It is ordered, That, as to respondents American Chinchilla Corporation, Lowell Thomas Page, Robert V. Fudge, and Gardner F. Tinnin, the initial decision of the hearing examiner be, and it hereby is, adopted as the decision of the Commission.

It is further ordered, That, as to respondent John C. Green, Jr., the complaint be, and it hereby is, dismissed.

IN THE MATTER OF

LAMRITE WEST, INC., TRADING AS A. C. SUPPLY CO., ETC.

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

Docket C-1663. Complaint, Dec. 23, 1969—Decision, Dec. 23, 1969

Consent order requiring a Cleveland, Ohio, importer of foreign merchandise to cease importing and marketing dangerously flammable wood fiber chips used primarily for making artificial flowers.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Flammable Fabrics Act, as amended, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Lamrite West, Inc., a corporation, also trading as A. C. Supply Co. and as Catan's Lamrite, and Pat Catanzarite, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Flammable Fabrics Act, as amended, 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 Lamrite West, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio with its office and principal place of business located at 6605 Clark Avenue, Cleveland, Ohio. Respondent also trades as A. C. Supply Co. and as Catan's Lamrite.

Individual respondent Pat Catanzarite is the principal officer of said corporate respondent. He formulates, directs and controls

the acts, practices and policies of said corporate respondent and his address is the same as that of the corporate respondent.

Respondents are engaged in the sale of various consumer goods, including, but not limited to, wood fiber chips.

PAR. 2. Respondents are now and for some time last past have been engaged in the sale and offering for sale, in commerce, and in the importation into the United States, and have introduced, delivered for introduction, transported and caused to be transported in commerce, and have sold or delivered after sale or shipment in commerce, fabrics, as the terms "commerce" and "fabric" are defined in the Flammable Fabrics Act, as amended which fabrics failed to conform to an applicable standard or regulation continued in effect, issued or amended under the provisions of the Flammable Fabrics Act, as amended.

Among such fabrics mentioned hereinabove were wood fiber chips.

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

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Textiles and Furs proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act and the Flammable Fabrics Act, as amended; 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 corporation is organized, existing and doing business under and by virtue of the laws of the State of Ohio with its office and principal place of business located at 6605 Clark Avenue, Cleveland, Ohio.

Respondent Pat Catanzarite is an officer of said corporate respondent and his address is the same as the corporate respondent.

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 Lamrite West, Inc., a corporation, also trading as A. C. Supply Co., and Catan's Lamrite or under any other name or names, and its officers, and Pat Catanzarite, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, do forthwith cease and desist from 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 respondents herein shall, within ten (10) days after service upon them of this order, file with the Commission an interim special report in writing setting forth the respondents' intention as to compliance with this order. This interim special report shall also advise the Commission fully and specifically concerning the identity of the fabric which gave rise to the complaint, (1) the amount of such fabric in inventory, (2)

any action taken to notify customers of the flammability of such fabric and the results thereof and (3) any disposition of such fabric since October 2, 1968. Such report shall further inform the Commission whether respondents have in inventory any wood fiber chips or any other fabric, product or related material having a plain surface and made of silk, rayon or cotton or combination thereof in a weight of two ounces or less per square yard or made of cotton or rayon or combinations thereof with a raised fiber surface. Respondents will submit samples of any such fabric, product or related material with this report.

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

MALOOLY'S FURNITURE AND CARPET CITY, 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-1664. Complaint, Dec. 24, 1969—Decision, Dec. 24, 1969

Consent order requiring an El Paso, Texas retailer of furniture, appliances and carpeting to cease falsely advertising and guaranteeing and misbranding its textile fiber products, making deceptive pricing claims, misrepresenting that it is endorsed by a Federal agency, and falsely claiming that it conducts factory bankrupt sales.

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 Malooly's Furniture and Carpet City, a partnership, and Edward T. Malooly, individually and as a copartner trading as Malooly's Furniture and Carpet City, and George J. Malooly, individually and as a copartner

trading as Malooly's Furniture and Carpet City, and as Malooly's Discount Center, or under any other name or names, 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 Malooly's Furniture and Carpet City is a partnership 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 9220 Dyer Street, El Paso, Texas. George J. Malooly and Edward T. Malooly are individuals and copartners in said partnership, with their office and principal place of business located at 222 South Santa Fe Street, El Paso, Texas.

