anemia;

(f) Which represents directly or by implication that the use of such preparation will increase the strength or energy of any part of the body in any amount or time less than that in which the consumer may actually experience improvement;

(g) Which represents directly or by implication that the use of such preparation will promote convalescence from a cold, flu, fever, virus infection, sore throat or any other winter illnesses;

(h) Which represents directly or by implication that the vitamins supplied in such preparation are of any benefit in the treatment or relief of an existing deficiency of iron or iron deficiency anemia.

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

It is further ordered, That respondents shall, within thirty (30) 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

PAT AND BOBBIE'S, INC., ET AL.

ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION AND THE FLAMMABLE FABRICS ACTS

Docket 8735. Complaint, April 18, 1967—Decision, Nov. 24, 1967*

Order requiring a Seattle, Wash., distributor of handicraft materials to cease importing or selling any fabric, including rice paper, so highly flammable as to be dangerous when worn.

COMPLAINT*

Pursuant to the provisions of the Federal Trade Commission Act and the Flammable Fabrics Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Pat and Bobbie's, Inc., a corporation, and Patricia A. Farrell, 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 Flammable Fabrics 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:

* Reported as amended by order of hearing examiner, dated June 21, 1967, by changing the name of the respondent from Pat and Bobbie's Floral Studios, Inc., to Pat and Bobbie's, Inc.

PARAGRAPH 1. Respondent Pat and Bobbie's, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Washington. Respondent Patricia A. Farrell is secretary and manager of the corporate respondent and formulates, directs and controls its policies, acts and practices.

The respondents are engaged in the sale and distribution of handicraft materials; the office and principal place of business of all the respondents is located at 6220 Roosevelt Way, NE., Seattle, Washington.

PAR. 2. Respondents, subsequent to July 1, 1954, the effective date of the Flammable Fabrics Act, have sold and offered for sale, in commerce; have imported into the United States; and have introduced, delivered for introduction, transported, and caused to be transported, in commerce; and have transported and caused to be transported for the purpose of sale or delivery after sale, in commerce; as "commerce" is defined in the Flammable Fabrics Act, fabric, as that term is defined therein, which fabric was, under Section 4 of the Flammable Fabrics Act, as amended, so highly flammable as to be dangerous when worn by individuals.

PAR. 3. The aforesaid acts and practices of respondents were and are in violation of the Flammable Fabrics Act and the Rules and Regulations promulgated thereunder, and as such constitute unfair methods of competition and unfair and deceptive acts and practices in commerce, within the intent and meaning of the Federal Trade Commission Act.

Miss Marilyn F. Hale and *Mr. Edward B. Finch* supporting the complaint.

Mr. Raymond H. Siderius, Corbett, Siderius and Lonergan, 847 Logan Building, Seattle, Wash., for respondents.

INITIAL DECISION BY WALTER K. BENNETT, HEARING EXAMINER[1]

OCTOBER 17, 1967

Preliminary Statement

This proceeding determines whether or not rice paper sold for use in making Hawaiian-type leis is fabric within the meaning of the Flammable Fabrics Act.

Pleadings

The Federal Trade Commission on April 18, 1967, issued its

[1] Caption amended by order of John Lewis dated June 21, 1967, the hearing examiner to whom the matter was then assigned, to reflect change in corporate name of respondents filed February 3, 1967, with the Secretary of State of the State of Washington.

complaint against respondents charging violation of the Flammable Fabrics Act.[2]

After identifying the corporate respondent, under a former name, as a Washington corporation and the individual respondent as secretary and manager thereof, directly controlling its acts and practices; the complaint alleged that respondents had imported and transported in interstate commerce "fabric" so highly flammable as to be dangerous when worn by individuals. This was alleged to be a violation of the Act and the rules and regulations under it and to constitute unfair methods of competition and unfair acts and practices under the Federal Trade Commission Act.[3]

Respondents, by answer filed May 22, 1967, admitted that corporate respondent under its changed name was a Washington corporation, engaged in the sale and distribution of handicraft materials, but denied that the individual respondent directs and controls its policies, acts and practices. They denied that they had violated the Flammable Fabrics Act and averred that the articles referred to were not fabrics but dyed wood bark, and that respondents had ceased making leis and had marked the product as "highly flammable" and "should not be used for the purpose of making leis." Respondents also denied they were engaged in deceptive acts and practices in commerce and asked that hearings be held in Seattle, Washington.

