893 Complaint

Attachement C

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FRAMES WITH COLORED ENLARGEMENTS

CHECK COLOR YOU WISH

Choice of beautiful pearl ivory or opal grey frames with standing easel back. Frames are made of lustrous lucite and make your enlargements "a thing of beauty and a joy forever." Check below color of frame you want.

☐ Pearl Ivory Frames ☐ Opal Grey Frames

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I have checked the free frame you are to include for the "Deluxe" 5 x 7 inch enlargements that you are having your artist hand color in natural oil colors. I will be glad to help with the few cents C.O.D. fees as well as $2.50 which includes artist's labor for each oil painting sent to me on five day approval.

Name_____, Address or R.F.D._____

City_____ State_____

IN THE MATTER OF

BROOKLYN QUILTING CORP. 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-1335. Complaint, May 10, 1968—Decision, May 10, 1968

Consent order requiring a Brooklyn, N.Y., manufacturer of quilted and fabric materials to cease misbranding its wool and textile fiber products and failing to keep required records.

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 Brooklyn Quilting Corp., a corporation, and Benjamin Zauderer, Nathan Shotsky and David H. Turkel, 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 Brooklyn Quilting Corp. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York.

Respondents Benjamin Zauderer, Nathan Shotsky and David H. Turkel are officers of said corporate respondent. They formulate, direct and control the acts, practices and policies of said corporate respondent.

Respondents are engaged in the manufacture and sale of wool and textile fiber products, including quilted fabrics, with their office and principal place of business located at 135–139 North 11th Street, Brooklyn, New York.

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, was batting stamped, tagged, labeled, or otherwise identified by respondents as acetate, whereas in truth and in fact, said products contained woolen fibers together with substantially different fibers and amounts of fibers than represented.

PAR. 4. Certain 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, was a wool product with a label on or affixed thereto which failed to disclose the percentage of the total fiber weight of the said wool product, exclusive of ornamentation not exceeding 5 per centum 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 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 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 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 had 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 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 amounts of the constituent fibers contained therein.

Among such misbranded textile fiber products, but not limited thereto, were quilted fabrics with labels stating "acetate" thereby representing the said quilting to be composed entirely of acetate, whereas, in truth and in fact, such products contained substantially different fibers and amounts of fibers other than as represented.

PAR. 8. Certain of the textile fiber products were misbranded by respondents in that they were not stamped, tagged, labeled or otherwise identified to show each element of information required to be disclosed by 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 quilted fabrics with labels which failed:

(1) To disclose the true percentage of the fibers present by weight; and

(2) To disclose the true generic names of the fibers present.

PAR. 9. Respondents have failed to maintain proper records showing the fiber content of the textile fiber products manufactured by them, in violation of Section 6 of the Textile Fiber Products Identification Act and Rule 39 of the Regulations promulgated thereunder.

PAR. 10. The acts and practices of respondents, as set forth in Paragraphs Seven, Eight and Nine above were, and are, in violation of the Textile Fiber Products Identification Act and the Rules and Regulations promulgated thereunder, and constituted, and now constitute, unfair methods of competition and unfair and deceptive acts and practices in commerce, under the Federal Trade Commission Act.

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 Brooklyn Quilting Corp. 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 135–139 North 11th Street, Brooklyn, New York.

Respondents Benjamin Zauderer, Nathan Shotsky and David H. Turkel 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 Brooklyn Quilting Corp., a corporation, and its officers, and Benjamin Zauderer, Nathan Shotsky and David H. Turkel, 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 and deceptively stamping, tagging, labeling, or otherwise identifying such products as to the character or amount of the constituent fibers contained therein.

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

It is further ordered, That respondents Brooklyn Quilting Corp., a corporation, and its officers, and Benjainm Zauderer, Nathan Shotsky and David H. Turkel, 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 the importation into the

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

A. Misbranding textile fiber products by:

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

2. Failing to affix a stamp, tag, label, or other means of identification to each such product showing in a clear, legible and conspicuous manner each element of information required to be disclosed by Section 4(b) of the Textile Fiber Products Identification Act.

B. Failing to maintain and preserve proper records showing the fiber content of the textile fiber products manufactured by said respondents as required by Section 6 of the Textile Fiber Products Identification Act and Rule 39 of the Regulations promulgated thereunder.

It is further ordered, That the respondent corporation shall forthwith distribute a copy of this order to each of its operating divisions.

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

JONATHAN LOGAN, INC., TRADING AS DAVIS SPORTSWEAR COMPANY DIVISION ET AL.

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

Docket C-1336. Complaint, May 16, 1968—Decision, May 16, 1968

Consent order requiring a North Bergen, N.J., manufacturer of women's sportswear to cease misbranding and falsely guaranteeing 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 Jonathan Logan, Inc., a corporation, trading as Davis Sportswear Company Division, and David W. Goren, individually and as general manager of said Division, 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 Jonathan Logan, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware. Respondent Jonathan Logan, Inc., trades, among others, under the name of Davis Sportswear Company Division.

Respondent David W. Goren is the general manager of the Davis Sportswear Company Division of Jonathan Logan, Inc. He directs the acts and practices of said Division, including those hereinafter set forth.

Respondents are engaged in the manufacture and sale of wool products, including women's benchwarmers and storm coats, with the office and principal place of business of respondent Jonathan Logan, Inc., located at 3901 Liberty Avenue, North Bergen, New Jersey. The office and principal place of business of respondent David W. Goren, general manager of Davis Sportswear Company Division is located at 4 Hampshire Street, Lawrence, Massachusetts.

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 products" 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 ladies' coats stamped, tagged, labeled, or otherwise identified by

respondents as 85 percent Wool, and 15 percent Nylon, whereas in truth and in fact, said products contained substantially different fibers and amounts of fiber 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, was a wool product with a label on or affixed thereto which failed to disclose the percentage of the total fiber weight of the said wool product, exclusive of ornamentation not exceeding 5 per centum 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 per centum or more; and (5) the aggregate of all other fibers.

PAR. 5. Respondents have furnished false guaranties that their wool products were not misbranded in violation of Section 9(b) of the Wool Products Labeling Act of 1939.

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

ment 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 Jonathan Logan, Inc., trading as Davis Sportswear Company Division, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 3901 Liberty Avenue, North Bergen, New Jersey.

Respondent David W. Goren is general manager of Davis Sportswear Company Division of Jonathan Logan, with his office and principal place of business located at 4 Hampshire Street, Lawrence, Massachusetts.

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 Jonathan Logan, Inc., a corporation, trading as Davis Sportswear Company Division, or under any other name, and its officers, and David W. Goren, individually and as general manager of Davis Sportswear Company Division, 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 and deceptively stamping, tagging, labeling, or otherwise identifying such products as to the character or amount of the constituent fibers contained therein.

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

It is further ordered, That Jonathan Logan, Inc., a corporation, trading as Davis Sportswear Company Division, or under any other name, and its officers, and David W. Goren, individually and as general manager of Davis Sportswear Company Division, and respondents' representatives, agents and employees, directly or through any corporate or other device, do forthwith cease and desist from furnishing a false guaranty that any wool product is not misbranded, under the Wool Products Labeling Act of 1939, and the Rules and Regulations promulgated thereunder, when there is reason to believe that any wool product so guaranteed may be introduced, sold, transported or distributed in commerce.

It is further ordered, That the respondent corporation shall forthwith distribute a copy of this order to each of its operating divisions.

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

E. H. TEASLEY & CO., INC., ET AL.

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

Docket C-1337. Complaint, May 16, 1968—Decision, May 16, 1968

Consent order requiring a Dallas, Texas, manufacturer of tents, tarpaulins and other products to cease fictitiously pricing its merchandise in catalogs and furnishing retailers with means of deceptive pricing.

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 E. H. Teasley & Co., Inc., a corporation, and Eugene H. Teasley, 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 Com-

mission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent E. H. Teasley & Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Texas, with its principal office and place of business located at 509 Corinth, Dallas, Texas.

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

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

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

PAR. 4. Respondents, for the purpose of inducing the purchase of their products, have engaged in the practice of using fictitious prices in connection therewith by the following method and means:

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

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

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

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

PAR. 5. By the aforesaid acts and practices, respondents place in the hands of retailers the means and instrumentalities by and

through which they may mislead the public as to the usual and regular retail price of said products.

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

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

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

DECISION AND ORDER

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

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by 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 Act, 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 E. H. Teasley & Co., Inc., is a corporation organied, existing and doing business under and by virtue of the laws of the State of Texas, with its office and principal place of business located at 509 Corinth, Dallas, Texas.

Respondent Eugene H. Teasley 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, E. H. Teasley & Co., Inc., a corporation, and its officers, and Eugene H. Teasley, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of tents, tarpaulins or other merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

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

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

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

It is further ordered, That the respondent corporation shall forthwith distribute a copy of this order to each of its operating divisions.

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

FIRST BUCKINGHAM COMMUNITY, INC., ET AL.

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

Docket 8750. Complaint, Nov. 30, 1967—Decision, May 20, 1968

Order vacating initial decision and dismissing complaint which charged nine affiliated Arlington, Va., apartment complexes with using advertising which deceptively carried the impression that their apartments were available to the general public without restriction as to race, color, or national origin.

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 First Buckingham Community, Inc., Second Buckingham Community, Inc., Third Buckingham Community, Inc., Fourth Buckingham Community, Inc., Fifth Buckingham Community, Inc., Sixth Buckingham Community, Inc., Paramount Communities, Inc., Claremont Communities, Inc. and Paramount Motors Incorporated, corporations, and Frances W. Freed, Beatrice W. Lesses and Maxwell C. Lieberman, individually and as officers of said corporations, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. First Buckingham Communitiy, Inc., Second Buckingham Community, Inc., Third Buckingham Community, Inc., Fourth Buckingham Community, Inc., Fifth Buckingham Community, Inc., Sixth Buckingham Community, Inc., Paramount Communities, Inc., Claremont Communities, Inc., are corporations organized, existing and doing business under and by virtue of the laws of the State of Virginia, with their principal office and place of business located at 313 North Glebe Road, in the county of Arlington, State of Virginia.

Paramount Motors Incorporated, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 313 North Glebe Road, in the county of Arlington, State of Virginia.

Corporate respondents First Buckingham Community, Inc., Second Buckingham Community, Inc., Third Buckingham Community, Inc., Fourth Buckingham Community, Inc., Fifth Buckingham Community, Inc., Sixth Buckingham Community, Inc., own, manage and operate Buckingham Community, 313 North Glebe Road, Arlington, Virginia. Corporate respondent, Claremont Communities, Inc., owns, manages and operates Claremont Community, 2733 South Walter Reed Drive, Arlington, Virginia; and corporate respondent Paramount Communities, Inc., owns, manages and operates Chatham, 4501 Arlington Boulevard, Arlington, Virginia. Corporate respondent, Paramount Motors Incorporated, is a holding company which owns all of the stock in each of the aforesaid corporations.

Respondents Frances W. Freed, Beatrice W. Lesses and Maxwell C. Lieberman are individuals and are officers and directors of each of the corporate respondents. They formulate, direct and control the acts and practices of the corporate respondents, including the acts and practices hereinafter set forth. Their business address is the same as that of the corporate respondents.

All of the aforementioned respondents cooperate and act together in carrying out the acts and practices hereinafter set forth.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for rent, rental and general management of the aforesaid apartment complexes located in Arlington, Virginia.

PAR. 3. In the course and conduct of their business, respondents have caused rental advertisements for the aforesaid properties to be published in newspapers and other publications of interstate circulation, including The Washington Post, The Evening Star and the Apartment Shopper's Guide. Said respondents have performed various acts in commerce relating to the advertising of the aforesaid apartments, such as transmitting payment for published advertisements from their place of business in the State of Virginia to the District of Columbia, and maintain, and at all times mentioned herein have maintained a substantial course of business 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 persons to apply for rental of their apartments, respondents now cause and have caused to be published in newspapers of interstate circulation certain advertisements, of which the following is typical and illustrative, but not all inclusive thereof:

CHARACTER!
PRESTIGE!

Two Outstanding Garden Apartment Communities with One of the Largest Swimming Pools in Virginia!

BUCKINGHAM
313 North Glebe Road, Arlington

Efficiencies, 1, 2 and 3 Bedroom Simplex and Duplex----------from $74
JA 2-5004

DIRECTIONS: From Washington—Across Memorial Bridge, take Route 50 to Glebe Road (Route 120).

CLAREMONT
2733 S. Walter Reed Drive, Arlington

2 Bedroom Simplex and Duplex----------from $107
WE 1-0400

DIRECTIONS: Across 14th Street Bridge, out Shirley Highway to Route 7, Right ½ mile to S. Walter Reed Drive off King Street to Claremont.

PAR. 5. By and through the use of the above-quoted statements and representations, and others of similar import and meaning but not expressed herein, respondents represent, and have represented, directly or by implication, that such apartments are available to the general public without restrictions or limitations as to race, color, national origin or number of family members.

PAR. 6. In truth and in fact, such apartments are not available to the general public without restrictions or limitations as to race, color, national origin or number of family members. These apartments are not available for rental to applicants who are Negro. Further, respondents limit the occupancy of the one bedroom apartments to two persons and the two bedroom apartments to four persons.

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

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

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

Mr. Lewis Franke and *Mr. George D. Beischer* supporting the complaint.

Mr. Charles W. Mander and *Mr. Jay Cutler* of Washington, D.C., for respondents.

INITIAL DECISION BY JOHN LEWIS, HEARING EXAMINER

APRIL 24, 1968

STATEMENT OF PROCEEDINGS

The Federal Trade Commission issued its complaint against the above-named respondents on November 30, 1967, charging them with engaging in unfair and deceptive acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act, by falsely representing in newspaper advertisements that the apartments in certain apartment building complexes owned, managed and operated by the corporate respondents are available for rental by the general public, without restrictions or limitations as to race, color, national origin or number of family members. After being served with said complaint, respondents appeared by counsel and thereafter filed their answer denying having engaged in the illegal practices charged and raising the affirmative defenses that, (a) the complaint fails to state a cause of action against them in that they are engaged in intrastate commerce in the ownership, management and rental of real properties, and the Commission does not have jurisdiction over them based upon the mere insertion of announcements in newspapers concerning the possible availability of their apartments, (b) they have not exceeded in any way what they may lawfully do in the exercise of their right to select tenants for their rental properties, (c) the insertion of announcements in newspapers does not constitute advertising, within the meaning of the Federal Trade Commission Act, requiring the affirmative disclosure of restrictions on the use and occupancy of the apartments, and (d) this proceeding is not in the public interest.

A motion filed by respondents for dismissal of the complaint on the ground that it did not allege facts sufficient to sustain the jurisdiction of the Commission over them was denied by order of the examiner, dated February 12, 1968, without prejudice to the renewal thereof at a later appropriate stage of this proceeding. A motion filed by National Apartment Association to intervene as a party was denied by order of the examiner, dated January 8, 1968, but said Association was granted permission to participate as *amicus curiae*.

Prehearing conferences were thereafter convened before the undersigned hearing examiner on February 15, 1968, and March 13, 1968, at which there was a considerable narrowing of the issues, at which various factual stipulations were reached, and at which substantially all documentary exhibits were received in evidence. The transcripts of said conference were, by agreement of the parties, made a part of the public record, and the results of said conferences were embodied in the examiner's Prehearing Orders Nos. 1 and 2.

Hearings for the reception of testimony and other evidence were held in Washington, D.C., on April 1–2, 1968. All parties were represented by counsel, participated in the hearings and were afforded full opportunity to be heard and to examine and cross-examine witnesses. At the close of all the evidence the parties were granted leave to file proposed findings of fact and conclusions of law on May 2, 1968, and replies thereto on May 13, 1968.

Following the close of hearings and before date fixed for the filing of proposed findings, respondents filed a motion for dismissal of the complaint herein on the ground that the Civil Rights Act of 1968 (Public Law 90–284), signed by the President on April 11, 1968, will render any decision on the merits moot for the reason that such Act makes unlawful, restrictions on the sale or rental of real estate based on race, color or national origin, and there is, therefore, "no real possibility that the alleged restrictions as to race, color or national origin which respondents allegedly failed to reveal in advertising can be continued." While said Act does not cover restrictions as to the number of persons who may occupy premises, respondents contend that such allegation in the complaint involves a "minor" matter and that any order which might result in this proceeding "is rendered ineffective, inconsequential and no longer in the public interest." Counsel supporting the complaint have filed answer to respondents' motion to dismiss, in which they assert that "they do not oppose respondents' Motion to Dismiss in this matter." The evidence adduced herein establishes that following the issuance of the complaint herein, respondents endeavored to insert in their advertisements an affirmative statement to the effect that their apartments were only available on a restricted occupancy basis. However, the two principal newspapers in the District of Columbia used by respondents for the insertion of rental advertisements refused to accept any advertisement containing such a statement (Tr. 171). It may be inferred that such refusal was based on the fact that a local ordinance of the District of Columbia prohibits the knowing publication of any advertisement which states that the

transfer of an interest in real property will be refused or restricted on account of race, color, religion or national origin (RX 9–A).