Respondent George J. Malooly is an individual trading as Malooly's Discount Center. Malooly's Discount Center is located at 600 North Main Street, Las Cruces, New Mexico. Individual respondent George J. Malooly maintains his office and principal place of business at 222 South Santa Fe Street, El Paso, Texas.

Respondents are primarily engaged in the retail sale of carpets. Sales of furniture and appliances are also made.

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

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

otherwise identified as to the name or amount of the constituent fibers contained therein.

Among such misbranded textile fiber products, but not limited thereto, were floor coverings which were falsely and deceptively advertised in the El Paso Times, a newspaper published in the city of El Paso, Texas, and having a wide circulation in the said State and various other States of the United States.

Also among such misbranded textile fiber products, but not limited thereto, were textile fiber products, namely floor coverings, which were falsely and deceptively advertised by means of the aforesaid advertisements and others of similar import and meaning not specifically referred to herein, in that said floor coverings containing exempted backings, fillings or paddings, were described therein as "DuPont 501 Nylon" without a disclosure that such fiber content information applied only to the face, pile or outer surface of the floor coverings and not to be exempted backings, fillings or paddings. The respondents' description of said floor coverings without such disclosure had the tendency and capacity to mislead respondents' customers and others into the erroneous belief that said floor coverings were composed entirely of nylon when this was not the fact. Such failure to disclose a material fact was to the prejudice of respondents' customers and the purchasing public and constituted false and deceptive advertising under Section 4(a) of the Textile Fiber Products Identification Act.

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

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

Among such textile fiber products, but not limited thereto, were floor coverings which were falsely and deceptively advertised by means of advertisements placed by the respondents in the El Paso

Times, published in El Paso, Texas, and having a wide circulation in said State and various other States of the United States, in that the true generic names of the fibers in such floor coverings were not set forth.

PAR. 6. By means of the aforesaid advertisements and others of similar import and meaning not specifically referred to herein, respondents falsely and deceptively advertised textile fiber products in violation of the Textile Fiber Products Identification Act in that said textile fiber products were not advertised in accordance with the Rules and Regulations promulgated thereunder in the following respects:

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

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

PAR. 7. The acts and practices of the respondents, as set forth above, were and are in violation of the Textile Fiber Products Identification Act and the Rules and Regulations promulgated thereunder, and constituted, and now constitute, unfair methods of competition and unfair and deceptive acts and practices, in commerce, under the Federal Trade Commission Act.

PAR. 8. Respondents are now and for some time last past have been engaged in the advertising, sale, offering for sale, and distribution of floor coverings, and other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act.

In the course and conduct of their business, respondents have advertised their products in "The El Paso Times" a newspaper published in El Paso, Texas, and having a wide circulation in said State and various other States of the United States.

Also 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 Texas to purchasers thereof located in various other States of the United States.

The respondents maintain and at all times mentioned herein have maintained, a substantial course of trade in said products in "commerce," as "commerce" is defined in the Federal Trade Commission Act.

PAR. 9. Respondents in the course and conduct of their business, as aforesaid, have made guaranty statements in the El Paso Times, a newspaper published in El Paso, Texas, advertising their textile fiber products, namely, floor coverings, as:

"Guaranteed 10 Years."

PAR. 10. Through the use of such statements and representations as set forth above, and others similar thereto, but not specifically set out herein, the respondents have represented directly or indirectly, to the purchasing public, that said floor coverings are unconditionally guaranteed for ten years.

PAR. 11. In truth and in fact, said floor coverings are not unconditionally guaranteed for ten years and the nature and extent of the guarantee and the manner in which the guarantor will perform was not set forth in connection therewith. Moreover, the name and address of the guarantor were not set forth as required. Therefore, the statements and representations made by the respondents, as hereinbefore stated, were and are, false, misleading and deceptive.

PAR. 12. Respondents in the course and conduct of their business, as aforesaid, have made certain statements with respect to the pricing of their textile fiber products, namely, floor coverings, in the El Paso Times. Among and typical, but not all inclusive of such statements are the following:

$10.95 sq. yd. to be sold for $3.95 sq yd.
$10.95 sq. yd. to be sold for $3.85 sq. yd.
$10 sq. yd. to be sold for $3.95.

PAR. 13. By and through the use of the above-quoted statements, and others of similar import not specifically set out herein, respondents have represented, directly or by implication, that the higher stated prices set out in said advertisements 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 the prices of respondents' products were reduced from the higher stated prices and the amounts of such reductions represented savings to the purchasers thereof.