Complaint counsel moved June 9, 1967, to change the corporate name of the corporate respondent in the complaint. The motion was granted June 21, 1967.

Respondents, by amended answer filed July 13, 1967, admitted that they had sold and offered for sale in interstate commerce wood fiber chips so highly flammable as to be dangerous when worn by individuals but reserved the right to offer evidence that such wood fiber chips do not fall within the definition of fabric[4]

[2] 15 U.S.C. 1191 *et seq.* The pertinent portion of the statute is § 3(b) (15 U.S.C. 1192) which reads as follows:

"The sale or the offering for sale, in commerce, or the importation into the United States, or the introduction, delivery for introduction, transportation or causing to be transported in commerce or for the purpose of sale or delivery after sale in commerce, of any fabric which under the provisions of section 4 of this Act is so highly flammable as to be dangerous when worn by individuals, shall be unlawful and shall be an unfair method of competition and an unfair and deceptive act or practice in commerce under the Federal Trade Commission Act."

[3] 15 U.S.C. 41 *et seq.*

[4] Section 2(e) of the Flammable Fabrics Act, 15 U.S.C. 1191 provides:

"The term 'fabric' means any material (other than fiber, filament, or yarn) woven, knitted, felted, or otherwise produced from or in combination with any natural or synthetic fiber, film, or substitute therefor which is intended or sold for use in wearing apparel except that interlining fabrics when intended or sold for use in wearing apparel shall not be subject to this Act."

in the Flammable Fabrics Act and are not intended or sold for use in wearing apparel. Respondents, in their amended answer, further agreed to offer no objection to the Commission's exhibits in the forms [sic] of documents, wood fiber chips, Hawaiian leis and test reports which show the flammability of said wood fiber chips.

Prehearing Conference

On motion of complaint counsel and on July 21, 1967, the hearing examiner ordered that a prehearing conference be held immediately prior to the formal hearing on August 15, 1967. At such prehearing conference, the names of witnesses were exchanged, the documents and other exhibits to be used were produced and the parties agreed that the issues were limited to the following questions:

1. Did the individual respondent direct and control the acts and practices of corporate respondent? [5]
2. Are the wood chips fabric within the meaning of the Flammable Fabrics Act?
3. Were the wood chips sold for the purpose of incorporation into wearing apparel?
4. Is the case moot?

The results of the conference were dictated into the record as the hearing examiner's prehearing order (see PHTr. 20–24, Tr. 2).

Basis for Decision

The formal hearing was commenced and concluded on August 15, 1967. Proposed findings, conclusions, and orders were filed September 14, 1967. All proposed findings and conclusions not adopted in substance or in terms are denied as immaterial, irrelevant, or erroneous. The following findings of fact, conclusions, and order are made on the basis of the entire record and on the hearing examiner's observation of the witnesses.

In accordance with Rule 3.51(b), principal items of evidence relied upon are cited. However, despite citation of particular items of evidence, consideration has been taken of the entire record and no effort has been made to cite all relevant references.

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[5] This issue was later resolved by admission of counsel during the prehearing conference that the individual respondent did direct and control the corporate respondent (PHTr. 7).

In citing the record the following abbreviations will be used:

C — Complaint.
A — Answer.
CPF — Commission's Proposed Findings (including citations).
RPF — Respondents' Proposed Findings (including citations).
Tr. — Transcript page; if prehearing (PHTr.).
CX — Commission Exhibit.
RX — Respondents' Exhibit.

FINDINGS OF FACT

1. Respondent Pat and Bobbie's, Inc., is a corporation organized and existing under the laws of the State of Washington, has its principal place of business at 6220 Roosevelt Way, NE., Seattle, Washington, and is engaged in the sale and distribution of handicraft materials (C., A.).

2. Respondent Patricia A. Farrell is the secretary and manager of respondent Pat and Bobbie's, Inc., and is responsible for the direction and control of its policies, acts, and practices (C.,A., Tr. 95).