This matter is now before the examiner for final consideration on respondents' motion to dismiss, which is unopposed by counsel supporting the complaint. The undersigned has concluded that the issues in this proceeding have been largely rendered moot by the enactment of Public Law 90–284, following the close of hearings. Since it will henceforth be unlawful, even in areas beyond the District of Columbia, to discriminate in the rental of apartments because of race, color or national origin, or to make any reference in advertisements of an intention to discriminate on such grounds, there would appear to be no further substantial public interest in an adjudicative disposition of the issues, as framed by the pleadings and developed by the evidence adduced herein. Accordingly, it would appear to be appropriate to grant respondents' motion and to dismiss the complaint herein.

ORDER

It is ordered, That the complaint in the above-entitled proceeding be, and the same hereby is, dismissed.

Opinion of the Commission

MAY 20, 1968

By Elman, *Commissioner:*

In this proceeding, in which the complaint issued on November 30, 1967, the hearing examiner filed an initial decision on April 24, 1968, granting an unopposed motion by respondents to dismiss the complaint. No appeal having been filed, the matter is before the Commission under Section 3.51 of the Rules of Practice to determine whether the case should be placed on its own docket for review.

Respondents' motion to dismiss the complaint was filed on April 16, 1968, following the close of evidentiary hearings. In granting the motion, the examiner made no findings of fact on whether the allegations of the complaint were supported by the evidence adduced at the hearings. His dismissal of the complaint was based solely on the ground that "the issues in this proceeding have been largely rendered moot by the enactment [on April 11, 1968] of Public Law 90–284 [the Civil Rights Act of 1968]," and that, therefore, "there would appear to be no further substantial interest in an adjudicative disposition of the issues, as framed by the pleadings and developed by the evidence adduced herein."

The hearing examiner's action is inexplicable, on several grounds.

To begin with, respondents' motion to dismiss was one upon which the hearing examiner had no authority to rule, and which he was required instead to certify to the Commission under Section 3.22 of the Rules of Practice. *Drug Research Corporation*, Docket 7179, October 3, 1963 [63 F.T.C. 998]; *cf. Florida Citrus Mutual, et al.*, 50 F.T.C. 959, 961 (1954). The Commission has not delegated to its hearing examiners the authority to rule upon motions to dismiss complaints on the grounds of alleged lack of public interest. Such a motion is addressed to the administrative discretion of the Commission, and necessarily involves reference to policy considerations outside the authority and competence of hearing examiners performing essentially adjusticative functions. As the Supreme Court has held, "the Commission alone is empowered to develop that enforcement policy best calculated to achieve the ends contemplated by Congress and to allocate its available funds and personnel in such a way as to execute its policy efficiently and economically." *Moog Industries* v. *Federal Trade Commission*, 355 U.S. 411, 413 (1958).

A parallel situation was presented to the Commission in the *Drug Research* case, *supra*, where the hearing examiner also dismissed the complaint on the ground that further proceedings would not be in the public interest. In vacating such action, the Commission stated [63 F.T.C. 1014–1015]:

> Complaint counsel's motion to dismiss the complaint was addressed to the Commission in its administrative capacity, as the complainant in this proceeding, and not in its adjudicative capacity; no question going to the merits of the violations of law alleged in the complaint was raised by the motion. In considering such administrative matters as whether to issue a complaint, or, as here, whether to go on with further proceedings in a case that has already been commenced by issuance of a complaint, the Commission is required to take into account a broad range of considerations bearing upon the public interest. In order to discharge its responsibility to make the most effective possible allocation of its necessarily limited resources of funds and personnel, the Commission must consider—as a matter of administrative judgment and discretion—which of the various courses of action open to it should be followed.
>
> Thus, the factors appropriate to the Commission's decision in such a matter are not within the authority and competence of the hearing examiner, whose duty it is, in such a case, to certify the motion to the Commission for its consideration and disposition rather than to act upon it himself. For, as stated in Section 8[1] of the Commission's Statement of Organization, "Hearing examiners are officials to whom the Commission, in accordance with law, delegates the initial performance of its *adjudicative fact-finding* functions to be exercised in conformity with Commission decisions and policy directives and with its rules of practice." (Emphasis added.) Disposition of a motion such as that filed

[1] Now Section 14.

by complaint counsel in this matter is not an "adjudicative fact-finding" function. Since the examiner had no authority to rule upon the motion, he should promptly have certified it to the Commission, pursuant to Section 3.6(a)[2] of the Commission's Rules of Practice.

It may be observed that the Commission's practice in this regard implies no disparagement of the important adjudicative functions performed by hearing examiners. "An examiner's cardinal function is to sit in a judicial capacity." (*Florida Citrus Mutual*, *supra* at p. 961.) It enhances the judicial role of hearing examiners to insulate them from such matters of policy and discretion as are involved in determining whether the public interest justifies issuance of, or continuation with, a complaint. We strengthen the judicial character of hearing examiners' determinations of fact and law on the record by relieving them from participation in determinations of broad administrative policy and discretion which cannot be closeted within the record of a single case.

Accordingly, following the precedents cited above, we must vacate the initial decision as *ultra vires* the hearing examiner. We shall instead treat respondents' motion to dismiss the complaint as if it had been properly certified to the Commission by the examiner.

It is clear that the issues of fact and law raised by the complaint in this case were not rendered moot by the subsequent enactment of the Civil Rights Act of 1968. The complaint here challenged the legality of certain newspaper advertisements under Section 5 of the Federal Trade Commission Act. The essence of the complaint was that respondents are engaged in the business of rental and management of described apartment complexes in Arlington, Virginia; that they published advertisements in interstate commerce which conveyed the impression that their apartments were available to the general public without restrictions as to race or color; that, in fact, these apartments were not available for rental to applicants who are Negro; and that, therefore, the advertisements were false, misleading, and deceptive.

If these allegations of the complaint were proved by the evidence adduced at the hearings, a violation of the Federal Trade Commission Act would have been established. Section 5 proscribes "any advertising matter whatsoever which creates a misleading impression in the mind of the ordinary purchaser * * * . [A]n advertisement may be deemed misleading even though the statements of fact it contains are not in and of themselves deceptive. The statutory ban applies to that which is suggested as well as that which is asserted." Handler,

[2] Now Section 3.22.

The Control of False Advertising Under the Wheeler-Lea Act, 6 Law & Contemp. Prob. 91, 102 (1939). An advertiser's failure to disclose material facts in circumstances where the effect of nondisclosure is to deceive a substantial segment of the public is as much deception as if it were accomplished through affirmative misrepresentations. "To tell less than the whole truth is a well known method of deception." *P. Lorillard Co.* v. *F.T.C.*, 186 F. 2d 52, 58 (4th Cir. 1950).

It is also clear that the enactment of the Civil Rights Act of 1968 does not render lawful any acts or practices which would otherwise be deemed unlawful under the Federal Trade Commission Act. Neither in its terms nor its legislative history does the Civil Rights Act disclose an intent by Congress to repeal or modify, in whole or in part, expressly or by implication, directly or indirectly, any provision of the Federal Trade Commission Act. Congress surely could not have intended, in passing the Civil Rights Act, to grant anyone a license to engage in false and misleading advertising that violates the Federal Trade Commission Act. Thus, if the facts presented before the hearing examiner showed a violation of the Federal Trade Commission Act, it would be immaterial that they might also show a violation of the Civil Rights Act of 1968. Conduct that violates one federal statute does not become immune because it also violates another statute.

Accordingly, it is not necessary for us to consider whether respondents' conduct violated, or was subject to the remedies or sanctions of, the Civil Rights Act of 1968. To the extent that compliance with the requirements of that Act may eliminate false and misleading advertising which violates the Federal Trade Commission Act, and thereby obviates the need for corrective action against such advertising under the statutes administered by this Commission, the enactment of the Civil Rights Act does bear significantly on the public interest which we must consider in developing "that enforcement policy best calculated to achieve the ends contemplated by Congress and to allocate its available funds and personnel in such a way as to execute its policy efficiently and economically." *Moog Industries*, *supra*.

However, we reject any contention that enactment of the Civil Rights Act of 1968 constitutes a mandate by Congress to this Commission to cease and desist enforcement of the Federal Trade Commission Act in the area of false and misleading advertising of housing covered by the Civil Rights Act. In this connection, we have noted the following provision in the Fair Housing Title of that Act:

> All executive departments and agencies shall administer their programs and activities relating to housing and urban development in a manner affirmatively to further the purposes of this title and shall cooperate with the Secretary [of

Housing and Urban Development] to further such purposes. (Title VIII, Section 808(d), 82 Stat. 73, 84–85.)

In the context of these general considerations, we return to the question of the disposition of respondents' motion to dismiss. In their motion, the respondents specifically state that there is "no real possibility that the alleged restrictions as to race, color and national origin which respondents allegedly failed to reveal in advertising can be continued." The Commission interprets this statement as a positive, unqualified affirmation that respondents have discontinued, and will not resume, a policy of restricting the availability of their apartments on the basis of race, color, or national origin. Such a change of rental policy necessarily eliminates from their advertising the deception challenged in the complaint. At this time, therefore, it would appear that the allegedly illegal acts and practices have been effectively terminated and that an order to cease and desist would serve no useful purpose. If it should transpire, however, that we are mistaken in this regard, the matter can always be reopened if necessary.

In view of the unique circumstances presented, therefore, the Commission has determined that the initial decision should be vacated and the complaint dismissed.

ORDER VACATING INITIAL DECISION AND DISMISSING COMPLAINT

For the reasons stated in the accompanying opinion,

It is ordered, That the initial decision of the hearing examiner, filed April 24, 1968, be, and it hereby is, vacated, and that the complaint in this proceeding be, and it hereby is, dismissed.

IN THE MATTER OF

E. FOMIL & SONS ET AL.

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

Docket C–1338. Complaint, May 20, 1968—Decision, May 20, 1968

Consent order requiring a San Francisco, Calif., importer and distributor of fabrics to cease importing or selling any fabric not meeting the flammability standards provided under the Flammable Fabrics Act.

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 E. Fomil & Sons, a partnership, and Ralph Fomil and Abraham Fomil, individually and as copartners trading as E. Fomil & Sons, 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:

PARAGRAPH 1. Respondent E. Fomil & Sons is a partnership. Respondents Ralph Fomil and Abraham Fomil are individuals and copartners trading as E. Fomil & Sons.

The respondents are engaged in the importation, sale and distribution of various commodities, including fabrics, with their office and principal place of business located at 480 Second Street, city of San Francisco, State of California.

PAR. 2. Respondents, now and for some time last past, 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.

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 Flammable Fabrics 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 com-

plaint 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 E. Fomil & Sons is a partnership, trading as E. Fomil & Sons, organized, existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 480 Second Street, in the city of San Francisco, State of California.

Respondents Ralph Fomil and Abraham Fomil are individuals and copartners trading as E. Fomil & Sons 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 E. Fomil & Sons, a partnership, and Ralph Fomil and Abraham Fomil, individually and as copartners, trading as E. Fomil & Sons, or any other name, and respondents' representatives, agents and employees, directly or through any corporate or other device, do forthwith cease and desist from manufacturing for sale, selling, offering for sale, in commerce, or importing into the United States, or introducing, delivering for introduction, transporting or causing to be transported in commerce, or selling or delivering after sale or shipment in commerce, any fabric as "commerce" and "fabric" are defined in the Flammable Fabrics Act as amended, which fails to conform to an applicable standard or regulation continued in effect, issued or amended under the provisions of the aforesaid Act.

It is further ordered, That the respondents herein shall, within ten (10) days after service upon them of this order, file with the Commission an interim report in writing setting forth respondents' intentions as to compliance with this order. This interim report shall also advise the Commission fully concerning the fiber composition, construction,

and weight of the respondents' fabrics intended or sold for use in wearing apparel and the approximate amounts thereof in inventory at the time of the issuance of this order. The interim report shall further advise the Commission fully and specifically with regard to the fabrics which led to the Commission's complaint and order in this Docket concerning (1) what, if any, inventory they have remaining and (2) what disposition they propose to make of the products. If fabric intended for wearing apparel has been disposed of in any manner, the Commission should be advised specifically concerning the nature of the disposition, supported by documentary proof.

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 of their compliance with this order.

IN THE MATTER OF

ALLIANCE ASSOCIATES, INC., ET AL.

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

Docket C-1339. Complaint, May 20, 1968—Decision, May 20, 1968

Consent order requiring a Coldwater, Mich., grocery brokerage firm to cease paying or receiving illegal brokerage fees, in violation of Section 2(c) of the Clayton Act

COMPLAINT

The Federal Trade Commission, having reason to believe that the parties respondent named in the caption hereof, and herein after more particularly described, have been and are violating the provisions of subsection (c) of Section 2 of the Clayton Act, as amended, (15 U.S.C. §13) hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent Alliance Associates, Inc., 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 605 West Chicago Street, Coldwater, Michigan. This organization is a closed corporation, the majority of the outstanding stock being owned or controlled by respondent E. Lee Feller.

PAR. 2. Respondent E. Lee Feller is president of the corporate respondent and is also a member of its board of directors. He formulates, directs, and controls the acts and practices of the corporate respond-

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

PAR. 3. Respondent Alliance Associates, Inc., is now, and for the past several years has been, engaged in the brokerage business, purportedly representing various sellers located throughout the United States in connection with the sale and distribution of products sold in grocery stores. In representing such sellers in sales to various buyers, respondent Alliance Associates, Inc., is paid a commission or brokerage fee by such sellers.

PAR. 4. Respondent Alliance Associates, Inc., in the course and conduct of its brokerage business, has been, and is now effecting the sale and distribution of products sold in grocery stores in commerce, as "commerce" is defined in the Clayton Act, as amended for sellers located in the various States of the United States other than the State of Michigan in which respondent is located. Said respondent has transported or caused such products, when sold, to be transported from the sellers' places of business to the buyers' places of business located in other States. Thus, there has been at all times mentioned herein a continuous course of trade in commerce in the sale of such products by said respondent for sellers.

PAR. 5. In the course and conduct of its business for the past several years respondent Alliance Associate, Inc., has entered into contracts and working agreements with a number of supermarkets, grocery chains and wholesalers, sometimes hereinafter referred to as buyers, who purchase and resell products that are generally sold in grocery stores. Such products are purchased through the respondent Alliance Associates, Inc., from various sellers purportedly represented by the respondent as described in Paragraph Three. In many instances respondent receives open orders from buyers to secure merchandise from sellers regularly selling to such buyers or from new sources of supply depending upon whether the terms of sales are most advantageous to the buyer. Among the supermarket and grocery chains having said arrangement with respondent Alliance Associates, Inc., are the following: H. C. Bohack Co., Inc., Brooklyn, New York; P & C Food Markets, Inc., Syracuse, New York; Borman Food Stores, Inc., Detroit, Michigan; Eberhard Foods, Inc., Grand Rapids, Michigan; Fishers Foods, Inc., Canton, Ohio; Oscar Joseph Stores, Inc., Toledo, Ohio; Fred W. Albrecht Grocery Co., Akron, Ohio; The Giant Markets, Scranton, Pennsylvania; and Carlisle Food Markets, Carlisle, Pennsylvania. Most of the merchandise purchased by these buyers through respondent Alliance Associates, Inc., carries a private label or private brand as distinguished from national label or brand merchandise. Re-

spondent Alliance Associates, Inc., has an understanding with the buyers that the latter will give priority consideration to purchasing all private label or brand merchandise from sellers through respondent. These private labels or private brands are owned either by the individual buyer or by respondent Alliance Associates, Inc. In some instances where the buyer owns the private label or brand they sell their interest in it to respondent for a nominal consideration. Respondent then grants a license to the buyer to use said label or brand on merchandise purchased through respondent from various sellers.

PAR. 6. Respondent Alliance Associates, Inc., renders valuable services, other than the purchasing services hereinbefore described, to the individual supermarket and grocery chain organizations referred to above. Respondent furnishes to these buyers a service which consists of keeping them advised by bulletins and otherwise of the market conditions and the prices of commodities offered for sale by the various sellers some of whom compete with each other. Respondent, on behalf of the buyers, conducts tests on products sold by them in order to insure that the quality is satisfactory and represents the best value. The expenses incurred by such tests are paid in whole or in part by respondent. In addition, respondent renders at its expense, valuable advertising, promotional and developmental services for the supermarkets and grocery chain buyers all of which are designed to increase the private label or private brand sales of such customers. These services include, among others, the preparation and organization of promotional sales campaigns by supplying the personnel who are responsible for planning, executing and supervising such activities. Besides furnishing the personnel and the concept of promotional campaigns, the respondent also supplies the artwork, pictorial displays, advertising mats and various other material and services. Respondent Alliance Associates, Inc., represents to the supermarket and grocery chain organizations that it will expend approximately 30 percent of the brokerage fee or commissions it receives from sellers on purchases by such customers for the various services that it renders to them.