PAR. 14. In truth and in fact, the higher prices set out in said advertisements 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 the prices of respondents' products were not reduced from the higher prices; therefore, the amounts of such reductions did not represent savings to the purchasers thereof.

PAR. 15. In the course and conduct of their aforesaid business, and for the purpose of bolstering and reinforcing their claims that certain floor coverings were being offered for sale at greatly reduced prices, respondents have made statements in advertisements inserted in the El Paso Times and the El Paso Herald Post, newspapers published in El Paso, Texas and having a wide circulation in said State and various other States of the United States. Among and typical of such statements are the following:

Government Approved F.H.A. Carpet
Dupont 501, Factory Bankruptcy sale * * *.

Malooly buys all remaining stock of Jackson Manufacturing Company, Jackson, Mississippi, and offers it to the public at Pennies on the Dollar!

Ring!! Ring!! Ring!! * * * Long Distance
call for Eddie Malooly! Curt Baxter,
President of Prestige Furniture at
Newton, North Carolina, calling. We
will give you up to 50% discount from
our wholesale prices.

PAR. 16. By and through the use of the above statements and others of similar import not specifically set out herein, respondents have represented, directly or by implication, that:

(a) The Federal Housing Administration had approved the respondents' business or the carpet respondents sell;

(b) Respondents were connected with or were conducting a bankruptcy sale;

(c) Respondents have acquired their products being offered for sale by means of special purchases from certain specific sources; and

(d) Through such special purchases savings are being afforded the purchasing public.

In truth and in fact:

1. Neither the Federal Housing Administration or any other agency has issued any "endorsement" or "approval" of respondents' business or any product of respondents' business.

2. Respondents' were not conducting or connected with a bankruptcy sale.

3. Respondents did not acquire the products being offered for sale by special purchase from sources designated in the advertisement; and

4. Savings were not afforded the purchasing public as represented.

PAR. 17. The aforesaid acts and practices of the respondents, as herein alleged in Paragraphs Nine through Sixteen, were and are, all to the prejudice and injury of the public and of the respondents' competitors, and constituted, and now constitute, 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 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 Malooly's Furniture and Carpet City is a partnership with its office and principal place of business located at 9220 Dyer Street, El Paso, Texas.

Respondent George J. Malooly and Edward T. Malooly are individuals and copartners in said partnership, with their office and principal place of business located at 222 South Santa Fe Street, El Paso, Texas.

Respondent George J. Malooly is an individual trading as Malooly's Discount Center. Malooly's Discount Center is located at 600 North Main, Las Cruces, New Mexico.

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 Malooly's Furniture and Carpet City, a partnership, and Edward T. Malooly, individually and as a copartner trading as Malooly's Furniture and Carpet City, and George J. Malooly, individually and as a copartner trading as Malooly's Furniture and Carpet City, and as Malooly's Discount Center, or under any other name or names, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, delivery for introduction, sale, advertising, or offering for sale, in commerce, or the transportation or causing to be transported in commerce, or the importation into the United States, of any textile fiber product; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, of any textile fiber product which has been advertised or offered for sale in commerce; or in connection with the sale, offering for sale, advertising, delivery, transportation or causing to be transported, after shipment in commerce, of any textile fiber product, whether in its original state or contained in other textile fiber products, as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act, do forthwith cease and desist from:

A. Misbranding textile fiber products by:

1. Falsely or deceptively stamping, tagging, labeling, invoicing, advertising or otherwise identifying such

products as to the name or amount of the constituent fibers contained therein.

2. Failing to affix 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. Falsely and deceptively advertising textile fiber products by:

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

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

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

It is further ordered, That respondents Malooly's Furniture and Carpet City, a partnership, and Edward T. Malooly, individually and as a copartner trading as Malooly's Furniture and Carpet City, and George J. Malooly, individually and as a copartner trading as Malooly's Furniture and Carpet City, and as Malooly's Discount Center, or under any other name or names, and respondents' representatives, agents and employees, directly or through

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

1. Representing that any of respondents' products are guaranteed, unless the nature and extent of the guarantee, the name of the guarantor, the address of the guarantor and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed in immediate conjunction therewith.

2. Representing, directly or by implication, that any price, whether accompanied or not by descriptive terminology is the respondents' former price of any such product when such price is in excess of the price at which such product has been sold or offered for sale in good faith by the respondents for a reasonably substantially period of time in the recent regular course of business, or otherwise misrepresenting the price at which any such product has been sold or offered for sale by respondents.