3. Respondents sold packages of square sheets of rice paper (designated as wood chips in the answer) for use as Hawaiian leis in commerce, as that term is used in the Flammable Fabrics Act, up to and including the date they had knowledge of the commencement of the investigation in this case (PHTr. 14).

4. The hearing examiner takes official notice that Hawaiian leis are articles of wearing apparel. They are placed over the head and extend around the back of the neck and fall in front of the torso.

5. The rice paper sheets sold by respondents are manufactured in Formosa by spinning the pith of a plant known as fatsia papyriferum, also known as aralia papyriferum, against a sharp knife so that thin layers are peeled off. These layers are then cut into squares, dyed and packaged (Tr. 57, 59, 68, 69, 109). They are purchased by respondents from an importer (CX 5).

6. In the opinion of the experts of both parties called to testify, which the hearing examiner accepts, such sheets are not fiber, film or yarn and they are not woven, knitted or felted (Tr. 60, 71, 74, 79, 109).

7. The sheets of rice paper are otherwise produced, *i.e.*, from pith, which in this usage is a substitute for natural or synthetic fiber or film (Tr. 62, 63, 72).

8. A significant amount of such sheets of rice paper, which were flammable within the meaning of the Flammable Fabrics Act, was sold in interstate commerce, after the passage of that Act, to persons located in States other than the State of Washington, was intended for use in the manufacture of Hawaiian leis (CXs 24, 25, 27, 28, 39, 41(b)).

9. Rice paper has been produced by the Chinese in the same manner, for hundreds, if not thousands, of years (Tr. 69, 70).

10. After respondents became aware that the Federal Trade Commission was investigating, they took steps to change their

manner of doing business in an effort to prevent the sale of flammable rice paper. By March or April 1967 they had set up separate displays of nonflammable and flammable material. The former was designated for the making of leis (RXs 1, 2; Tr. 100–101). Their dealer catalogue (RX 7) was amended to include a statement that a certain line of rice paper was not flameproof and should not be used on leis. Prior to August 1966, it was admitted that respondents had given instructions in the making of leis (PHTr. 14) and respondent Farrell testified that the first invoice of fireproof rice paper was not received until September 1966 (Tr. 100). Accordingly, respondent's statements that the catalogue (RX 7) was used for a year and the separate displays of flammable and nonflammable material maintained for a similar period are erroneous (see Tr. 101) since respondents did not have nonflammable rice paper available for that long a period.

11. Respondents' action was not effective to prevent the sale of flammable rice paper for use in the manufacture of leis. As late as February 1967, respondents' salesgirl instructed a salesclerk from a purchaser in the manufacture of leis and sold the salesclerk rice paper to which the latter helped herself (Tr. 39–50, 104; CXs 1, 2, 31, 33, 34). The sales slip bore the number 8000 (CX 32) and concededly the 8000 line had a flammability forbidden by the Act (Tr. 25; CXs 33–40). In an attempt to explain, respondents' salesgirl who had signed the sales slip testified that, at that time, no distinction in number on the description written on a sales slip was made between flammable and nonflammable rice paper but that she recommended to purchasers who wanted to make leis that they take the kind that was for leis only (Tr. 113, 114). The transaction was so vague in her mind (Tr. 111) that what she told prospective purchasers is not accepted as a valid explanation of the testimony of Mrs. Abeyta, the purchasing salesclerk. Mrs. Farrell testified that the red rice paper sold to Mrs. Abeyta in early 1967 and made into a lei (CX 31) looked lighter in color to her than the flammable rice paper (Tr. 106). Examination of Commission Exhibit 31 confirms that it might be described as rose-colored paper. Rose-colored paper was advertised in respondents' catalogue as nonflammable (RX7). Respondents, however, did not submit a test report on or seek to test the particular lei involved. Moreover, respondents did not establish that they had surely ceased placing flammable rice paper in the hands of persons making leis. It is very clear that respondents had flammable rice paper available and let customers serve themselves (Tr. 104).

Reasons for Decision

The foregoing facts found from the testimony and exhibits leave only two questions for decision: 1) Is rice paper "fabric" in the circumstances? and 2) did respondents so surely cease their activity that no order should issue?