PAR. 7. In view of the relationship described above, respondent Alliance Associates, Inc., in the conduct of its business is acting for and in behalf of the various buyers or has been subject to the direct or indirect control of such buyers. The acts and practices of respondent Alliance Associates, Inc., in accepting or receiving a brokerage fee or commission from sellers on sales to the various supermarkets and grocery chain buyers in connection with such buyers' purchases in commerce of products sold in grocery stores amount to the payment by the seller of a brokerage fee or commission to an agent of the buyer

In all of the buying-selling transactions hereinabove referred to, the brokerage fee or commissions are paid and transmitted by the seller to and accepted and received by the respondent, Alliance Associates, Inc., upon the purchases of the supermarket and grocery store organizations, while the said respondent is acting in fact for and in behalf of such buyers.

PAR. 8. In addition, and without regard to whether Alliance Associates, Inc., was acting for and in behalf of the buyer or seller, the acts and practices of respondent Alliance Associates, Inc., in passing on a portion of the brokerage fee or commission paid by the seller to the buyers in the form of services performed and other considerations granted amount to the payment of a commission, brokerage or an allowance or discount in lieu thereof to the buyers.

PAR. 9. The acts and practices of respondent as heretofore alleged, are in violation of subsection (c) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with violation of subsection (c) of Section 2 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 thirty (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 Alliance Associates, Inc., 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 605 West Chicago Street, Coldwater, Michigan.

Respondent E. Lee Feller is president of said corporation and is also a member of its board of directors. 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.

ORDER

It is ordered, That respondents Alliance Associates, Inc., a corporation, and its officers, and E. Lee Feller, individually and as an officer and stockholder of Alliance Associates, Inc., and respondents' agents, representatives and employees, directly or through any corporate or other device, in or in connection with the purchase, in commerce, as "commerce" is defined in the Clayton Act, as amended, of products sold in grocery stores do forthwith cease and desist from:

1. Receiving or accepting, directly or indirectly, from any seller, anything of value as a commission, brokerage or other compensation, or any allowance or discount in lieu thereof, upon or in connection with any purchase of such products for the account of any buyer, so long as any relationship exists between said brokerage organization and the buyer organization, either through ownership, control or management, or where respondents Alliance Associates, Inc., or E. Lee Feller is the agent, representative or other intermediary acting for or in behalf or is subject to the direct or indirect control of any buyer.

2. Directly or indirectly paying, transmitting or delivering to any buyer anything of value as a commission, brokerage or other compensation, or any allowance or discount in lieu thereof, received from any seller, either in the form of rebates or services, facilities or other benefits provided or furnished by respondents Alliance Associates, Inc., or E. Lee Feller to such buyers.

It is further ordered, That the respondent corporation shall forthwith distribute a copy of this order to each of its operating divisions.

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

Complaint

IN THE MATTER OF

MAIN SEWING CENTER, INC., ET AL.

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

Docket C-1340. Complaint, May 20, 1968—Decision, May 20, 1968

Consent order requiring an Elkhart, Ind., seller of sewing machines, vacuum cleaners and similar products to cease using bait advertising, false pricing and saving claims, fictitious contests, false guarantees, and other deceptive sales practices.

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 Main Sewing Center, Inc., a corporation, and Eugene G. Van Dusen and Gene A. Bridger, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Main Sewing Center, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Indiana, with its principal office and place of business located at 1039 South Main Street, in the city of Elkhart, State of Indiana.

Respondents Eugene G. Van Dusen and Gene A. Bridger are individuals and are officers of the corporate respondent. They formulate direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of sewing machines, vacuum cleaners and related products directly to the public and to other retailers for resale to the public.

PAR. 3. In the course and conduct of their business as aforesaid, respondents now cause, and for some time last past have caused, their said products, when sold, to be shipped from their places of business in the State of Indiana to purchasers thereof located in various other States of the United States, and maintain, and at all times mentioned

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

PAR. 4. Basically, respondents' sales plan is to locate or to secure the location of registration boxes and display material in a high density traffic area, such as a supermarket, where persons are requested or invited to register for a drawing, offering as a prize a free sewing machine. After the prize is awarded, registrants, who failed to win, receive from respondents a letter and credit of specified monetary value to be applied to the purchase of a sewing machine offered at a reduced price or other designated appliance or receive from respondents a letter offering an opportunity to win such a credit or allowance by participation in a lucky number contest. Although respondents advertise low priced appliances in such letters and in newspaper classified ads, their salesmen undertake to sell, and in many instances, do sell higher priced appliances to their customers who respond to such offers.

PAR. 5. In the course and conduct of their aforesaid business, and for the purpose of inducing the purchase of their products, the respondents have made, and are now making, numerous statements and representations in advertisements inserted in newspapers and in promotional material with respect to drawings, sales promotions, limitations to product offers, merchandise prices and guarantees.

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

WE THANK YOU FOR YOUR PARTICIPATION IN OUR RECENT DRAWING * * * AND ALTHOUGH YOU DID NOT WIN THE MAJOR PRIZE, YOUR NAME WAS SELECTED IN THE SECOND GROUP. THIS ENTITLES YOU TO A $60.00 CHECK CERTIFICATE WHICH MAY BE APPLIED AT ITS FULL VALUE ON THE PURCHASE OF ANY DOMESTIC, NEW HOME, RICCAR OR NECCHI SEWING MACHINE * * * YOUR CHECK CERTIFICATE MAY BE USED AS FOLLOWS:

New home zig zag model 104	$99.50
Less your check certificate	60.00
Total cost to you	39.50

OR IF YOU WISH YOU MAY USE YOUR $60.00 CERTIFICATE ON ONE OF OUR ROYAL VACUUM CLEANERS

* * * * * * *

ALL MACHINES ARE * * * COMPLETELY GUARANTEED.

* * * * * * *

P.S.—Please mail card today as this offer is completely void after ten days.

* * * * * * *

Lucky Number
Pull Tab

Congratulations:

You have been selected to participate in the all new

DOMESTIC SWEEPSTAKES

HERE is your opportunity. Compare the serial number on your letter against the enclosed list of lucky numbers, by removing the tab. It may mean extra savings to you.

Your letter may be used toward the purchase of the famous DOMESTIC MODEL ROBIN 164 SEWING MACHINE. * * * It is especially priced at $149.00.

* * * * * * *

Group No. 1 winners are eligible for $59.95 discount on any machine, and Group No. 2, $29.95.

* * * * * * *

Thank you for your interest in our recent free Sewing Machine Drawing. As a result, you have been selected to participate in the NECCHI-DOMESTIC Sewing Machine Sweepstakes.

* * * * * * *

At this time we have a special sale on one of our Brand New 1967 DOMESTIC ZIG ZAG SEWING MACHINES. The usual price is $109.00. This model is now on sale at only $99.50 Any sweepstake winnings you may have won in this contest will be deducted from the price of $99.50. * * *

* * * * * * *

NECCHI Zig Zag sewing machine * * * $43.80 * * * Guaranteed. * * *

* * * * * * *

SINGER electric sewing machine * * * guaranteed, $18.88 * * *

PAR. 6. By and through the use of the above-quoted statements and representations, and others of similar import and meaning but not expressly set out herein, the respondents have represented, and are now representing, directly or by implication:

1. That they are conducting bona fide drawings and bona fide contests to determine the identity of persons eligible to purchase articles of their merchandise at reduced or discount prices.

2. That as part of a bona fide promotional program, they are awarding valuable prizes of specified amounts as credits or allowances to be applied to the regular retail or sale price of designated articles of their merchandise.

3. That they are making bona fide offers to sell new sewing machines for $18.88, $43.80 and various other prices not set forth herein.

4. That their price of $109.50 for their 1967 Domestic Zig Zag Sewing Machine and their price of $149 for their Domestic Model Robin 164 Sewing Machine are the prices at which the said articles of merchandise were sold or offered for sale in good faith by respond-

ents at retail for a reasonably substantial period of time in the recent, regular course of their business.

5. By use of the words "special savings," "on sale" or other word or words of similar import or meaning, that respondents' offering prices for certain sewing machines constitute a substantial reduction from a higher price or prices at which such machines were sold or offered for sale in good faith by respondents at retail for a reasonably substantial period of time in the recent, regular course of their business and that the difference between such higher price or prices and the corresponding lower offering price for the said machines represents a savings to the purchaser.

6. That their said awards of credits or allowances are made only to a limited number of specially selected persons for a limited period of ten days.

7. That their sewing machines are unconditionally guaranteed.

PAR. 7. In truth and in fact:

1. Respondents are not conducting bona fide drawings or bona fide contests to determine the identity of persons eligible to purchase articles of their merchandise at reduced or discount prices. Their purpose in conducting such drawings and contests is to attract prospective purchasers of their higher priced merchandise.

2. Respondents do not award valuable prizes of specified amounts as credits or allowances to be applied to the regular retail or sale price of designated merchandise as part of a bona fide promotional program. Credits or allowances, granted pursuant to the said promotional program, are not deducted from respondents' regular retail or sale prices but from higher prices and therefore, such prizes are illusory.

3. The advertised offers to sell new sewing machines for $18.88, $43.80 and various other prices not set forth herein are not bona fide offers, but are made for the purpose of obtaining leads to prospective purchasers of respondents' sewing machines. After obtaining such leads, respondents or respondents' salesmen disparage the advertised sewing machine by act or words or both, and attempt to sell and, in many instances, do sell higher priced sewing machines to such purchasers.

4. Their price of $109.50 for their 1967 Domestic Zig Zag Sewing Machine or their price of $149 for their Domestic Model Robin 164 Sewing Machine are not the prices at which the said articles of merchandise were sold or offered for sale in good faith by respondents at retail for a reasonably substantial period of time in the recent, regular course of their business but are considerably in excess of such prices.

5. The prices referred to in respondents' offers of sewing machines in connection with the words "special savings," "on sale" or other word or words of similar import or meaning do not constitute a substantial reduction from a higher price or prices at which such machines were sold or offered for sale in good faith by respondents at retail for a reasonably substantial period of time in the recent, regular course of their business and purchasers are not afforded savings between such higher price or prices and the corresponding lower offering price for the said machines.

6. Respondents' said offers were not made to only a limited number of or to specially selected persons but were made generally to members of the purchasing public. Said offers were not limited to ten days but were available beyond that period of time.

7. Respondents' sewing machines are not unconditionally guaranteed but are subject to numerous terms, conditions and limitations which are not revealed in their advertising of such guarantees.

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

PAR. 8. In the course and conduct of their business, as aforesaid, respondents or their salesmen in a substantial number of cases fail to disclose orally at the time of sale and in writing on any conditional sales contract, promissory note or other instrument executed by the purchaser, with such conspicuousness and clarity as is likely to be read and observed by the purchaser, that such conditional sales contract, promissory note or other instrument may, at the option of the seller and without notice to the purchaser, be negotiated or assigned to a finance company or other third party and that if such negotiation or assignment is effected, the purchaser will then owe the amount due under the contract to the finance company or third party and may have to pay this amount in full whether or not he has claims against the seller under the contract for defects in the merchandise, nondelivery or the like.

The aforesaid failure of the respondents or their representatives to reveal said facts to purchasers has the tendency and capacity to lead and induce a substantial number of such persons into the understanding and belief that the respondents will not negotiate or transfer such documents, as aforesaid, and that legal obligations and relationships will exist only between such respondents and purchasers and will remain unchanged and unaltered, and has the tendency and capacity to induce a substantial number of such persons to enter into contracts

or execute promissory notes for the purchase of respondents' products of which facts the Commission takes official notice.

In truth and in fact, respondents frequently and in a substantial number of cases and in the usual course of their business sell, transfer and assign said notes and contracts to finance companies or third parties so as to bring about the aforementioned changes in legal obligations and relationships.

Therefore the failure of respondents or their representatives to reveal such facts to prospective purchasers, as aforesaid, was and is an unfair and false, misleading and deceptive act and practice.

PAR. 9. In the course and conduct of their aforesaid business, and at all times mentioned herein, respondents have been, and now are, in substantial competition in commerce, with corporations, firms and individuals in the sale of sewing machines, vacuum cleaners and related products of the same general kind and nature as those sold by respondents.

PAR. 10. By and through the use of the aforesaid acts and practices, respondents place in the hands of retailers, dealers and others the means and instrumentalities by and through which they may mislead and deceive the public in the manner and as to the things hereinabove alleged.

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

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

DECISION AND ORDER

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

if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by 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 Act, 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 Main Sewing Center, 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 1039 South Main Street, in the city of Elkhart, State of Indiana.

Respondents Eugene G. Van Dusen and Gene A. Bridger 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 Main Sewing Center, Inc., a corporation, and its officers, and Eugene G. Van Dusen and Gene A. Bridger, individually and as officers of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of sewing machines, vacuum cleaners and related products or other products in commerce, do forthwith cease and desist from:

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

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

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

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

5. Representing, directly or by implication, that any amount is respondents' usual and customary retail price for an article of merchandise when such amount is in excess of the price or prices at which such article of merchandise has been sold or offered for sale in good faith by respondents at retail for a reasonably substantial period of time in the recent, regular course of their business.

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

7. Using the words "special savings," "on sale" or any other word or words of similar import or meaning as descriptive of any price amount: *Provided, however*, That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that such price constitutes a substantial reduction from the price at which such merchandise was sold or offered for sale in good faith by respondents at retail for a reasonably substantial period of time in the recent regular course of their business.

8. Representing, directly or by implication, that any offer of products or merchandise is: (a) limited as to time; (b) made to a limited number of persons; or (c) restricted or limited in any other manner: *Provided, however*, That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that any represented limitations or restrictions were actually in force and in good faith adhered to.

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

10. Misrepresenting, in any manner, drawings, contests, offers, prizes, limitations to offers, prices, contracts, guarantees or any savings available to purchasers of respondents' products.

11. Furnishing or otherwise placing in the hands of others any means or instrumentality by or through which they may mislead or deceive the public in the manner or as to the things hereinabove prohibited.

12. Failing to disclose orally prior to the time of sale, and in writing on any conditional sales contract, promissory note or other instrument of indebtedness executed by a purchaser, and with such conspicuousness and clarity as is likely to be observed and read by such purchaser, that: Any such instrument, at respondent's option and without notice to the purchaser, may be discounted, negotiated or assigned to a finance company or other third party to which the purchaser will thereafter be indebted and against which the purchaser's claims or defenses may not be available.

13. Failing to deliver a copy of this order to cease and desist to all present and future salesmen or other persons engaged in the sale of respondents' products or services, and failing to secure from each such salesman or other person a signed statement acknowledging receipt of said order.

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

IN THE MATTER OF

WILLIAM N. BEESLEY, JR., ET AL.*

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

Docket C-1341. Complaint, May 20, 1968—Decision, May 20, 1968

Consent order requiring a Springfield, Ill., seller of chinchilla breeding stock to cease misrepresenting the profits to be made in chinchilla breeding, the fertility of his stock, and making other false claims.

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*Formerly trading as Great Lakes Chinchilla Company, etc.

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 William N. Beesley, Jr., an individual who traded and did business as Great Lakes Chinchilla Company, and as Chinchilla Guild of America, Great Lakes Division, hereinafter referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent William N. Beesley, Jr., is an individual who traded and did business under the name Great Lakes Chinchilla Company. His principal place of business was located at 148 Maple Grove, Springfield, Illinois which is his present address.

Respondent, until September 1966, also traded and did business as Chinchilla Guild of America, Great Lakes Division.

PAR. 2. Respondent for some time prior to March 1967 was engaged in the advertising, offering for sale, sale and distribution of chinchilla breeding stock to the public.

PAR. 3. In the course and conduct of his aforesaid business, respondent has caused his said chinchillas, when sold, to be shipped from his place of business in the State of Illinois to purchasers thereof located in various other States of the United States, and maintained, and at all such times maintained, a substantial course of trade in said products in commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of his aforesaid business, and for the purpose of obtaining the names of prospective purchasers and inducing the purchase of said chinchillas, respondent made numerous statements and representations in direct mail advertising and through the oral statements and display of promotional material to prospective purchasers by his salesmen, with respect to the breeding of chinchillas for profit without previous experience, the rate of reproduction of said animals, the expected return from the sale of their pelts, the market value of said animals as breeding stock, their quality, their warranty, the training assistance and inspection services to be made available to purchasers and the status of his organization.