3. Falsely representing that savings are afforded to the purchaser of any such product or misrepresenting in any manner the amount of savings afforded to the purchaser of such product.

4. Falsely representing that the price of any such product is reduced.

5. Falsely representing that the Federal Housing Administration, or any other agency of the United States Government, has issued an approval or endorsement of respondents' business or falsely representing that respondents' products have been endorsed by any other organization or person.

6. Falsely representing that respondents are conducting, or are in any way connected with, a "factory bankruptcy sale."

7. Falsely representing that respondents have acquired any products by means of special purchases or that through such special purchases, savings are being offered to the consuming public misrepresenting in any manner the source from which any of respondents' merchandise was obtained.

It is further ordered, That the respondents henceforth maintain full and adequate records supporting all pricing claims made by them.

It is further ordered, That 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.

INTERLOCUTORY, VACATING, AND MISCELLANEOUS ORDERS

AVON PUBLICATIONS, INC., ET AL.

Docket 6911. *Opinion and Order, July 15, 1969*

Order adopting hearing examiner's recommendation that show cause order be vacated and that proceeding to determine whether Hearst Corporation was to be considered the successor to any of corporate respondents be dismissed.

OPINION OF THE COMMISSION

This matter presents a single narrow issue for the determination of the Commission: Is the Hearst Corporation a successor to the respondent corporations herein such that it may be bound by the consent order entered against those respondents?

On October 21, 1958, the Commission issued a consent order against Avon Publications, Inc., Avon Publishing Company, Inc., Avon Book Sales Corporation,[1] Joseph M. Mann, and Harry Rebell, prohibiting continuance of certain misleading practices with respect to the titling of books, *Avon Publications, Inc.*, 55 F.T.C. 619. The respondent corporations were part of a group of publishing companies, owned entirely by Joseph Meyers and Harry Rebell, which had been separately incorporated for tax and other business purposes. Mr. Meyers, who owned 85 per cent of the stock of these corporations and was responsible for formulating company policy and managing daily operations, died on November 3, 1957, prior to issuance of the order against the Avon companies. Mr. Meyers' interest in the publishing companies comprised the major portion of his estate and, from the time of Mr. Meyers' death, the attorneys representing the Meyers' estate urged Mr. Rebell—who owned the remaining 15 percent of the stock in the corporate group—to liquidate the Meyers' interest.

[1] Before the order issued, Avon Publishing Company, Inc., was merged into Avon Publications, Inc. In this opinion, the corporations subject to the 1958 consent order are sometimes referred to as "the Avon companies."

The principal consideration leading to disposition of both the Meyers and Rebell interests in the publishing companies was the desire of Mr. Rebell to find a more profitable and more easily manageable investment for himself and for Mr. Meyers' widow than was afforded by investment in a group of publishing companies. Consequently in late 1958, after the order against the Avon companies had issued, Mr. Rebell contacted Fred Lewis, vice president of Hearst Corporation, regarding the possible sale of Avon's assets.[2] Negotiations between Lewis and Rebell, evidently at arm's length and guided carefully by experienced counsel,[3] culminated in an agreement dated May 5, 1959, for the transfer to Hearst of most of the assets of the Avon companies, including the inventories, trademarks, trade names, and the goodwill of the businesses.[4] Not all of the Avon assets were transferred, however; for example, the accounts receivable were not sold.

The evidence is uncontradicted that the Hearst Corporation never received actual notice, prior to consummation of the agreement, of the order issued against the Avon companies, and there is evidence that Hearst would not have purchased the Avon assets had it known of the order.

After the transfer of the Avon assets to Hearst, only two major employees of Avon—neither an Avon stockholder—were retained by Hearst. Neither of these employees became officers of Hearst and both left the employ of Hearst within a few years of the transfer. The Avon company operations became the operations of the Avon Division of Hearst Magazines of Hearst Corporation and, within a year of the transfer, were moved from their previous location to the Hearst Corporation's main building.

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[2] Prior to this time, there had been other dealings between Hearst and the Avon companies. International Circulation Distributors, a division of the Hearst Corporation, had been a distributor of Avon's pocketbooks for seven years to wholesalers and retailers throughout the United States. This relationship between Hearst and Avon was not an exclusive one; Hearst had competitors in the field and it performed distribution services for many other customers.