On the first question, although rice paper had been a product in common use for centuries, there was no indication that at the time of the passage of the Flammable Fabrics Act such product was commonly used in the manufacture of wearing apparel. Accordingly, there was no reason for Congress to make an express reference to it in the statute. Nothing found in the legislative history is of assistance in determining what was meant to be included in the terms "otherwise produced" or "substitute therefor." Accordingly, we have only the terms of the Act. It reads:

> The term "fabric" means any material (other than fiber, filament, or yarn) woven, knitted, felted, or otherwise produced from or in combination with any natural or synthetic fiber, film, or substitute therefor which is intended or sold for use in wearing apparel except that interlining fabrics when intended or sold for use in wearing apparel shall not be subject to this Act.

Express exception was made to the inclusion of fiber, filament, or yarn because of difficulties of testing and to the inclusion of interlining because the fact that it is covered reduces its flammability. These reasons are apparent from the hearings and reports.

It is the opinion of the hearing examiner that Congress intended through the use of the terms "woven, knitted, or felted" modifying the word "material" to include all common methods of producing material such as piece goods then in use for wearing apparel. Hence, Congress added the words, "or otherwise produced" so that material like piece goods, produced by a method other than weaving, knitting, or felting, would be included if intended for wearing apparel. This opinion is confirmed by the fact that the term "otherwise produced" is followed by the sweeping term "from or in combination with any natural or synthetic fiber [or] film." Adding to this the term "or substitute therefor" would seem clearly intended as a further enlargement of the class of material included. Moreover, the mischief intended to be corrected by the statute was clearly the sale of material that was dangerously flammable for use in wearing apparel. Hence, since the rice paper here in question is material produced otherwise than by knitting, weaving, or felting from a substitute for natural or synthetic fiber or film and since when sold to make leis it is intended for use as wearing apparel, it follows that rice paper is fabric within the definition of the Act.

On the second question, it is the opinion of the hearing examiner that this case is not moot. Respondents maintained to the end their contention that flammable rice paper sold for use in leis was not fabric within the meaning of the Flammable Fabrics Act. They took no action to stop selling rice paper for that purpose until the Commission disclosed its hand. And, when action was taken, it was delayed and ineffective.

The following conclusions are reached from these reasons and from the findings of fact.

CONCLUSIONS

1. The Federal Trade Commission has jurisdiction of respondents and of the subject matter of this proceeding. And, the acts and practices complained of took place in commerce as that term is used in the Flammable Fabrics Act.

2. Rice paper sold for use in the manufacture of leis, which are a type of wearing apparel, is fabric within the meaning of the Flammable Fabrics Act.

3. Respondents sold rice paper for leis in interstate commerce that was flammable within the meaning of the Flammable Fabrics Act.

4. Respondents accordingly violated the Flammable Fabrics Act and thus committed unfair acts and practices within the meaning of the Federal Trade Commission Act.

5. The order in this case should run both against the corporate respondent and the individual respondent, but it should be limited to fabric to be used for wearing apparel including leis, *i.e.*, "fabric," as defined in the Flammable Fabrics Act.

6. Respondents' attempts to prevent the sale of flammable rice paper for use in the manufacture of leis were not made until after they had knowledge of the pendency of the investigation by the Federal Trade Commission and were ineffective to the extent that there is a continuing danger that flammable rice paper again will be made available for use in the manufacture of leis. Hence the case is not moot.

Accordingly, the following order should issue.

ORDER

It is ordered, That respondents Pat and Bobbie's, Inc., a corporation, and its officers, and Patricia A. Farrell, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, do forthwith cease and desist from:

(a) Importing into the United States; or

(b) Selling, offering for sale, introducing, delivering for introduction, transporting, or causing to be transported, in commerce, as "commerce" is defined in the Flammable Fabrics Act, as amended; or

(c) Transporting or causing to be transported, for the purpose of sale or delivery after sale in commerce;

any fabric, as "fabric" is defined in the Flammable Fabrics Act, as amended, including rice paper which, under the provisions of Section 4 of the said Act, is so highly flammable as to be dangerous when worn by individuals.

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 3.51 of the Commission's Rules of Practice (effective July 1, 1967), 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 November, 1967, become the decision of the Commission.