Typical and illustrative of said statements and representations, but not inclusive thereof, were the following:

Many chinchilla ranchers are earning thousands of dollars a year IN THEIR SPARE TIME. Turn extra room into additional income for education, travel,

retirement. With just a few hundred dollars invested YOU CAN PULL YOURSELF OUT OF THAT MONTHLY PAYROLL RUT!!

PROFITS ARE HIGH—Quality pelts are valued at $20–$55 on today's market. The demand for pelts increases year after year.

Professional assistance from well-trained service people assures success, even if you have no experience.

Turn that extra room into potential Income, for Education, Travel or Retirement.

We've found the answer to financial problems for hundreds of people * * * City Folks and Farmers alike.

* * * OUR BREEDERS ARE WARRANTED to live 3 years and reproduce.

PAR. 5. By and through the use of the above-quoted statements and representations, and others of similar import and meaning but not expressly set out herein, and through the oral statements and representations made in sales presentations to purchasers, respondent represented, directly or by implication, that:

1. It is commercially feasible to breed and raise chinchillas in homes, basements, garages or spare rooms and large profits can be made in this manner.

2. The breeding of chinchillas for profit requires no previous experience.

3. The breeding stock of four female chinchillas and four male chinchillas purchased from respondent will result in live offspring as follows: 16 the first year, 64 the second year, 208 the third year, 640 the fourth year, and 1,936 the fifth year.

4. All of the offspring referred to in Paragraph Five (3) above will have pelts selling for an average price of $25 per pelt, and that pelts from offspring of respondent's breeding stock generally sell from $20 to $55 each.

5. Chinchillas sold by respondent are choice quality breeding stock and have a market value ranging from $150 to $350 each.

6. Each female chinchilla purchased from respondent and each female offspring will produce at least four live young per year.

7. A purchaser starting with four females and four males of respondent's chinchillas will have a minimum gross income of at least $12,000 a year from the sale of pelts at the end of the fifth year.

8. Chinchilla breeding stock purchased from respondent is unconditionally warranted to live three years and reproduce.

9. Purchasers of respondent's breeding stock would have their chinchillas inspected by a Guild ranch inspector at least three times per year or as required.

10. Chinchillas are hardy animals and are not susceptible to diseases.

11. Purchasers of respondent's breeding stock would be given guidance in the care of and breeding of chinchillas.

12. Through the use of the word "Guild" separately and as part of respondent's trade name, respondent is a guild or association formed for the mutual aid and protection of purchasers of respondent's breeding stock.

PAR. 6. In truth and in fact:

1. It is not commercially feasible to breed or raise chinchillas in homes, basements, garages, or spare rooms and large profits cannot be made in this manner. Such quarters or buildings, unless they have adequate space and the requisite temperature, humidity, ventilation and other necessary environmental conditions are not adaptable to or suitable for the breeding of chinchillas on a commercial basis.

2. The breeding of chinchillas for profit requires specialized knowledge in the feeding, care and breeding of said animals much of which must be acquired through actual experience.

3. The initial breeding stock of four females and four males purchased from respondent will not result in the number specified in subparagraph (3) Paragraph Five above, since these figures do not allow for factors which reduce chinchilla production, such as those born dead or which die after birth, the culls which are unfit for reproduction, fur chewers and sterile animals.

4. All of the offspring referred to in subparagraph (4) of Paragraph Five above will not produce pelts selling for an average price of $25 per pelt but substantially less than that amount; and pelts from offspring of respondent's breeding stock will generally not sell for $20 to $55 each since some of the pelts are not marketable at all and others would not sell for $20 but substantially less than that amount.

5. Chinchillas sold by respondent are not choice quality breeding stock and do not have a market value ranging from $150 to $350 each but substanially less than those amounts.

6. Each female chinchilla purchased from respondent and each female offspring will not produce at least four live young per year but generally less than that amount.

7. A purchaser starting out with four females and four males of respondent's breeding stock will not have a minimum gross income of at least $12,000 from the sale of pelts at the end of the fifth year but substantially less than that amount.

8. Chinchilla breeding stock purchased from respondent is not unconditionally warranted to live three years and reproduce but such guarantee as is provided is subject to numerous terms, limitations and conditions.

9. Purchasers of respondent's breeding stock do not receive inspection services from a Guild ranch inspector three times a year, but generally less than that number nor do they receive inspection services as required.

10. Chinchillas are not hardy animals and are susceptible to pneumonia, and other diseases.

11. Purchasers of respondent's breeding stock are given little if any guidance in the care of and breeding of chinchillas.

12. Respondent's business organization is not a guild or association formed for the mutual aid and protection of purchasers of respondent's chinchilla breeding stock but is a business organization formed for the purpose of selling chinchilla breeding stock for a profit.

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

PAR. 7. In the course and conduct of his business, respondent has been in substantial competition in commerce, with corporations, firms and individuals in the sale of chinchilla breeding stock.

PAR. 8. The use by respondent of the aforementioned false, misleading and deceptive statements, representations, and practices has had the tendency and capacity to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were true and into the purchase of substantial quantities of respondent's chinchillas by reason of said erroneous and mistaken belief.

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

DECISION AND ORDER

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

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the

respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent 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 respondent has violated the said Act, 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 William N. Beesley, Jr., is an individual who traded and did business under the name Great Lakes Chinchilla Company, and also at times under the name of Chinchilla Guild of America, Great Lakes Division, with his principal place of business located at 148 Maple Grove, Springfield, Illinois. His present address is 148 Maple Grove, Springfield, Illinois.

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

ORDER

It is ordered, That respondent William N. Beesley, Jr., an individual who traded and did business as Great Lakes Chinchilla Company, and Chinchilla Guild of America, Great Lakes Division, or trading and doing business under any other name or names, and respondent's representatives, agents and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of chinchilla breeding stock or any other products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Representing, directly or by implication, that:

1. It is commercially feasible to breed or raise chinchillas in homes, basements, garages, spare rooms or other quarters or buildings or that large profits can be made in this manner: *Provided, however*, That it shall be a defense in any enforcement proceeding instituted hereunder for respondent to establish that the represented quarters or buildings have the req-

uisite space, temperature, humidity, ventilation and other environmental conditions which would make them adaptable to and suitable for the breeding and raising of chinchillas on a commercial basis and that large profits can be made in this manner.

2. Breeding chinchillas for profit can be achieved without previous knowledge or experience in the feeding, care and breeding of such animals.

3. The breeding stock of four females and four male chinchillas purchased from respondent will produce live offspring of 16 the first year, 64 the second year, 208 the third year, 640 the fourth year, and 1,936 the fifth year.

4. The number of live offspring produced by respondent's chinchilla breeding stock is any number: *Provided, however*, That it shall be a defense in any enforcement proceeding instituted hereunder for respondent to establish that the represented number of offspring are usually and customarily produced by chinchillas purchased from respondent or the offspring of said chinchillas.

5. Chinchilla pelts produced from respondent's breeding stock will sell for any price, average price, or range of prices: *Provided, however*, That it shall be a defense in any enforcement proceeding instituted hereunder for respondent to establish that the represented price, average price, or range of prices are usually received for pelts produced by chinchillas purchased from respondent or by the offspring of such chinchillas.

6. Purchasers of respondent's chinchilla breeding stock will receive choice quality chinchillas or any other grade or quality of chinchillas; or that respondent's chinchilla breeding stock has a market value of from $150 to $350 each or any other price or range of prices: *Provided, however*, That it shall be a defense in any enforcement proceeding instituted hereunder for respondent to establish that purchasers do actually receive chinchillas of the represented grade, quality, market value, price or range of prices.

7. Each female chinchilla purchased from respondent and each female offspring produce at least four live young per year.

8. The number of live offspring produced per female chinchilla is any number: *Provided, however*, That it shall be a defense in any enforcement proceeding instituted hereunder

for respondent to establish that the represented number of offspring are usually and customarily produced by female chinchillas purchased from respondents or the offspring of said chinchillas.

9. A purchaser starting with four females and four males will have, from the sale of pelts, a minimum gross income, earnings or profits of $12,000 at the end of the fifth year after purchase.

10. Purchasers of respondent's breeding stock will realize gross or net income, earnings or profits in any amount or range of amounts: *Provided, however*, That it shall be a defense in any enforcement proceeding instituted hereunder for respondent to establish that the represented amount or range of amounts of earnings, profits or income are usually realized by purchasers of respondent's breeding stock.

11. Breeding stock purchased from respondent is warranted or guaranteed without clearly and conspicuously disclosing the nature and extent of the guarantee, the manner in which the guarantor will perform and the identity of the guarantor.

12. Purchasers of respondent's chinchilla breeding stock will be furnished with inspection services by respondent three times each year or as often as such services may be required by the purchaser: *Provided, however*, That it shall be a defense in any enforcement proceeding instituted hereunder for respondent to establish that the represented inspection services are actually furnished.

13. Chinchillas are hardy animals or are not susceptible to disease.

14. Purchasers of respondent's chinchilla breeding stock are given guidance in the care and breeding of chinchillas or are furnished advice by respondent as to the breeding of chinchillas: *Provided, however*, That it shall be a defense in any enforcement proceeding instituted hereunder for respondent to establish that purchasers are actually given the represented guidance in the care and breeding of chinchillas or are furnished the represented advice by respondent as to the breeding of chinchillas.

B. Using the word "Guild" or any other word of similar import or meaning as a part of the respondent's trade or corporate name; or misrepresenting, in any manner, the nature or status of respondent's business.

C. Misrepresenting, in any manner, the assistance, training, services or advice supplied by respondent to purchasers of his chinchilla breeding stock.

D. Misrepresenting, in any manner, the earnings or profits of purchasers of respondent's chinchilla breeding stock.

E. Failing to deliver a copy of this order to cease and desist to all present and future salesmen or other persons engaged in the sale of the respondent's products or services and failing to secure from each such salesman or other person a signed statement acknowledging receipt of said order.

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

BRONDABROOKE PUBLISHERS, INC., ET AL.

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

Docket 8546. Complaint, Nov. 29, 1962—Decision, May 23, 1968

Order reopening and modifying a cease and desist order issued October 11, 1963, 63 F.T.C. 1023, prohibiting a New Jersey publishing firm from misrepresenting that its newspaper was affiliated with a labor union by adding a proviso that as a defense in any enforcement proceeding respondent, Joseph Harrow, may show that the newspaper "The New Jersey Teamsters News" is in fact labor union affiliated.

ORDER REOPENING PROCEEDING AND MODIFYING ORDER TO CEASE AND DESIST

Respondent Joseph Harrow, on March 15, 1968, filed with the Commission a petition requesting that this proceeding be reopened for the purpose of modifying the order to cease and desist issued October 11, 1963 [63 F.T.C. 1023], prohibiting respondents named therein from representing that the newspaper designated "United Labor Management Press," or any similar publication, is endorsed by, affiliated with, or an official publication of, or otherwise connected with a labor union.

According to the petition, respondent Joseph Harrow is now president-treasurer of Harrow News-Feature Press, Inc., a firm which edits and publishes, under authority granted by Teamsters Joint Council No. 73 of New Jersey, a newspaper known as "The New Jersey Teamster News." The petition specifically requests that the order to cease and desist be modified so that it will not prohibit the truthful representation that said newspaper is edited and published under the authority of a labor union.

The Acting Director of the Bureau of Deceptive Practices, on April 15, 1968, filed an answer to the petition stating that it appeared from information obtained in a compliance investigation conducted in November 1966 that The New Jersey Teamsters News had been endorsed by Joint Council No. 73 and that if petitioner could show that said newspaper is still endorsed by the union there would be no reason to deny respondent's request to modify the order to cease and desist.

Subsequently, on May 8, 1968, respondent Joseph Harrow filed with the Commission a statement dated April 25, 1968, signed by Dominick Calabrese, president, Joint Council No. 73, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, advising that The New Jersey Teamsters News was originally endorsed and authorized at a regular membership meeting by Joint Council No. 73 on March 15, 1960, that this action was renewed by said Council and is so recorded in the minutes of the April 16, 1968, meeting.

For the foregoing reasons, the Commission has determined that this proceeding should be reopened pursuant to § 3.72(b) of the Commission's rules of practice and the order modified in accordance with respondent's request. Accordingly,

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

It is further ordered, That as to respondent Joseph Harrow, the order to cease and desist entered herein October 11, 1963, be, and it hereby is, modified by adding to paragraph 1 thereof the following proviso:

> *Provided, however*, That in any enforcement proceeding instituted hereunder in connection with the representation that the newspaper known as "The New Jersey Teamsters News" is endorsed by or affiliated with a labor union, it shall be a defense for respondent Joseph Harrow to establish that said newspaper is endorsed by or affiliated with Joint Council No. 73, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.

Complaint

IN THE MATTER OF

HEMCA, INC., ET AL.

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

Docket C-1342. Complaint, May 24, 1968—Decision, May 24, 1968

Consent order requiring a Grand Prairie, Texas, franchiser of retail meat stores to cease using bait advertising in the sale of its meat products, misrepresenting the weight loss due to cutting and trimming, misbranding meat which is below U.S.D.A. grade standards, and furnishing its licensees with means of deception.

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 Hemca, Inc., a corporation, and Marvin J. Hutcheson, 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 Hemca, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Texas, with its principal office and place of business located at 111 NE. 11th Street, Grand Prairie, Texas.

Respondent Marvin J. Hutcheson is an officer of the corporate respondent. Said individual respondent formulates, directs, and controls the acts and practices of the corporate respondent, and certain of their franchised dealers, distributors, and licensees, 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 business of licensing and franchising the operation of stores in various States of the United States which sell meat and meat products to the public.

Respondents, by and through said franchised dealers, distributors and licensees, are now, and for some time last past have been engaged in the advertising, offering for sale, sale and distribution of meat and meat products, to members of the purchasing public. Said meat and meat products come within the classification of food, as "food" is defined in the Federal Trade Commission Act.

PAR. 3. In the course and conduct of their business and at all times mentioned herein, pursuant to agreements with said franchised dealers, distributors, and licensees, respondents have disseminated and do now disseminate advertising by the United States mails, and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, including advertising material for use in newspapers of general circulation, for the purpose of inducing, or which is likely to induce, the purchase of meat and meat products; and have disseminated and caused the dissemination of advertising material by various means for the purpose of inducing and which were likely to induce the purchase of meat and meat products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

Respondents have furnished and supplied to said franchised dealers, distributors, and licensees, who sell said meat and meat products to the public, various types of advertising literature, including, but not limited to, sales manuals, brochures, and advertising mats, and have instructed, assisted and in other ways cooperated with them in the advertising of said products in newspapers of general circulation.

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

U.S.D.A. CHOICE BEEF HALVES 39¢ lb.

U.S.D.A. Graded and Inspected HEAVY BEEF HALVES lb. 29¢.

U.S. Government Inspected GUARANTEED TENDER AND DELICIOUS BEEF HALVES 29¢ lb. BEEF HINDQUARTERS 33¢ lb.

U.S.D.A. CHOICE SELECT CUT ORDERS CORN FED TENDER AGED, 59 to 79¢ lb.

Satisfaction Guaranteed.

Tender and Delicious Hindquarters, 33¢ lb.

Satisfaction Guaranteed

All Hutcheson Meats are guaranteed to meet your satisfaction or your order will be cheerfully replaced or your money refunded within 10 days...

HUTCHESON MEAT

PAR. 5. By and through the use of the aforesaid statements, and others of similar import and meaning, not specifically set forth herein, respondents and their franchised dealers, distributors and licensees have represented, and do represent directly or by implication, that:

(1) Offers set forth in said advertisements are bona fide offers to sell products of the kind therein described at the prices stated therein.

(2) The advertised meats have been inspected and graded by the United States Department of Agriculture and labeled by that Department according to the determined grade; and that as a result

thereof a specific grade of meat so labeled will be readily identifiable by visual inspection of the label, from a different grade of the same type of meat, and will be distinguishable from similar meats which have not been inspected and graded by the Department of Agriculture and which because of this fact bear no inspection or grading label.

(3) The advertised meats are guaranteed and a purchaser who is not satisfied with the product purchased by him will, upon request, receive a refund of his entire purchase price.

PAR. 6. In truth and in fact:

(1) The offers set forth in said advertisements, and other offers not set forth in detail herein, were not, and are not, bona fide offers to sell the products appearing in the advertisements at the advertised prices but, to the contrary, are made to induce prospective purchasers to visit the stores and places of business of respondents' franchised dealers, distributors and licensees for the purpose of purchasing the said advertised products. When prospective purchasers, in response to said advertisements, attempt to purchase the advertised products, salesmen of the said franchised dealers, distributors and licensees make no effort to sell such products, but, in fact disparage them in a manner calculated to discourage the purchase therof, and attempt to, and frequently do, sell much higher priced products.