[3] The final agreement encompassed 15 pages of typewritten provisions specifying the details of the arrangements and how they were to be carried out. Among other things, a representation was secured by Hearst that there was no litigation pending or threatened that would affect the trademarks or trade names transferred; moreover, Avon's attorney represented that only one suit was pending against any Avon company and that was probably barred by the statute of limitations.

[4] The other publishing companies which belonged to the group of publishing companies owned by Meyers and Rebell but not named in the Commission order were also parties to this agreement.

On November 10, 1960, the Avon companies—which had continued to exist as independent corporations—underwent a change of name and, on the same day, were formally dissolved.

On August 17, 1967, the Commission, in view of the fact that similar orders issued against other publishers contained provisions which were broader in scope than those entered against the Avon companies and which were more appropriate for the protection of the public interest, issued an order to show cause why its 1958 consent order against the Avon companies should not be reopened and modified. The order to show cause was served upon the Hearst Corporation as the alleged successor of the Avon companies. Hearst appeared specially, contesting the jurisdiction of the Commission; counsel for the Commission also moved, on December 15, 1967, to vacate the show cause order. On October 28, 1968, however, the Commission, having determined that a substantial factual issue was presented requiring the receipt of evidence pursuant to Section 3.72(b)(3) of the Commission's rules,[5] ordered the taking of evidence to determine whether Hearst was to be considered the successor to any of the corporate respondents named in the order against the Avon companies. Following the taking of such evidence, which resulted in the findings summarized above, the examiner concluded that Hearst was not the successor of the Avon companies for purposes of enforcement of the 1958 consent order and recommended that the order to show cause be vacated and that these proceedings be dismissed. We adopt the recommendations of the examiner.

While the order entered here is not expressly binding upon the "successors" of respondents,[6] it is fundamental that parties subject to an order may not, through transfer of the business or otherwise, nullify its provisions by carrying out prohibited acts through persons who were not parties to the original proceeding.

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[5] Rule 3.72(b)(3) provides in relevant part: "Whenever an order to show cause or petition to reopen is not opposed, or if opposed but the pleadings do not raise issues of fact to be resolved, the Commission, in its discretion, may decide the matter on the order to show cause or petition and answer thereto * * *. When the pleadings raise substantial factual issues, the Commission will direct such hearings as it deems appropriate, including hearings for the receipt of evidence by it or by a hearing examiner * * *. Upon conclusion of hearings before a hearing examiner, the record and the hearing examiner's recommendations shall be certified to the Commission for final disposition of the matter."

[6] The Commission has, in other cases, entered orders which were expressly binding upon the "successors and assigns" of the respondent, see, *e.g.*, *Sherwin-Williams Co.*, 36 F.T.C. 25, 72 (1943).

Regal Knitwear Co. v. *N.L.R.B.*, 324 U.S. 9, 14–15 (1945). An order may, therefore, be enforced against the transferee of a corporation subject to the order where the transfer was made in circumstances indicating an attempt by the transferor to evade the order with the aid or, at least, with the knowledge, of the transferee; mere succession to the assets of the transferor is, however, insufficient to invoke this principle. *Ibid.* Stated otherwise, "Whether a successor corporation is liable is a question of fact which turns on whether, for example, it is the alter ego of the original respondent or whether it has participated in an attempted evasion of obligations * * *." *N.L.R.B.* v. *Mastro Plastics Corp.*, 354 F.2d 170, 180 (2d Cir., 1965).

With due regard to these principles, we find no basis in precedent[7] or policy for holding Hearst, as the successor to the Avon companies, liable under the Avon order. There is neither substantial identity of parties nor any attempt to evade the order here.[8] Rather, this was an arm's length transaction involving a sale of the major assets of a group of corporations; the incentives for the transfer on both sides were independent of the order; the selling corporations existed after the transfer and were dissolved after a change of name; only two major employees went over to the successor corporation, neither of whom became officers and both of whom have since left; and the evidence is uncontradicted that the transferee, Hearst, had no actual notice of the outstanding order.[9] Under these circumstances, we do not see how this

[7] We are not aware of a single case in which an administrative order was held binding upon a successor corporation where there was not substantial identity of parties or some element of active participation by the successor in an attempt to evade the order. See, *e.g.*, *N.L.R.B.* v. *Tempest Shirt Mfg. Co.*, 285 F.2d 1 (5th Cir., 1960); *N.L.R.B.* v. *Ozark Hardwood Co.*, 282 F.2d 1 (8th Cir., 1960). Moreover, it should be noted that the circumstances of this case are readily distinguishable from the facts in *Crowell-Collier Publishing Co.*, Dkt. 7751 (1969) [75 F.T.C. 241], recently decided by the Commission. In that case, the successor corporation was a subsidiary of the same parent as the respondent corporation and the Commission found an "identity of interest and of business operations" between the respondent and its successor; this is obviously not the case here.