It is further ordered, That respondents Pat and Bobbie's, Inc., a corporation, and Patricia A. Farrell shall, within sixty (60) days after service of this order upon them, file with the Commission a report in writing, signed by the respondents, setting forth in detail the manner and form of their compliance with the order to cease and desist.

IN THE MATTER OF

SCHNEIDER & FALK, INC., ET AL.

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

Docket C-1271. Complaint, Nov. 24, 1967—Decision, Nov. 24, 1967

Consent order requiring a New York City textile wholesaler and converter to cease misbranding its textile fiber products.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Textile Fiber Products Identification Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Schneider & Falk, Inc., a corporation, and Aaron Schneider and David Falk, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the 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 Schneider & Falk, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York.

Respondents Aaron Schneider and David Falk are officers of the corporate respondent. They formulate, direct and control the acts, practices and policies of said corporate respondent including the acts and practices hereinafter set forth.

Respondents are wholesalers and converters of textile fiber products with their office and principal place of business located at 240 West 35th Street, New York, New York.

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

PAR. 3. Certain of said textile fiber products were misbranded by the respondents within the intent and meaning of Section 4(a) of the Textile Fiber Products Identification Act and the Rules and Regulations promulgated thereunder, in that they were falsely and deceptively stamped, tagged, labeled, invoiced, advertised, or otherwise identified as to the name or amount of constituent fibers contained therein.

Among such misbranded textile fiber products, but not limited thereto, were textile fiber products with invoices which set forth the fiber content as 100% cotton print, whereas, in truth and in fact, said product contained substantial amounts of rayon.

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

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

1. To disclose the true generic names of the fibers present; and
2. To disclose the correct percentage of such fibers.

PAR. 5. Certain of said textile fiber products were misbranded by the respondents, 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 the following respects:

1. Information required under Section 4(b) of the Textile Fiber Products Identification Act and the Rules and Regulations promulgated thereunder was set forth on labels in abbreviated form, in violation of Rule 5(a) of the aforesaid Rules and Regulations.

2. Information required under Section 4(b) of the Textile Fiber Products Identification Act and the Rules and Regulations promulgated thereunder was not set forth on the required labels so that all parts of the fiber content information appeared in type or lettering of equal size and conspicuousness, in violation of Rule 16(b) of the aforesaid Rules and Regulations.

3. Nonrequired information was set forth on labels in such a manner as to interfere with, minimize, detract from, and conflict with information required by Section 4(b) of the Textile Fiber Products Identification Act and the Rules and Regulations promulgated thereunder, in violation of Rule 16(c) of the aforesaid Rules and Regulations.

PAR. 6. The acts and practices of the respondents as set forth above were, and are, in violation of the Textile Fiber Products Identification Act and the Rules and Regulations promulgated thereunder, and constituted, and now constitute, unfair methods of competition and unfair and deceptive acts and practices in commerce, within the intent and meaning of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Textiles and Furs proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act and the 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 respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Acts, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in § 2.34(b) of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Schneider & Falk, 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 240 West 35th Street, New York, New York.

Respondents Aaron Schneider and David Falk are officers of said corporation and their address is the same as that of said corporation.

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

ORDER

It is ordered, That respondents Schneider & Falk, Inc., a corporation, and its officers, and Aaron Schneider and David Falk, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, delivery for introduction, sale, advertising, or offering for sale in commerce, or the transportation or causing to be transported in commerce, or the importation into the United States of textile fiber products; or in connection with the sale, offering for sale, advertising, delivery, transportation or causing to be transported, of any textile fiber products, which have been advertised or offered for sale in commerce; or in connection with the sale, offering for sale, advertising, delivery, transportation or causing to be transported, after shipment in commerce of any textile fiber product, whether in its original state or contained in other textile fiber products, as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act, do forthwith cease and desist from:

A. Misbranding textile fiber products by:

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

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

3. Setting forth information required under Section 4(b) of the Textile Fiber Products Identification Act and the Rules and Regulations promulgated thereunder in abbreviated form on labels affixed to textile products.

4. Failing to set forth all parts of the information as to fiber content required under Section 4(b) of the Textile Fiber Products Identification Act and the Rules and Regulations promulgated thereunder in type or lettering of equal size and conspicuousness.

5. Setting forth on labels nonrequired information that interferes with, minimizes, detracts from, or conflicts with the required information.

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