(2) Not all of the advertised meats have been inspected and graded by the United States Department of Agriculture and the practice of respondents' franchised dealers, distributors and licensees of removing the inspection and grading stamps and labels placed on meats which have been inspected and graded by that Department, and of substituting their own labels and grade names in the place and stead thereof, precludes prospective purchasers from readily ascertaining by visual inspection the grade of any specific cut of meat previously graded and inspected as aforesaid, or from distinguishing it from similar meat which has not been inspected and graded by the United States Department of Agriculture.

(3) The advertised guarantee fails to clearly and conspicuously set forth the nature and extent of said guarantee. Contrary to the representation, appearing therein, that the entire amount of the purchase price will be refunded on the request of an unsatisfied purchaser, any refund made by respondents' franchised dealers, distributors or licensees is based on the weight of the product returned. No refund is made on that portion of the original purchase which is lost by the act of cutting and trimming the meat, regardless of the fact that the purchaser pays a weight price based on the untrimmed product.

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

PAR. 7. By use of the aforesaid practices, respondents have placed in the hands of said franchised dealers, distributors, and licensees, the means and instrumentalities by and through which they may mislead the purchasing public; and use by respondents and their franchised dealers, distributors and licensees, of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were, and are, true and into the purchase of substantial quantities of the aforesaid products, including higher priced products than those advertised because of said mistaken and erroneous belief.

PAR. 8. The aforesaid acts and practices of respondents, as herein alleged, including the dissemination by respondents of false advertisements as aforesaid, were, and are, all to the prejudice and injury of the public and constituted, and now constitute unfair and deceptive acts and practices in commerce in violation of Sections 5 and 12 of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the 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 Hemca, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Texas, with its office and principal place of business located at 111 NE. 11th Street, in the city of Grand Prairie, State of Texas.

Respondent Marvin J. Hutcheson 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 Hemca, Inc., a corporation, and its officers, and Marvin J. Hutcheson, individually and as an officer of said corporation and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of meat and other food products, do forthwith cease and desist from:

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

(a) That any products are offered for sale, when the purpose of such representations is not to sell the offered products, but to obtain prospects for the sale of other products at higher prices.

(b) That any product is offered for sale when such an offer is not a bona fide offer to sell such product.

(c) That any product is guaranteed unless the nature, conditions and extent of the guarantee and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed in immediate conjunction therewith.

2. Disseminating, or causing the dissemination of any advertisement by means of United States mails, or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which fails to clearly and conspicuously indicate:

(a) That beef sides, hindquarters, and other untrimmed pieces of meat offered for sale are sold subject to weight loss due to cutting, dressing, and trimming;

(b) That the price charged for such meat is based on the weight before cutting, dressing, and trimming occurs;

(c) The average percentage of weight loss of such meat due to cutting, dressing and trimming.

3. Disseminating, or causing the dissemination of any advertisement by means of the United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which fails to clearly and conspicuously include:

(1) When United States Department of Agriculture graded meat is advertised which is below the grade of "USDA Good," the statement "This meat is of a grade below U.S. Prime, U.S. Choice, and U.S. Good."

(2) When meat not graded by United States Department of Agriculture is advertised:

(a) The statement "This meat has not been graded by the United States Department of Agriculture," and

(b) If such meat is a portion of the total meat offered a statement indicating the portion which is ungraded, and the percentage, by weight, of the total meat offered.

4. 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 meat or other food product in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which contains any of the representations prohibited in Paragraph 1 of this order or fails to comply with the affirmative requirements of Paragraphs 2 and 3 hereof.

5. Discouraging the purchase of, or disparaging in any manner, or encouraging, instructing or suggesting that others discourage or disparage, any meat or other food products which are advertised or offered for sale in advertisements, disseminated or caused 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.

6. Supplying or placing in the hands of any franchised dealer, distributor, licensee, or any salesman or agent thereof, sales manuals, brochures, advertising mats, or any other advertising, or sales aid materials for the purpose of inducing or which are likely to induce, directly or indirectly, the purchase of meat or other food products in commerce, as "commerce" is defined in the Federal Trade Commission Act, and which contain any of the false, misleading or deceptive representations prohibited in

this order, or which are designed for use, or could be used, to carry out or enhance the practices prohibited in this order.

7. Failing to deliver a copy of this Order to Cease and Desist to all operating divisions of the corporate respondent and to all officers, managers and salesmen, both present and future, of each franchised dealer, distributor, and licensee; and to any other person now engaged or who becomes engaged in the sale of meat or other food products as respondents' agent, representative, or employee; and to secure a signed statement from each of said persons acknowledging receipt of a copy thereof.

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

STERLING DRUG INC., ET AL.

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

Docket C-1343. Complaint, May 28, 1968—Decision, May 28, 1968

Consent order requiring a drug distributor and its advertising agency of New York City, to cease making misleading therapeutic claims in advertising its "Ironized Yeast" tablets, "Super Ironized Yeast" liquid and similar drug preparations.

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 Sterling Drug Inc., a corporation, and Thompson-Koch Company, Inc., a corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Sterling Drug Inc., is a corporation organized and existing under the laws of the State of Delaware with its office and principal place of business at 1450 Broadway in the city of New York, State of New York.

Respondent Thompson-Koch Company, Inc., is a corporation organized and existing under the laws of the State of Ohio, with its office

and principal place of business located at 1450 Broadway, in the city of New York, State of New York.

PAR. 2. Respondent Sterling Drug Inc., through the instrumentality of Glenbrook Laboratories, a division of said corporate respondent, is now, and has been for some time last past, engaged in the sale and distribution of preparations which come within the classification of drugs as the term "drug" is defined in the Federal Trade Commission Act.

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

1. *Designation:* "Ironized Yeast"

Formula: Six tablets contain:

Ferrous Sulfate, exsiccated grains (100 mg. iron)	5.25
Vitamin B_1 (from high potency primary dried brewers yeast) mg	2.25

Directions: Ironized Yeast is offered for use in iron deficiency anemia. In order to get the best results it must be taken *regularly and faithfully.* In the dosage recommended. Ironized Yeast contains 10 times the minimum daily requirement of iron and 2¼ times the minimum daily requirement of Vitamin B_1. In addition, it contains other Vitamin B complex factors natural to this type of yeast.

For adults and children over 6 years of age, the minimum daily dose is 6 tablets. Take 2 with water or other liquid at meal time. Tablets may be crushed or mixed with cereals or other foods.

2. *Designation:* "Super Ironized Yeast"

Formula: Each fluid ounce (2 tablespoonfuls) contains:

Iron (as iron ammonium citrate)	100mg.
Thiamine hydrochloride (B_1)	5mg.
Riboflavin (B_2)	5mg.
Pyriodoxine hydrochloride (B_6)	3mg.
Vitamin B_{12} (cyanocobalamin)	10mg.
Nicotinamide	100mg.
Panthenol	5mg.
Liquid Yeast Concentrate	1ml.
Alcohol	12% by volume.

Directions: This pleasant-tasting iron tonic and high potency vitamin supplement may be taken regularly whenever needed. SUPER IRONIZED YEAST supplies large quantities of iron to combat the tired, dragged out feeling associated with common iron deficiency anemia. This iron is supplied in the form of an elixir to *build strength fast.* This elixir also supplies your body with liberal amounts of multi-vitamins essential to glowing, robust health. You can take SUPER IRONIZED YEAST any time you need it with complete confidence. Just be sure you use it regularly for best results.

Adults—As a therapeutic tonic (Iron, Thiamine, Riboflavin, Nicotinamide deficiencies): 1 tablespoonful at each meal or as directed by physician. As a dietary supplement: 1 tablespoon daily at breakfast or any mealtime. Children 6 to 12 years—one half the adult dose.

The above designated preparations are sometimes referred to collectively as "Ironized Yeast."

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

Respondent Thompson-Koch Company, Inc., is now and for some time last past has been the advertising agency of respondent Sterling Drug Inc., and its Glenbrook Laboratories Division, and now prepares and places, and for some time last past has prepared and placed, for publication, advertising material, including the advertising hereinafter referred to, to promote the sale of said preparations.

PAR. 4. In the course and conduct of their business, respondents have disseminated, and caused the dissemination of, certain advertisements concerning the preparation referred to in Paragraph Two, above, by the United States Mails and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, including, but not limited to advertisements inserted in newspapers and other advertising media, and by means of radio and television broadcasts transmitted by radio and television stations located in various States of the United States and in the District of Columbia, having sufficient power to carry such broadcasts across State lines, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said preparations; and have disseminated, and caused the dissemination of, advertisements concerning said preparations by various means including but not limited to the aforesaid media, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said preparations in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. Among and typical, but not all inclusive thereof, of the statements and representations contained in said advertisements, including audio-visual representations in television broadcasts, disseminated as hereinabove set forth, are the following:

VIDEO	AUDIO
George comes through door into living room. He moves slowly, wearily. He looks haggard, worn. He walks to divan where he drops his hat and coat, turns toward easy chair.	*ANNOUNCER:* Is this you? Tired and worn before the evening begins?

VIDEO	AUDIO
George sits down heavily in chair, closes eyes momentarily, rubs his hand over face then reaches for newspaper on table beside him. Opens newspaper starts to read.	Dragging through day after weary day with no pep?
Dissolve to George asleep in chair. Newspaper has fallen to his lap.	Chances are you may have ·
Picture fades as full screen-lettering "The Gray Sickness" is super-imposed. * * *	The Gray Sickness (tunnel).
	Announcer: The Gray Sickness means you suffer iron deficiency anemia. Ask your doctor. * * *
Words "Builds Strength Fast" pop out of package in synchro with audio.	Ironized Yeast Builds Strength Fast!
Cut to George smiling, full of pep dancing with wife.	Yes, in only 7 days you can start to feel your old self again * * * Just look at George now * * * finished a hard day's work * * * and with energy to spare.
Cut to package of I.Y. Tablets. Super words "60 Tablets—Only 90 Cents."	So get Ironized Yeast. 60 tablets—Only 90 cents.
Cut to package and super "New Liquid Formula."	If you prefer an iron tonic in liquid form * * *
Zoom to S.I.Y. name on package.	Get this brand new formula * * * pleasant-tasting Super Ironized Yeast.
Cut to full screen package. Super "Iron Tonic Plus High-Potency Vitamins."	We call it Super because we've loaded this iron tonic with High-Potency Multi-Vitamins.
Full screen of S.I.Y. tablets packages. Pop in "Liquid 98¢—Tablets 90¢."	Remember—Build strength fast with Ironized Yeast * * * Liquid or tablets.

* * * * * * *

VIDEO	AUDIO
Woman slowly, half heartedly, wearily washing dishes. In synchro with audio pop in "Flu, Grippe, Bad Cold."	*Announcer:* If the Flu, Grippe or a Bad Cold has left you so weak that even washing the breakfast dishes is an effort * * *
Closeup of woman—Super over action words "You Feel Gray."	And you're feeling gray * * * you may suffer iron deficiency anemia.
* * * * * * *	
Man fortyish, doing fast "rock and roll" dance with pretty young woman.	*Announcer:* Boy, Jim's got it made—
Iris open on head of Jim.	But not long ago * * *
Jim walks into room. He sits down in chair.	Jim dragged through day after weary day with no pep * * *
Jim picks up newspaper and starts to read.	Tired and worn before the evening began.
Cut to Jim asleep in chair with newspaper in his lap.	Never sick enough to stay in bed * * * yet never really well.
Picture fades as full screen lettering "The Gray Sickness" is superimposed.	Jim had The Gray Sickness! (tunnel) * * * iron deficiency anemia * * * Now, to combat this condition, doctors usually prescribe an iron tonic. And * * *
Cut to zoom-up shot of word "New" in burst.	New.
Cue in emblem containing "super."	Super.
Open to full label shot showing S.I.Y.	Ironized Yeast.
To full shot of S.I.Y. carton, pop words "Builds Strength Fast" in synchro with audio.	Is an amazing, effective liquid iron vitamin tonic * * * Builds Strength Fast!
"Builds strength Fast" fades out. Vitamin names, one by one, roll on like screen credits: Vitamin B_1 * * *	We call it Super because we've loaded it with iron and an abundance of essential, high-potency multi-vitamins.
Vitamin B_2 * * * Nicotinamide * * * Vitamin B_6 * * * Panthenol * * * bottom of screen shows words "High Potency Vitamins."	
* * * * * * *	

VIDEO	AUDIO
CU of railroad crossing type sign with words "Diet Danger" flashing on and off.	Announcer: What is Diet Danger? Well, if you're on a reducing diet, you may not be
Cut to semi-CU of woman's head.	getting all the essential vitamins and the iron you need to keep up your strength.
Cue in on woman's face. Pop in "Pale, Tired, Worn." Iris open to full scene of	So you are pale, tired, worn * * *
Same woman ironing. Stops and leans on ironing board.	yes, actually look older, but now—you can get
Cut to zoom-up shot of word "New" in burst.	New.
Cue in emblem containing "super"	Super.
Open to full label shot showing S.I.Y.	Ironized Yeast,
* * * * * * *	
To full shot of S.I.Y. carton, pop words "Builds Strength Fast" in synchro with audio.	The liquid iron-vitamin tonic that Builds Strength Fast!
"Builds Strength Fast" fades out. Vitamine names, one by one, roll on like screen credits: Vitamin B_1 * * * Vitamin B_2 * * * Nicotinamide * * * Vitamin B_5 * * * Panthenol. Bottom of screen shows words "High Potency Vitamins."	We call it Super because it's loaded with an abundance of these essential, high-potency multi-vitamins to give you the normal strength and energy these supply * * * even while you diet!
* * * * * * *	

When convalescing. * * * to combat iron, thiamine, riboflavin, nicotinamide deficiencies due to bad colds or flu, take one tablespoon at each meal or as directed by physician. Children 6 to 12 years—½ the adult dose.

WEAK, TIRED, DRAGGED-OUT? * * * You know how miserable it is to drag through day after weary day * * * having to work when you don't feel up to it * * * going around weak, tired, worn. Well symptoms such as these can mean that you have iron deficiency anemia—or you're not getting an adequate supply of vitamins—or both! * * * But here's *one* tonic that effectively combats either or both of these conditions * * * gives you *both* large, strength-building amounts of iron *plus* abundant, high potency multi-vitamins essential to glowing, robust health.

* * * * * * *

If you're worn out after a normal day's work . . . tired and weak before the evening begins . . . never really sick, yet never really well . . . you may be suffering from IRON DEFICIENCY ANEMIA. You feel weak, tired, nervous, irritable. . . . (Radio)

* * * * * * *

Goes to work in 24 hours to build rich red blood that brings new strength to every part of your body! (Newspaper)

* * * * * * *

SIGNS of IRON-POOR BLOOD * * * Pallor; Weakness; Frequent Headaches; Tiredness; Nervousness; Loss of Appetitte, Loss of Energy; Restlessness. (Newspaper)

* * * * * * *

If the Illnesses of winter, such as cold and flu, have left you tired, weak and worn, use SUPER IRONIZED YEAST AS a spring tonic to combat iron, thiamine, riboflavin, nicotinamide deficiencies. Take one tablespoonful at each meal or as directed by physician.

* * * * * * *

Never Really Sick* * * Never Really Well * * * THE GRAY SICKNESS * * * Iron Deficiency Anemia has been aptly called the GRAY SICKNESS. Not only because its victims have lost their once healthy color, but also because life itself has become gray and drab for them. For you simply cannot enjoy work or play when you have to drag through day after weary day feeling tired, weak and listless. And sleep doesn't seem to refresh you for you wake up tired. * * * Fortunately iron-poor blood responds quickly to proper treatment . . . and normal healthy color, strength and vigor return. (Newspaper)

* * * * * * *

So if iron-poor blood is slowing down your recovery from Asian Flu, a bad cold or the grippe, get IRONIZED YEAST today. (Radio)

* * * * * * *

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

(1) That the use of Ironized Yeast and Super Ironized Yeast, and each of them, will be of benefit, safe and effective in the treatment and relief of a deficiency of iron and iron deficiency anemia, and pallor, weakness, frequent headaches, tiredness, nervousness, loss of appetite, loss of energy, and restlessness.

(2) That Ironized Yeast and Super Ironized Yeast, and each of them, will increase the strength and energy of every part of the body within 24 hours.

(3) That the vitamins as supplied by Ironized Yeast and Super Ironized Yeast contribute to the effectiveness of these preparations in

the treatment and relief of a deficiency of iron and iron deficiency anemia.

(4) That persons who are dieting have a special need for the nutrients supplied by Ironized Yeast and Super Ironized Yeast.