[8] We note the examiner's specific finding that "The Hearst Corporation did not take any action that, if it had been a respondent, would have violated the consent order; and its policy as to titling books, in a manner to prevent confusion, was in accord with the Commission's expressed policy." *Certification of Record*, February 27, 1969, p. 20.

[9] Even if Hearst had received actual notice there is some question as to whether it would be bound by the order under the circumstances of this case. The Supreme Court has very recently held that: "Although injunctions issued by federal courts bind not only the parties-defendant in a suit, but

order can be enforced against Hearst without doing violence to the salutary principle which forbids enforcement of an order "so broad as to make punishable the conduct of persons who act independently and whose rights have not been adjudged according to law." *Regal Knitwear, supra,* 324 U.S. at 13. Moreover, we believe that a contrary conclusion would lead to bewildering consequences. The transaction here involved a transfer of some, but not all, of the Avon assets. Who would be subject to the Avon order if the assets had been transferred to several different parties? If a sale of assets *per se* is sufficient to hold a "successor" liable under an order entered against the transferor, how few or how many assets must be transferred? Is a transferee constrained to purchase the transferor's liability as well as any of its assets? Are the assets perpetually to be encumbered by the outstanding order regardless of the number of transfers made?

We believe that the present rule, by which a successor corporation is liable under an order entered against a predecessor where there is substantial identity of parties or knowing participation in an attempt to evade the order, adequately protects the public interest and is in accord with sound policy. Since, therefore, the evidence in this case does not remotely suggest that this transaction involved any of these factors, we adopt the recommendations of the examiner; the order will issue accordingly.

ORDER VACATING ORDER TO SHOW CAUSE

This matter having come before the Commission upon the hearing examiner's certification of record and recommendation pursuant to Section 3.72(b)(3) of the Commission's Rules of Practice, and the hearing examiner having recommended that the Commission's order to show cause issued in this matter on August 17, 1967, be vacated and this proceeding be dismissed; and

The Commission, for the reasons stated in the accompanying opinion, having determined that the examiner's recommendations should be adopted:

It is ordered, That the Commission's order to show cause issued in this matter on August 17, 1967, be, and it hereby is, vacated.

Commissioner Nicholson concurring in the result.

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also those persons 'in active concert or participation with them who receive actual notice of the order by personal service or otherwise,' Fed. Rule Civ. Proc. 65(d), a nonparty with notice cannot be held in contempt until shown to be in concert or participation." *Zenith Radio Corp.* v. *Hazeltine Research, Inc.*, 37 U.S. Law Week 4424, 4426 (May 19, 1969).

MAREMONT CORPORATION

Docket 8763. Order, July 23, 1969

Order denying respondent's motion for reconsideration of Commission's order denying respondent's request to withdraw matter from adjudication for the purpose of negotiating a consent order and for oral presentation.

ORDER DENYING REQUEST FOR RECONSIDERATION OF PRIOR ORDER AND FOR ORAL PRESENTATION

This matter is before the Commission upon respondent's motion filed July 9, 1969, for reconsideration of the Commission's order of June 27, 1969, and a renewal of its request for oral presentation, asserting that apparently certain pertinent documents had not yet reached the Commission at the time it issued such order.

The Commission having considered all the documents filed in this proceeding, including the hearing examiner's amended order of certification filed June 20, 1969, and respondent's memorandum and request for oral presentation filed June 25, 1969, has determined that these contain no new or different facts or circumstances sufficient to justify modification of the Commission's order issued June 27, 1969, denying respondent's request for withdrawal from adjudication. The Commission has further determined that it is fully advised by the submissions of counsel and that oral presentation would serve no useful purpose in the circumstances.

The Commission, in denying respondent's request to withdraw this matter from adjudication for the purpose of negotiating a consent settlement, directed that the parties in any further such request submit in a motion a concrete proposal of settlement. The Commission in this connection notes that if there is a possibility of a consent settlement of the case in whole or in part on the basis of an agreement between the parties and the entry of a consent order in the absence of a record of evidence, then the parties must negotiate the issues first and present a concrete proposal to the hearing examiner for his consideration and action pursuant to Section 3.22 of the Commission's Rules of Practice. Accordingly,

It is ordered, That respondent's motion for reconsideration of the Commission's order of June 27, 1969 be, and it hereby is, denied.

It is further ordered, That respondent's request for oral presentation be, and it hereby is, denied.

Commissioner Elman not concurring.

SUBURBAN PROPANE GAS CORPORATION

Docket 8672. Order, July 24, 1969

Order denying respondent's request to file appeal from hearing examiner's ruling against motion to dismiss.

ORDER DENYING LEAVE TO FILE INTERLOCUTORY APPEAL

This matter is before the Commission upon the request filed by respondent on June 23, 1969, for leave to file an interlocutory appeal from the hearing examiner's order filed June 12, 1969, denying its motion to dismiss the complaint at the close of the evidence offered in support of the complaint based upon an alleged failure to establish a *prima facie* case; upon complaint counsel's opposition thereto filed June 30, 1969; and upon a reply filed by respondent on July 9, 1969; and

The Commission having determined that respondent has made no showing that the hearing examiner abused his discretion in denying its motion to dismiss the complaint and, further, that respondent has made no showing, as required by Section 3.23 of the Commission's Rules of Practice for an interlocutory appeal, that the ruling complained of involves substantial rights and will materially affect the final decision and that a determination of its correctness before conclusion of the hearing is essential to serve the interests of justice:

It is ordered, That respondent's request, filed June 23, 1969, for leave to file an interlocutory appeal from the hearing examiner's order denying its motion to dismiss the complaint be, and it hereby is, denied.

Commissioner Elman dissenting.

NATIONAL DAIRY PRODUCTS CORP.

Docket 6651. Order, July 25, 1969

Order requiring parties to file briefs on existence of issues of fact requiring evidentiary hearings and issues of law raised by previously filed papers.

ORDER ESTABLISHING SCHEDULE FOR HEARINGS, BRIEFING AND ORAL ARGUMENT

The Commission having issued an order on April 17, 1969, ordering respondent to show cause why the Commission should not reopen this proceeding and modify the original order herein in certain respects; and

Respondent having filed answers to the averments in the Order to Show Cause and alternative Motions to Dismiss or to Strike and respondent having further requested alternatively that the matter be set for hearing before a hearing examiner; and

Counsel in support of the order having filed a cross-motion; and

The Commission being of the opinion that briefs should be submitted, and oral argument had, on the existence of factual issues warranting an evidentiary hearing and on all legal issues raised by the papers previously submitted on the Order to Show Cause,

It is hereby ordered, That the parties hereto shall submit briefs on Sept. 15, 1969, on the following subjects:

1. The existence of issues of fact, if any, in the present proceeding requiring an evidentiary hearing.
2. The issues of law raised by the papers filed heretofore in the present proceeding;

Either party may file answering briefs on or before Oct. 1, 1969. Oral argument will be scheduled promptly thereafter.

Commissioner Elman not concurring and Commissioner MacIntyre not participating.

KNOLL ASSOCIATES, INC.

Docket No. 8549. Order, July 25, 1969

Order withdrawing complaints from adjudication due to procedural problems attendant on excising material produced by or obtained through witness Herbert Prosser.

ORDER WITHDRAWING COMPLAINT

This matter is now before us on respondent's motion of June 12, 1969 to withdraw the complaint herein and to accept a new proposed agreement to cease and desist.

The complaint in this matter was issued by the Commission on December 27, 1962. The hearing examiner's opinion finding a violation of Section 2(a) of the Clayton Act was rendered on Febru-

ary 25, 1965, and the Commission's decision upholding the examiner was issued on August 2, 1966 [70 F.T.C. 311].

Respondent appealed to the United States Court of Appeals for the Seventh Circuit. In an opinion dated June 18, 1968 the Court of Appeals for the Seventh Circuit remanded the proceeding to the Commission for reconsideration, the court excepting from the record all evidence or testimony produced by or obtained through the witness Herbert Prosser. *Knoll Associates, Inc.* v. *Federal Trade Commission,* 397 F.2d 530 (7th Cir. 1968). The Court of Appeals did not pass on any of the substantive Robinson-Patman issues in the case.

Rather than attempt to resolve all the procedural problems attendant of excising the Prosser material, it is the view of the Commission (upon the urging of both the complaint counsel and respondent) that this matter should be withdrawn from adjudication and that complaint counsel should be authorized to execute the agreement in the form annexed to the affidavit submitted in support of respondent's motion.