(5) That Ironized Yeast and Super Ironized Yeast, and each of them, will promote convalescence from colds, influenza and Asian Flu.

PAR. 7. In truth and in fact:

(1) Neither Ironized Yeast nor Super Ironized Yeast will be of benefit in the treatment or relief of weakness, frequent headaches, tiredness, nervousness, loss of appetite, loss of energy, or restlessness except in a small minority of persons in whom such symptoms or conditions are due to a deficiency of one or more of the vitamins provided by these preparatiions, or to a deficiency of iron or to iron deficiency anemia.

Furthermore, the statements and representations in said advertisements have the capacity and tendency to suggest, and do suggest, to persons viewing or hearing such advertisements that in cases of persons of both sexes and all ages who experience weakness, frequent headaches, tiredness, nervousness, loss of appetite, loss of energy, or restlessness, there is a reasonable probability that these symptoms in such cases will respond to treatment by the use of these preparations: and have the capacity and tendency to suggest, and do suggest, that in cases of persons of both sexes and all ages who have a deficiency of iron or who have iron deficiency anemia the preparations can be used safely and effectively in the treatment and relief of a deficiency of iron or of iron deficiency anemia and their symptoms. In the light of such statements and representations, said advertisements are misleading in a material respect and therefore constitute false advertisements, as that term is defined in the Federal Trade Commission Act, because they fail to reveal the material facts that in the great majority of persons, or of any age, sex or other group or class thereof, who experience weakness, frequent headaches, tiredness, nervousness, loss of appetite, loss of energy, or restlessness, these symptoms are not caused by a deficiency of one or more of the vitamins provided by said preparation or by a deficiency of iron or iron deficiency anemia, and that in such persons the said preparations will be of no benefit; and they are additionally misleading in a material respect because they fail to reveal the material fact, when representing that the preparations will be effective for the treatment and relief of a deficiency of iron or of iron deficiency anemia, in adults, and when ascribing symptoms of pallor, weakness, frequent headaches, tiredness, nervous-

ness, loss of appetite, loss of energy, or restlessness, in adults, to a deficiency of iron or to iron deficiency anemia, that, in women of any age beyond the usual child-bearing age and in men of all ages, a deficiency of iron or iron deficiency anemia is almost invariably due to bleeding from some serious disease or disorder and, in the absence of adequate treatment of the underlying cause of the bleeding, the use of the preparations may mask the signs or symptoms of said deficiency or anemia and thereby permit the progression of such disease or disorder.

(2) Neither Ironized Yeast nor Super Ironized Yeast will increase the strength or energy of any part of the body within 24 hours.

(3) The vitamins as supplied by either Ironized Yeast or Super Ironized Yeast do not in any way contribute to the effectiveness of either of these preparations in the treatment or relief of iron deficiency anemia.

(4) Persons who are dieting have no special need for the nutrients supplied by either Ironized Yeast or Super Ironized Yeast.

(5) Neither Ironized Yeast nor Super Ironized Yeast will be of benefit in promoting convalescence from colds influenza, or Asian Flu.

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

PAR. 8. The dissemination by the respondents of the false advertisements, as aforesaid, constituted, and now constitutes unfair and deceptive acts and practices, in commerce, in violation of Sections 5 and 12 of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the 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, such agreement providing that the issuance, service and entry of the Commission's decision and order in disposition of the proceeding be stayed until an order disposing of all the issues raised *In the Matter of J. B. Williams Company, Inc., et al.*, Docket No. 8547 [68 F.T.C. 481], shall have become final within the meaning of the Federal Trade Commis-

sion Act; and such agreement providing further that if the terms of the final order in Docket No. 8547 shall differ from the terms of the order contained in the Hearing Examiner's Initial Decision therein, then the order set forth in the agreement herein shall be modified prior to issuance, service and entry so as to conform in all material and pertinent respects to the final order in Docket No. 8547; and

The Commission having accepted the agreement, issued its complaint forthwith and deferred the entry of its decision and order; and

Counsel for the parties herein having thereafter by joint motion submitted to the Commission for acceptance in agreement containing a consent order, the same being the order of the prior agreement revised so as to conform in all material and pertinent respects to the final order in Docket No. 8547, and additionally containing an admission by the respondents of all the jurisdictional facts set forth in the complaint heretofore issued, copy of which was attached, 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 the same, in lieu of the said prior agreement, and such agreement and the said attached complaint having thereupon been placed on the public record for a period of 30 days, now in further conformity with the procedure prescribed in Section 2.34(b) of its Rules, the Commission having heretofore issued its complaint in the form contemplated by such agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Sterling Drug Inc., is a corporation organized and existing under the laws of the State of Delaware, with its office and principal place of business at 1450 Broadway, in the city of New York, State of New York.

Respondent Thompson-Koch Company, Inc., is a corporation organized and existing under the laws of the State of Ohio, with its office and principal place of business located at 1450 Broadway, in the city of New York, State of New York.

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

ORDER

It is ordered, That respondents Sterling Drug Inc., a corporation, and Thompson-Koch Company, 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 Ironized Yeast the preparation designated Super Ironized Yeast, or any other preparation of substantially similar composition or possessing substantially similar properties, under whatever name or names sold, do forthwith cease and desist from directly or indirectly:

(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 weakness, frequent headaches, tiredness, nervousness, loss of appetite, loss of energy, or restlessness;

(b) which represents directly or by implication that the preparation is a generally effective remedy for weakness, frequent headaches, tiredness, nervousness, loss of appetite, loss of energy, or restlessness;

(c) which represents directly or by implication that the preparation is an effective remedy for weakness, frequent headaches, tiredness, nervousness, loss of appetite, loss of energy, or restlessness 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 weakness, frequent headaches, tiredness, nervousness, loss of appetite, loss of energy, or restlessness 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 weakness, frequent headaches, tiredness, loss of appetite, loss of energy, or restlessness 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 of 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 colds, influenza or Asian Flu or any other winter illness;

(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;

(i) which represents directly or by implication that persons who are dieting have a special need for the nutrients supplied by such preparation.

(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 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 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

SUPREME FREEZER MEATS, INC., ET AL.

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

Docket 8753. Complaint, Dec. 12, 1967—Decision, May 29, 1968

Order requiring a Seekonk, Mass., distributor of beef and other meat products to cease using bait advertising and misrepresenting the quality of its beef and other foods.

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 Supreme Freezer Meats, Inc., a corporation, and Maynard Meyer, 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 Supreme Freezer Meats, Inc., is a corporation duly organized, existing and doing business under and by virtue of the laws of the State of Rhode Island, with its principal office and place of business located at 1408 Fall River Avenue, in the city of Seekonk, in the State of Massachusetts.

Respondent Maynard Meyer is an individual and an officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His address is 54 Marianne Drive, in the city of Bridgewater, in the Commonwealth of Massachusetts.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of beef and other meat products which come within the classification of food as the term "food" is defined in the Federal Trade Commission Act, to members of the purchasing public.

PAR. 3. In the course and conduct of their business, respondents have disseminated and caused the dissemination of certain advertisements by the United States mails and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, including advertisements in daily newspapers for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of food, as the term "food" is defined in the Federal Trade Commission Act; and have disseminated and caused the dissemination of advertisements by various means, including those aforesaid, for the purpose of inducing, and which were likely to induce, directly or indirectly, the purchase of food in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Typical of the statements appearing in the newspaper advertisements disseminated as aforesaid are the following:

(The Pawtucket Times, Tuesday, July 12, 1966.)

(Representation of a black steer indicating the various portions of the animal from which are obtained various cuts of meat, including roasts, sirloin steaks and other prime cuts of meat.)

Tender, delicious, aged, grain fed, Black Angus beef halves, 27¢ a pound.

Tender, delicious, grain fed Black Angus beef hinds, 31¢ a pound.

* * * * * * *

(The Providence Sunday Journal, July 31, 1966.)

Beef Charge It Sale.

Tender, delicious, heavy Western beef halves, 39¢ a pound.

Tender, delicious, heavy Western beef hinds, 41¢ a pound.

* * * * * * *

(Providence Sunday Journal TV Weekly, July 17, 1966.)

ATTENTION: Because of the tremendous response GRAND OPENING SALE will be continued (Representation of Black steer surrounded by prime cuts of meat).

Tender, delicious, aged, grain fed, Black Angus beef halves, 27¢ a pound.

Tender, delicious, grain fed Black Angus beef hinds, 31¢ a pound.

In their advertisements the respondents prominently feature a picture of a steer or a T-bone or other good cut of meat. The picture of the steer frequently has dotted lines on it purporting to show the parts of the animal from which the various cuts of meat are obtained.

In addition to the foregoing, the respondents' representatives, agents and employees represent to prospective purchasers of the advertised meat that there is a lot of fat and waste on such meat, that the animals are force-fed and kept in pens and that this results in more fat and waste, than other, more expensive meats, which are not advertised, are really cheaper than the advertised meats because there is less fat and waste and you get more meat.

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

1. That the offer to sell beef at 27, 31, 39 and 49 cents per pound is a bona fide offer to sell merchandise at these prices.

2. That the beef offered at the prices aforesaid is tender, delicious, aged, grain fed and heavy western beef.

3. That the beef offered at the prices aforesaid consists primarily of sirloin, T-bone, porterhouse, roasts and other top quality cuts of beef.

4. That the beef offered in said advertisements comes primarily from the carcass of that breed of cattle known as Black Angus.

PAR. 6. In truth and in fact:

1. The offer to sell beef at 27, 31, 39 and 49 cents per pound is not a bona fide offer but, on the contrary, is made for the purpose of inducing the public to come to respondents' places of business. When cus-

tomers respond and go to said place of business, respondents' employees and representatives point out to said customers that there will be an excessive weight loss in trimming and cutting said beef and otherwise disparage the beef offered at the prices aforesaid and attempt to, and usually do, sell beef at higher prices to said customers.

2. The beef offered at 27, 31, 39 and 49 cents per pound is not tender, delicious, aged, grain fed or heavy western beef, it is instead ungraded cow beef, largely fat and waste.

3. The beef offered at the prices aforesaid does not consist primarily of sirloin, T-bone, porterhouse, roasts or other top quality cuts of beef, rather the major portion of the meat is hamburger, chuck and flank. Any steaks or roasts obtained are of poor quality and bear considerable fat.

4. The beef offered in said advertisement does not come primarily from the breed of cattle known as Black Angus.

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

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

PAR. 8. The dissemination by respondents of the false advertisements, as aforesaid, constituted and now constitutes, unfair and deceptive acts and practices in commerce in violation of Sections 5 and 12 of the Federal Trade Commission Act.

Mr. William J. Kelly supporting the complaint.

No appearance for respondents.

INITIAL DECISION BY ELDON P. SCHRUP, HEARING EXAMINER

FEBRUARY 16, 1968

STATEMENT OF PROCEEDINGS

The Federal Trade Commission on December 12, 1967, issued its complaint charging the respondents with unfair and deceptive acts and practices in commerce in violation of Sections 5 and 12 of the Fed-

eral Trade Commission Act. The notice of the complaint set the hearing date for 10 a.m., January 30, 1968, at the Federal Trade Commission Offices, The 1101 Building, 11th Street and Pennsylvania Avenue NW., Washington, D.C.

The docket file shows that respondents were duly served but failed to file answer as required under Section 3.12 of the Federal Trade Commission Rules of Practice, subsection 2(c) *Default*. Respondents further failed to appear at the hearing set in the notice of the complaint. Subsection 2(c) *Default* states, that failure of the respondent to file an answer within the time provided shall be deemed to constitute a waiver of his right to appear and contest the allegations of the complaint and to authorize the hearing examiner, without further notice to the respondent, to find the facts to be as alleged in the complaint and to enter an initial decision containing such findings, appropriate conclusions, and order.

FINDINGS OF FACT

1. Respondent Supreme Freezer Meats, Inc., is a corporation duly organized, existing and doing business under and by virtue of the laws of the State of Rhode Island, with its principal office and place of business located at 1408 Fall River Avenue, in the city of Seekonk, in the State of Massachusetts.

Respondent Maynard Meyer is an individual and an officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His address is 54 Marianne Drive, in the city of Bridgewater, in the Commonwealth of Massachusetts.

2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of beef and other meat products which come within the classification of food as the term "food" is defined in the Federal Trade Commission Act, to members of the purchasing public.

3. In the course and conduct of their business, respondents have disseminated and caused the dissemination of certain advertisements by the United States mails and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, including advertisements in daily newspapers for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of food, as the term "food" is defined in the Federal Trade Commission Act: and have disseminated and caused the dissemination of advertisements by various means, including those aforesaid, for the purpose of inducing, and which were likely to induce, directly or indirectly, the purchase of food in commerce, as "commerce" is defined in the Federal Trade Commission Act.

4. Typical of the statements appearing in the newspaper advertisements disseminated as aforesaid are the following:

(The Pawtucket Times, Tuesday, July 12, 1966.)

(Representation of a black steer indicating the various portions of the animal from which are obtained various cuts of meat, including roasts, sirloin steaks and other prime cuts of meat.)

Tender, delicious, aged, grain fed, Black Angus beef halves, 27¢ a pound.

Tender, delicious, grain fed Black Angus beef hinds, 31¢ a pound.

* * * * * * *

(The Providence Sunday Journal, July 31, 1966.)

Beef Charge It Sale.

Tender, delicious, heavy Western beef halves, 39¢ a pound.

Tender, delicious, heavy Western beef hinds, 41¢ a pound.

* * * * * * *

(Providence Sunday Journal TV Weekly, July 17, 1966.)

ATTENTION: Because of the tremendous response GRAND OPENING SALE will be continued (Representation of Black steer surrounded by prime cuts of meat).

Tender, delicious, aged, grain fed. Black Angus beef halves, 27¢ a pound.

Tender, delicious, grain fed Black Angus beef hinds, 31¢ a pound.

In their advertisements the respondents prominently feature a picture of a steer or a T-bone or other good cut of meat. The picture of the steer frequently has dotted lines on it purporting to show the parts of the animal from which the various cuts of meat are obtained.

In addition to the foregoing, the respondents' representatives, agents and employees represent to prospective purchasers of the advertised meat that there is a lot of fat and waste on such meat, that the animals are force-fed and kept in pens and that this results in more fat and waste, that other, more expensive meats, which are not advertised, are really cheaper than the advertised meats because there is less fat and waste and you get more meat.

5. Through the use of the aforesaid advertisements and others of similar import and meaning, not specifically set out herein, respondents have represented, directly and my implication:

1. That the offer to sell beef at 27, 31, 39 and 49 cents per pound is a bona fide offer to sell merchandise at these prices.

2. That the beef offered at the prices aforesaid is tender, delicious, aged, grain fed and heavy western beef.

3. That the beef offered at the prices aforesaid consists primarily of sirloin, T-bone, porterhouse, roasts and other top quality cuts of beef.

4. That the beef offered in said advertisements comes primarily from the carcass of that breed of cattle known as Black Angus.

6. In truth and in fact:

1. The offer to sell beef at 27, 31, 39 and 49 cents per pound is not a bona fide offer but, on the contrary, is made for the purpose of inducing the public to come to respondents' places of business. When customers respond and go to said place of business, respondents' employees and representatives point out to said customers that there will be an excessive weight loss in trimming and cutting said beef and otherwise disparage the beef offered at the prices aforesaid and attempt to, and usually do, sell beef at higher prices to said customers.

2. The beef offered at 27, 31, 39 and 49 cents per pound is not tender, delicious, aged, grain fed or heavy western beef; it is instead ungraded cow beef, largely fat and waste.

3. The beef offered at the prices aforesaid does not consist primarily of sirloin, T-bone, roasts, porterhouse, or other top quality cuts of beef, rather the major portion of the meat is hamburger, chuck and flank. Any steaks or roasts obtained are of poor quality and bear considerable fat.

4. The beef offered in said advertisement does not come primarily from the breed of cattle known as Black Angus.

Therefore, the advertisements referred to in Finding 5 were and are misleading in material respects and constituted and now constitute "false advertisements" as that term is defined in the Federal Trade Commission Act.

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

CONCLUSIONS

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

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

3. The aforesaid acts and practices of the respondents as found in the foregoing Findings of Fact were and are to the prejudice and injury of the public, and constituted and now constitute, unfair and deceptive acts and practices in commerce in violation of Sections 5 and 12 of the Federal Trade Commission Act.

ORDER

It is ordered, That respondents Supreme Freezer Meats, Inc., a corporation, and its officers, and Maynard Meyer, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of beef or any other food products, do forthwith cease and desist from:

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

1. That any such products are offered for sale when such offer is not a bona fide offer to sell such products at the price or prices stated.

2. That any products are offered for sale when the purpose of such representations is not to sell the offered products but to obtain prospects for the sale of other merchandise at higher prices.

3. That the beef offered at 27, 31, 39 and 49 cents per pound, or at any other comparatively low price per pound is top quality meat.

4. That the beef offered at the prices aforesaid consists primarily of sirloin, T-bone, roast, porterhouse, or other top quality cuts of meat.

5. That the beef offered for sale comes primarily from the Black Angus breed of cattle.

B. Disseminating, or causing the dissemination of any advertisement by means of the United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisements misrepresent in any manner the quality or grade of any beef or other food products.

C. Discouraging the purchase of, or disparaging in any manner, any products which are advertised or offered for sale in advertisements disseminated or caused to be disseminated in commerce, as "commerce" is defined in the Federal Trade Commission Act.

D. Disseminating, or causing to be disseminated, any advertisement by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of respondents' products in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement contains any of the representations or misrepresentations prohibited in Paragraphs A and B above.

FINAL ORDER

The hearing examiner filed his initial decision in this proceeding on February 16, 1968. By order of March 8, 1968, the Commission stayed the effective date of the initial decision because the Commission had not received proof of service thereof upon respondents and pending a determination whether the initial decision constitutes an adequate disposition of the issues in this case. In addition, it was ordered that the stay was not to be construed as extending the time provided under § 3.52 of the Commission's Rules of Practice for filing notice of intention to appeal from the initial decision by any party to this proceeding.

Service of the initial decision was perfected by personal service on April 25, 1968. No appeal from the initial decision of the hearing examiner having been filed, and the Commission having determined that the initial decision constitutes an adequate dispositon of the issues in this case, the order to stay the effective date of the initial decision will be vacated and the initial decision adopted as the decision of the Commission. Accordingly,

It is ordered, That the order of March 8, 1968, staying the effective date of the initial decision be, and it hereby is, vacated.

It is further ordered, That the initial decision of the hearing examiner be, and it hereby is, adopted as the decision of the Commission as of the 29th day of May, 1968.

It is further ordered, That Supreme Freezer Meats, Inc., a corporation, and Maynard Meyer, individually and as an officer of said corporation, shall, within sixty (60) days after service of this order upon them, file with the Commission a report in writing, signed by such respondents, setting forth in detail the manner and form of their compliance with the order to cease and desist.

Complaint

IN THE MATTER OF

REIGN TEENS, LTD., ET AL.

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

Docket C-1344. Complaint, June 3, 1968—Decision, June 3, 1968

Consent order requiring a New York City manufacturer of girls' and ladies' coats and raincoats to cease misbranding the fiber content of its wool and textile fiber 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 Reign Teens, Ltd., a corporation, and Eugene W. Goldstein, 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 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 Reign Teens, Ltd., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York.

Respondent Eugene W. Goldstein is an officer of said corporation. He formulates, directs and controls the acts, practices and policies of the corporate respondent including the acts and practices hereinafter referred to.

Respondents are manufacturers of girls' and ladies' coats and raincoats, including both wool and textile products, with their office and principal place of business located at 520 Eighth Avenue, New York, New York.

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 said 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 girls' coats stamped, tagged, labeled, or otherwise identified as containing "90% Reprocessed Wool, 10% Other Fibers" whereas in truth and in fact, such coats 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, namely girls' coats, with labels on or affixed thereto, which failed to disclose the percentage of the total fiber weight of the said wool products, exclusive of ornamentation not exceeding five 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 five 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 misbranded by respondents in that they were not stamped, tagged, labeled, or otherwise identified to show each element of information required to be disclosed by 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 to disclose the true generic names of the fibers present.

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

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 therafter 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 Reign Teens, Ltd., 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 520 Eighth Avenue, New York, New York.

Respondent Eugene W. Goldstein 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 Reign Teens, Ltd., a corporation, and its officers, and Eugene W. Goldstein, 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 manufacture for introduction into commerce, the 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 products" are defined in the Wool Products Labeling Act of 1939, do forthwith cease and desist from misbranding wool products by:

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

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

It is further ordered, That respondents Reign Teens, Ltd., a corporation, and its officers, and Eugene W. Goldstein, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, delivery for introduction, manufacture for introduction, sale, advertising or offering for sale, in commerce, or the transportation or causing to be transported in com-

merce, or the importation into the United States, of any textile fiber product; or in connection with the sale, offering for sale, advertising, delivery, transportation or causing to be transported, of any textile fiber product which has been advertised or offered for sale in commerce; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, after shipment in commerce, of any textile fiber product, whether in its original state or contained in other textile fiber products, as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act, do forthwith cease and desist from misbranding textile fiber products by failing to affix a stamp, tag, label, or other means of identification to each such textile fiber product showing in a clear, legible and conspicuous manner each element of information required to be disclosed by Section 4(b) of the Textile Fiber Products Identification Act.

It is further ordered, That the respondent corporation shall forthwith distribute a copy of this order to each of its operating divisions.

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

MARSI DRESS CORP. 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-1345. Complaint, June 4, 1968—Decision, June 4, 1968

Consent order requiring a New York City manufacturer of women's clothing to cease misbranding its textile fiber products and failing to maintain required records.

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 Marsi Dress Corp., a corporation, and Joseph Silverstein and Martin Friedland, individually and as officers of said corporation, and William Underwood, individually and as part owner 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 Marsi Dress Corp. 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 1385 Broadway, in the city of New York, State of New York.

Respondents Joseph Silverstein and Martin Friedland are officers of said corporate respondent. They, together with respondent William Underwood, formulate, direct and control the acts, practices and policies of said corporation. Their address is the same as that of said corporation.

Respondent William Underwood is part owner of said corporate respondent and participates in the formulation, direction and control of the acts, practices and policies of said corporation. His address is the same as that of the said corporation.

Respondents are manufacturers of textile fiber products.

PAR. 2. 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. 3. Certain of the textile fiber products were misbranded by respondents in that they were not stamped, tagged, labeled, or otherwise identified to show each element of information required to be disclosed by 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 dresses which did not have on or affixed thereto any label setting forth any of the information required to be disclosed.

PAR. 4. Certain of said textile fiber products were misbranded in violation of the Textile Fiber Products Identification Act in that they were not labeled in accordance with the Rules and Regulations promulgated thereunder in that samples, swatches or specimens of textile fiber products subject to the aforesaid Act, which were used to promote or effect sales of such textile fiber products, were not labeled to show their respective fiber content and other information required by Section 4(b) of the Textile Fiber Products Identification Act and the Rules and Regulations promulgated thereunder, in violation of Rule 21(a) of the aforesaid Rules and Regulations.

PAR. 5. Respondents have failed to maintain proper records showing the fiber content of the textile fiber products manufactured by them, in violation of Section 6(a) of the Textile Fiber Products Identification Act and Rule 39 of the Regulations promulgated thereunder.

PAR. 6. 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 Indentification 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 Marsi Dress Corp. 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 1385 Broadway, in the city of New York, State of New York.

Respondents Joseph Silverstein and Martin Friedland are officers of said corporation and their address is the same as that of said corporation.

Respondent William Underwood is part owner 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 Marsi Dress Corp., a corporation, and its officers, and Joseph Silverstein and Martin Friedland, individually and as officers of said corporation, and William Underwood, individually and as part owner of said corporation, and respondents' representatives, agents, and employees, directly or through any corporate or other device, in connection with the introduction, delivery for introduction, manufacture for introduction, sale, advertising, or offering for sale, in commerce, or the transportation or causing to be transported in commerce, or the importation into the United States, of any textile fiber product; or in connection with the sale, offering for sale, advertising, delivery, transportation or causing to be transported of any textile fiber product which has been advertised or offered for sale in commerce; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, after shipment in commerce, of any textile fiber product, whether in its original state or contained in other textile fiber products, as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act, do forthwith cease and desist from:

A. Misbranding textile fiber products by:

1. Failing to affix labels to textile fiber products showing each element of information required to be disclosed by Section 4(b) of the Textile Fiber Products Identification Act.

2. Failing to affix labels to samples, swatches or specimens of textile fiber products used to promote or effect the sale of such textile fiber products showing in words and figures plainly legible all the information required to be disclosed by Section 4(b) of the Textile Fiber Products Identification Act.

B. Failing to maintain and preserve for at least three years proper records showing the fiber content of textile fiber products manufactured by them, as required by Section 6(a) of the Textile Fiber Products Identification Act and Rule 39 of the Regulations promulgated thereunder.

It is further ordered, That the respondent corporation shall forthwith distribute a copy of this Order to each of its operating divisions.

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

WORLD SEWING CENTER, INC., d/b/a ALL STATES SEWING CENTER ET AL.

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

*Docket 8746. Complaint, Sept. 29, 1967—Decision, June 7, 1968**

Order requiring a Dorchester, Mass., distributor of new and used sewing machines to cease using bait advertising, false pricing and savings claims, misrepresenting its machines as distress merchandise, and using deceptive guarantees.

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 World Sewing Center, Inc., a corporation, trading as All States Sewing Center and Ernest Rose, 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:

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*Final order was modified Aug. 13, 1968, 74 F.T.C. 603.

PARAGRAPH 1. Respondent World Sewing Center, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Massachusetts, with its principal office and place of business located at 992 Blue Hill Avenue in the city of Dorchester, State of Massachusetts. Said corporate respondent also trades as All States Sewing Center.

Respondent Ernest Rose is an officer of the corporate respondent. He formulates, directs and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of new and used sewing machines to the public.

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

PAR. 4. In the course and conduct of their aforesaid business, and for the purpose of inducing the public to purchase their said sewing machines, the respondents have made numerous statements and representations in advertisements inserted in newspapers, by means of radio and television broadcasts and through other advertising media, with respect to the source, the sale price, the regular or original price, the numbers available, the condition and the performance characteristics of the advertised sewing machines.

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

* * * Morse portable electric sewing machines that were originally offered for as much as $99—now sale priced at just $23.50. * * * The machines are brand new nineteen sixty fours that were sold to All States by a distributor who needed the cash in order to pay for his incoming shipments of nineteen sixty fives. * * * 100 machines were delivered to All States last week—and this week, the last of the lot. 86 more machines that you can own for $23.50 each—are scheduled for delivery * * *.

* * * * * * *

* * * Last week they were able to make a special purchase of discontinued 1964 models that were offered to you for only $23.50. * * * The first lot of 100

machines were quickly snatched up at this incredible low price. * * * And this week, All States was able to get 86 more machines—the last of the lot.

* * * * * * *

It seems that a fussy inspector on the assembly line has been rejecting new machines right and left because of tiny scratches, and a full freight car load had accumulated. * * * As always the alert All States buyer snapped up the entire lot at a fabulous low price! . . . And now you can own a Morse electric portable sewing machine—regularly $79—for only $23.50.

* * * * * * *

* * * The makers of famous "Morse" electric portable sewing machines * * * no longer sell demonstrators in their own sales outlets around the country * * * so, All States successfully bid on the entire lot—a 6-month accumulation—and can now offer you a positively incredible value never before possible * * * the big surprise is that the machine we speak of is a model 2600 * * * originally $88.50—yours now while quantities last, for the record breaking low price of $22.50!

* * * * * * *

* * * Their reputation for buying right and passing the savings along to their customers reached way out to a midwestern dealer who complained to factory salesmen that he was overstocked * * * the salesmen suggested a call to All States here in Boston * * * the All States buyer who took the call sized up the situation and flew right out with cash in hand. * * * P.S.—He bought the dealer's entire stock of famous Morse electric sewing machines for 20¢ on the dollar of their normal retail value. * * * You can own a brand new Morse electric portable sewing machine, a $79.50 value—for the incredibly low price of just $23.50.

* * * * * * *

* * * A famous Morse portable electric sewing machine that can be yours now for only $19! * * * This sewing machine bargain of all bargains can be offered to you exclusively by All States right now simply because of their coast to coast reputation of buying in quantities at the lowest discount prices * * * Therefore, when a well known Southwestern dealer overbought and needed cash quickly, they immediately called All States who in turn made an offer that was accepted on an entire trailer truckload. * * *

* * * * * * *

Brand New 1965 Automatic Morse Zig-Zag Sewing Machine.
Limited Time Offer.
Pay Only $34.50.
No Money Down.
Pay Only $1.25 Weekly.
Simply by turning the dial you can zig-zag, darn, monogram, decorate, fancy stitch, applique, design, buttonhole, quilt and embroidery.
2 Year Parts Guarantee.

* * * * * * *

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. Said machines are distress merchandise purchased from dealers in financial difficulty, or purchased in car load lots or other large quantities, or are factory rejects, or had been used as demonstration machines in factory outlets, and that for the foregoing and other reasons, respondents are enabled to sell and are offering for sale sewing machines at substantial savings to the public;

2. The higher stated price amounts set out in the said advertisements, and others not quoted herein, in connection with the terms "Originally," "Regularly," and other terms of similar import and meaning, were the prices at which the advertised merchandise was sold or offered for sale by respondents in good faith for a reasonably substantial period of time in the recent, regular course of their business and that purchasers thereof save the difference between respondents' advertised selling price and the corresponding higher price;

3. The higher stated price amounts set out in the said advertisements, and others not quoted herein, in connection with the term "Value" and other terms of similar import and meaning, were not appreciably in excess of the highest price at which substantial sales of such merchandise have been made in the recent regular course of business in the trade area where such representations were made, and that purchasers save the difference between respondents' advertised selling prices and corresponding higher prices;

4. They are making bona fide offers to sell new sewing machines for $19.00, $23.50, $34.50 and various other price amounts not set forth herein, and used sewing machines for $18.88 and $22.50 and various other price amounts not set forth herein;

5. Said products are unconditionally guaranteed for two years and for various other periods of time as to parts.

PAR. 6. In truth and in fact:

1. Respondents do not purchase distressed merchandise from dealers in financial difficulty, or purchase sewing machines in car load lots or other large quantities, or purchase sewing machines which are factory rejects or have been used for demonstration in factory outlets, and respondents are not thereby enabled to sell or to offer for sale said machines at substantial savings to the public;

2. The higher stated price amounts set out in the said advertisements and others not quoted herein, in connection with the terms "Originally," "Regularly," and other terms of similar import and meaning,

were not the prices at which the advertised merchandise was sold or offered for sale by respondents in good faith for a reasonably substantial period of time in the recent regular course of their business, and purchasers thereof do not save the difference between respondents' advertised selling price and the corresponding higher price;

3. The higher prices set out in said advertisements in connection with the term "Value," and other terms of similar import and meaning, were appreciably in excess of the highest price at which substantial sales of such merchandise have been made in the recent regular course of business in the trade area where such representations were made, and purchasers do not save the difference between respondents' advertised selling prices and the corresponding higher prices;

4. The advertised offers to sell new sewing machines for $19.00, $23.50, $34.50, and various other price amounts not herein set forth, and used sewing machines for $18.88 and $22.50 and various other price amounts not herein set forth, are not bona fide offers, but are made for the purpose of obtaining leads to prospective purchasers of sewing machines. After obtaining such leads, respondents' salesmen call at the homes of such prospective purchasers, and at such times and places, said salesmen disparage the advertised sewing machine by act or words or both, and attempt to sell and do sell different and more expensive sewing machines.

Respondents' plan or method of compensation of such salesmen does not provide for the payment of such salesmen in consideration of the sale of the advertised machine other than the payment of a minimal amount as a delivery and instruction fee upon sale and subsequent delivery of the advertised machine, but does provide for the payment of substantial commissions to such salesmen upon the sale of a more expensive machine.

Such method of compensation has the effect of discouraging the salesmen from selling the advertised machine, or penalizing the salesmen upon the sale of the advertised machine by the requirement of delivery thereof by such salesmen for a nominal fee at a time subsequent to the time at which such sale is made.

5. Respondents' sewing machines, or the parts thereof, are not unconditionally guaranteed without conditions or limitations for a period of two years or various other periods of time. Such guarantee as may be provided is subject to the payment of service charges and numerous other terms, conditions and limitations, and fails to set forth the nature and extent of the guarantee, the identity of the guarantor, and the manner in which the guarantor would perform thereunder.

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

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

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

Mr. Frank P. Dunn supporting the complaint.
Mr. James S. Bagnell for respondents.

INITIAL DECISION BY ANDREW C. GOODHOPE, HEARING EXAMINER

APRIL 11, 1968

STATEMENT OF PROCEEDINGS

The Federal Trade Commission on September 29, 1967, issued its complaint charging the respondents with 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. Respondents, following an informal prehearing conference on March 11, 1968, filed an amended answer on March 12, 1968, admitting all material allegations of the complaint to be true.

The Federal Trade Commission's Rules of Practice for Adjudicative Proceedings, Section 3.12, subparagraph (2) states: *If allegations of complaint are admitted.*—If the respondent elects not to contest the allegations of fact set forth in the complaint, his answer shall consist of a statement that he admits all of the material allegations to be true.

Such an answer shall constitute a waiver of hearings as to the facts alleged in the complaint, and together with the complaint will provide a record basis on which the hearing examiner shall file an initial decision containing appropriate findings and conclusions and an appropriate order disposing of the proceeding. In such an answer, the respondent may, however, reserve the right to submit proposed findings and conclusions under § 3.46 and the right to appeal the initial decision to the Commission under § 3.52. Respondents in this proceeding waive the right to submit proposed findings and conclusions and the right to appeal the initial decision to the Commission (Tr. 3).

FINDINGS OF FACT

1. Respondent World Sewing Center, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Massachusetts, with its principal office and place of business located at 992 Blue Hill Avenue in the city of Dorchester, State of Massachusetts. Said corporate respondent also trades as All States Sewing Center.

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

2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of new and used sewing machines to the public.

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

4. In the course and conduct of their aforesaid business, and for the purpose of inducing the public to purchase their said sewing machines, the respondents have made numerous statements and representations in advertisements inserted in newspapers, by means of radio and television broadcasts and through other advertising media, with respect to the source, the sale price, the regular or original price, the numbers available, the condition and the performance characteristics of the advertised sewing machines.

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

* * * Morse portable electric sewing machines that were originally offered for as much as $99—Now sale priced at just $23.50 * * * The machines are brand new nineteen sixty fours that were sold to All States by a distributor who needed the cash in order to pay for his incoming shipments of nineteen sixty fives. * * * 100 machines were delivered to All States last week—and this week, the last of the lot, 86 more machines that you can own for $23.50 each—are scheduled for delivery * * *.

* * * * * * *

* * * Last week they were able to make a special purchase of discontinued 1964 models that were offered to you for only $23.50 * * * the first lot of 100 machines were quickly snatched up at this incredible low price * * * and this week, All States was able to get 86 more machines—the last of the lot.

* * * * * * *

It seems that a fussy inspector on the assembly line has been rejecting new machines right and left because of tiny scratches, and a full freight car load had accumulated * * * as always, the alert All States buyer snapped up the entire lot at a fabulous low price! * * * And now you can own a Morse electric portable sewing machine—regularly $79—for only $23.50.

* * * * * * *

* * * The makers of famous "Morse" electric portable sewing machines * * * no longer sell demonstrators in their own sales outlets around the country * * * so, All States successfully bid on the entire lot—a 6-month accumulation—and can now offer you a positively incredible value never before possible * * * the big surprise is that the machine we speak of is a model 2600 * * * originally $88.50—yours now while quantities last, for the record breaking low price of $22.50!

* * * * * * *

* * * Their reputation for buying right and passing the savings along to their customers reached way out to a midwestern dealer who complained to factory salesmen that he was overstocked * * * The salesmen suggested a call to All States here in Boston * * * The All States buyer who took the call sized up the situation and flew right out with cash in hand. * * * P.S.—he bought the dealer's entire stock of famous Morse electric sewing machines for 20¢ on the dollar of their normal retail value. * * * You can own a brand new Morse electric portable sewing machine, a $79.50 value—for the incredibly low price of just $23.50.

* * * * * * *

* * * A famous Morse portable electric sewing machine that can be yours now for only $19! * * * This sewing machine bargain of all bargains can be offered to you exclusively by All States right now simply because of their coast to coast reputation of buying in quantities at the lowest discount prices * * * therefore, when a well known southwestern dealer overbought and needed cash quickly, they immediately called All States, who in turn made an offer that was accepted on an entire trailer truckload. * * *

* * * * * * *

Brand new 1965 automatic Morse zig-zag sewing machine.
Limited time offer.
Pay only $34.50.
No money down.
Pay only $1.25 weekly.
Simply by turning the dial you can zig-zag, darn, monogram, decorate, fancy stitch, applique, design, buttonhole, quilt and embroidery.
2 year parts guarantee.

* * * * * * *

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. Said machines are distress merchandise purchased from dealers in financial difficulty, or purchased in car load lots or other large quantities, or are factory rejects, or had been used as demonstration machines in factory outlets, and that for the foregoing and other reasons, respondents are enabled to sell and are offering for sale sewing machines at substantial savings to the public;

2. The higher stated price amounts set out in the said advertisements, and others not quoted herein, in connection with the terms "Originally," "Regularly," and other terms of similar import and meaning, were the prices at which the advertised merchandise was sold or offered for sale by respondents in good faith for a reasonably substantial period of time in the recent, regular course of their business and that purchasers thereof save the difference between respondents' advertised selling price and the corresponding higher price;

3. The higher stated price amounts set out in the said advertisements, and others not quoted herein, in connection with the term "Value" and other terms of similar import and meaning, were not appreciably in excess of the highest price at which substantial sales of such merchandise have been made in the recent regular course of business in the trade area where such representations were made, and that purchasers save the difference between respondents' advertised selling prices and corresponding higher prices;

4. They are making bona fide offers to sell new sewing machines for $19.00, $23.50, $34.50 and various other price amounts not set forth herein, and used sewing machines for $18.88 and $22.50 and various other price amounts not set forth herein;

5. Said products are unconditionally guaranteed for two years and for various other periods of time as to parts.

6. In truth and in fact:

1. Respondents do not purchase distressed merchandise from dealers in financial difficulty, or purchase sewing machines in car load lots or other large quantities, or purchase sewing machines which are factory rejects or have been used for demonstration in factory outlets, and respondents are not thereby enabled to sell or to offer for sale said machines at substantial savings to the public;

2. The higher stated price amounts set out in the said advertisements and others not quoted herein, in connection with the terms "Originally," "Regularly," and other terms of similar import and meaning, were not the prices at which the advertised merchandise was sold or offered for sale by respondents in good faith for a reasonably substantial period of time in the recent regular course of their business, and purchasers thereof do not save the difference between respondents' advertised selling price and the corresponding higher price;

3. The higher prices set out in said advertisements in connection with the term "Value," and other terms of similar import and meaning, were appreciably in excess of the highest price at which substantial sales of such merchandise have been made in the recent regular course of business in the trade area where such representations were made, and purchasers do not save the difference between respondents' advertised selling prices and the corresponding higher prices;

4. The advertised offers to sell new sewing machines for $19.00, $23.50, $34.50, and various other price amounts not herein set forth, and used sewing machines for $18.88 and $22.50 and various other price amounts not herein set forth, are not bona fide offers, but are made for the purpose of obtaining leads to prospective purchasers of sewing machines. After obtaining such leads, respondents' salesmen call at the homes of such prospective purchasers, and at such times and places, said salesmen disparage the advertised sewing machine by act or words or both, and attempt to sell and do sell different and more expensive sewing machines.

Respondents' plan or method of compensation of such salesmen does not provide for the payment of such salesmen in consideration of the sale of the advertised machine other than the payment of a minimal amount as a delivery and instruction fee upon sale and subsequent delivery of the advertised machine, but does provide for the payment of substantial commissions to such salesmen upon the sale of a more expensive machine.

Such method of compensation has the effect of discouraging the salesman from selling the advertised machine, or penalizing the salesmen upon the sale of the advertised machine by the requirement of

delivery thereof by such salesmen for a nominal fee at a time subsequent to the time at which such sale is made.

5. Respondents' sewing machines, or the parts thereof, are not unconditionally guaranteed without conditions or limitations for a period of two years or various other periods of time. Such guarantee as may be provided is subject to the payment of service charges and numerous other terms, conditions and limitations, and fails to set forth the nature and extent of the guarantee, the identity of the guarantor, and the manner in which the guarantor would perform thereunder.

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

CONCLUSIONS

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

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

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

ORDER TO CEASE AND DESIST

It is ordered, That respondents, World Sewing Center, Inc., a corporation, its officers and Ernest Rose, individually and as an officer of said corporation, trading as All States Sewing Center, or under any other trade name or names, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of sewing machines, or any other products, in commerce, as "com-

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

1. Representing, directly or by implication, that sewing machines or other products being offered for sale are distressed merchandise purchased from dealers in financial difficulty, or purchased in car load lots or other large quantities, or are factory rejects or have been used for purposes of demonstration in factory outlets;

2. Representing, directly or by implication, that stated quantities of sewing machines or other products have been purchased or are available for sale: *Provided, however*, That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that such quantities have been purchased or that such quantities are available for sale as represented;

3. Misrepresenting, in any manner, the source, the numbers available, the condition or performance characteristics of sewing machines or any other product;

4. Using the terms "Originally," "Regularly" or any other terms or words of similar import or meaning, to refer to any amount which is in excess of the price at which sewing machines or any other product have been sold or offered for sale in good faith by respondents for a reasonably substantial period of time in the recent regular course of their business; or otherwise misrepresenting the price at which such merchandise has been sold or offered for sale by respondents;

5. Using the term "Value," or any other terms or words of similar import or meaning, to refer to any amount which is appreciably in excess of the highest price at which substantial sales of such merchandise have been made in the recent regular course of business in the trade area where such representations are made; or otherwise misrepresenting the price at which such merchandise has been sold in the trade area where such representations are made;

6. Representing, in any manner, that by purchasing sewing machines or any other product, customers are afforded savings amounting to the difference between respondents' stated price and any other price used for comparison with that price;

(a) Unless respondents have offered such merchandise for sale at the compared price in good faith for a reasonably substantial period of time in the recent regular course of their business; or

(b) Unless substantial sales of said merchandise are being made in the trade area at the compared price, or a higher price; or

(c) When value comparison representation with comparable merchandise is used, unless substantial sales of merchandise of like grade and quality are being made in the trade area at the compared price and it is clearly and conspicuously disclosed that the comparison is with merchandise of like grade and quality;

7. Falsely representing, in any manner, that savings are available to purchasers or prospective purchasers of respondents' sewing machines or any other product, or misrepresenting, in any manner, the amount of savings available to purchasers or prospective purchasers of respondents' sewing machines or any other product at retail;

8. Advertising or offering sewing machines or any other product for sale for the purpose of obtaining leads or prospects for the sale of different sewing machines or products at higher prices;

9. Discouraging the purchase of or disparaging in any manner any sewing machine or other product advertised;

10. Using any advertising, sales plan or procedure involving the use of false, deceptive or misleading statements or representations for the purpose of obtaining leads or prospects for the sale of other sewing machines or products;

11. Representing, directly or by implication, that any sewing machines or other products are offered for sale when such is not a bona fide offer to sell such sewing machines or products;

12. The conduct or use of any sales plan or method of compensation for any agent, representative or employee in any manner which has the effect of discouraging them from selling the advertised sewing machine or product or penalizing them upon the sale of the advertised sewing machine or product;

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

14. Failing to deliver a copy of this order to cease and desist to all present and future salesmen or other persons engaged in the sale of the respondents' products to purchasers; and failing to secure from each such person a signed statement acknowledging receipt of said order and agreeing to abide by the requirements of

said order and to refrain from engaging in any of the acts or practices prohibited by said order; and for failure so to do, agreeing to dismissal or to the withholding of commissions, salaries and other remunerations, or both to dismissal and to withholding of commissions, salaries and other remunerations.

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 7th day of June 1968, become the decision of the Commission.

It is further ordered, That World Sewing Center, Inc., a corporation, d/b/a All States Sewing Center, and Ernest Rose, individually and as an officer of said corporation, shall, within sixty (60) days after service of this order upon them, file with the Commission a report in writing, signed by such respondents, setting forth in detail the manner and form of their compliance with the order to cease and desist.

IN THE MATTER OF

FOX RIVER MILLS, INC., 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-1346. Complaint, June 7, 1968—Decision, June 7, 1968

Consent order requiring an Appleton, Wisconsin, sock manufacturer to cease misbranding its wool and textile fiber products and furnishing false guarantees.

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 Fox River Mills, Inc., a corporation, and Joseph R. Lessard, indi-

vidually 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 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 Fox River Mills, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Wisconsin. Its office and principal place of business is located at 808 Wisconsin Avenue, Appleton, Wisconsin.

Individual respondent Joseph R. Lessard is an officer of said corporation. He formulates, directs and controls the acts, practices and policies of the said corporation, His office and principal place of business is the same as that of said corporation.

The respondents manufacture and sell socks composed, in some instances, in whole or in part of woolen fibers; in other instances, of fibers or combinations of fibers other than wool.

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 said 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 socks stamped, tagged, labeled, or otherwise identified by respondents as "85% Wool, 15% Nylon except 2% Nylon Reinforced Heel and Toe," "50% Wool, 25% Rayon, 15% Cotton, 10% Nylon," whereas in truth and in fact, such products contained substantially different fibers and amounts of fibers than as 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, viz, socks, with labels on or affixed thereto which failed to disclose the percentage of the total fiber weight of the said wool product, exclusive of ornamentation not exceeding 5 per centum 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 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 or 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 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 fibers contained therein.

Among such textile fiber products, but not limited thereto, were textile fiber products, viz, socks. labeled by respondents as "80% Orlon, 20% Nylon," whereas, in truth and in fact, such socks contained substantially different amounts of fibers than as represented.

PAR. 8. Certain of said textile fiber products were misbranded by respondents in that they were not stamped, tagged, labeled, or otherwise identified as required under the provisions of Section 4(b) of the Textile Fber Products Identification Act and Regulations promulgated under said Act.

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

(a) To disclose the true generic names of the fibers present; and

(b) To disclose the true percentages of the fibers present by weight.

PAR. 9. The acts and practices of respondents, as set forth in Paragraph Seven and Eight 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.

PAR. 10. Respondents are now, and for some time last past have been, engaged in the offering for sale, sale and distribution of socks to jobbers and retailers for resale to the purchasing public.

PAR. 11. In the course and conduct of their aforesaid business, respondents now cause, and for some time last past have caused, their said articles of merchandise, when sold, to be shipped from their place of business in the State of Wisconsin to purchasers thereof located in various other States of the United States, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 12. In the course and conduct of their business as aforesaid, and for the purpose of inducing the sale of said articles of merchandise respondents have made certain statements and representations with respect thereto, which statements and representations are imprinted on transparent plastic bags encasing some of said articles of merchandise. Typical and illustrative thereof, but not all inclusive, are such statements as "UNCONDITIONALLY GUARANTEED," and others of similar import and meaning.

PAR. 13. By and through the use of said statements, and others of similar import not specifically set out herein, respondents' represented, directly or by implication, that the respondents' articles of merchandise were unconditionally guaranteed.

PAR. 14. In truth and in fact the respondents' guarantee was not unconditional and the guarantor failed to set forth the nature and extent of the guarantee, and the manner in which the guarantor would perform. Therefore, the statements and representations set forth in Paragraph Twelve were and are false, misleading and deceptive.

PAR. 15. In the conduct of their business at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of articles of merchandise of the same general kind and nature as those sold by respondents.

PAR. 16. 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' articles of merchandise by reason of said erroneous and mistaken belief.

PAR. 17. The aforesaid acts and practices of respondents, as set forth in Paragraphs Twelve through Sixteen inclusive, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of 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 Fox River Mills, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Wisconsin, with its office and principal place of business located at 808 Wisconsin Avenue, Appleton, Wisconsin.

Respondent Joseph R. Lessard 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 Fox River Mills, Inc., a corporation, and its officers, and Joseph R. Lessard, 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 manufacture for introduction into commerce, the 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 included 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 Fox River Mills, Inc., a corporation, and its officers, and Joseph R. Lessard, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, delivery for introduction, sale, advertising, or offering for sale, in commerce, or the transportation or causing to be transported in commerce, or the importation into the United States, of any textile fiber product; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, of any textile fiber product which has been advertised or offered for sale in commerce; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, after shipment in commerce of any textile fiber product,

whether in its original state or contained in other textile fiber products, as the terms "commerce," and "textile fiber product" are defined in the Textile Fiber Products Identification Act, do forthwith cease and desist from misbranding 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 products showing each element of information required to be disclosed by Section 4(b) of the Textile Fiber Products Identification Act.

It is further ordered, That respondents Fox River Mills, Inc., a corporation, and its officers, and Joseph R. Lessard, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of textile products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that any of respondents' products are guaranteed unless the nature and extent of the guarantee, the identity of the guarantor, and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed.

It is further ordered, That the respondent corporation shall forthwith distribute a copy of this Order to each of its operating divisions.

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

FRED MEYER, INC., ET AL.

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

Docket 7492. Complaint, May 21, 1959—Decision, June 13, 1968

Order modifying an order dated July 9, 1963, 63 F.T.C. 1, pursuant to an opinion of the Supreme Court, 390 U.S. 341 (1968), and an order of the U.S. Court of Appeals, Ninth Circuit, of May 16, 1968, which prohibited a Portland, Oreg., supermarket chain from knowingly inducing discriminatory prices by including in the prohibition those retailers who buy through wholesalers as well as direct-buying retailers.