Accordingly, the motion of respondent will be granted, and

It is ordered, That this matter be, and it hereby is, withdrawn from adjudication.

Commissioner Elman concurring in the result, and Commissioner MacIntyre not participating.

MAREMONT CORPORATION

Docket 8763. Order and Opinion, July 28, 1969

Order denying two of respondent's requests for leave to file interlocutory appeals from adverse rulings pertaining to discovery requests.

ORDER AND OPINION DENYING RESPONDENT'S REQUESTS FOR PERMISSION TO APPEAL

On April 18, 1969, respondent filed its request for leave to appeal from the hearing examiner's order dated April 7, 1969, denying, except as to certain "interrogatories" respondent's motion for discovery filed February 25, 1969. Thereafter, on May 26, 1969, respondent filed another request to file an interlocutory appeal; this second request relating to the hearing examiner's order of April 2, 1969, which allegedly unduly bars respondent's access to certain survey data.

From our review of all the examiner's orders and opinions, respondent's motions, responses thereto, and replies, we find the examiner has carefully weighed the merits of both of respondent's discovery requests and there is no showing, as required by Section 3.23 of the Rules of Practice, that interlocutory review by the Commission before the conclusion of the hearing is essential to serve the interests of justice.

The Commission ordinarily accepts the hearing examiner's determination in such areas unless there is a clear showing of the abuse of his discretion or other unusual circumstances. The examiner has the responsibility and adequate powers to resolve these discovery and procedural issues. Frequently, a great deal can be, and if possible should be, accomplished on discovery by agreement between counsel. Where there is disagreement, however, the resolution of the issues raised is primarily the responsibility of the examiner, and as stated, the Commission ordinarily will not dispute his rulings thereon, and we do not in this instance.

Respondent has already received substantial discovery through informal agreement with complaint counsel and by direction of the examiner. Moreover, the examiner has indicated that he is quite willing upon a proper showing to allow such future discovery as may be necessary. Indeed, as the hearings develop, respondent may be able to make a more substantial showing of necessity for the material covered in its two requests. The examiner, of course, retains full discretion to reconsider such requests and in exercising that discretion he is encouraged to follow the Commission's policy of allowing a respondent maximum discovery. Specifically, the examiner is encouraged to look to our recently revised Section 4.11 of our rules, and the accompanying press release dated June 20, 1969, for guidance. If respondent remains unsatisfied at the conclusion of the hearings, it may include the discovery issue in the Commission's review of this matter on the merits. Accordingly,

It is ordered, That respondent's requests filed April 18, 1969, and May 26, 1969, for leave to file interlocutory appeal be, and they hereby are, denied.

Commissioner MacIntyre concurring only in the result.

ARTHUR MURRAY STUDIO OF WASHINGTON, INC., ET AL.

Docket 8776. Order, Aug. 6, 1969

Order contingently withdrawing case from adjudication if respondent accepts the new paragraph 10 in a consent order relating to customer's right to rescind dance contracts.

ORDER CONTINGENTLY WITHDRAWING MATTER FROM ADJUDICATION

This matter is before the Commission upon the examiner's certification of July 10 of a joint motion by complaint counsel and counsel for respondent dated July 8, 1969, that the above-captioned matter be withdrawn from adjudication and the settlement agreement with consent order be accepted.

The Commission is of the opinion that Paragraph 9 of the consent order does not afford an adequate basis for settlement. An acceptable order for settlement purposes would require respondents to cease and desist from:

9. Entering into one or more contracts or written agreements for dance instruction or any other service provided by respondents' dance studios when such contracts or written agreements obligate any party to pay a total amount which at any one time exceeds $1,500.

To avoid confusion, the last sentence of existing Paragraph 9 should be redrafted as new Paragraph 10 as follows:

10. Entering into any contract or written agreement for dance instruction or any other service provided by respondents' dance studio unless such contracts or written agreements, regardless of the obligation incurred, shall bear the following notation in at least 10-point bold type:

Notice: You may rescind (cancel) this contract, for any reason whatever, by submitting notice in writing of your intention to do so within seven (7) days from the date of making this agreement.

If you rescind (cancel) this contract, the only cost to you will be a fair charge for any lessons or services actually furnished during the period prior to rescission, and all moneys due will be promptly refunded.

All paragraphs following should be renumbered to reflect these changes. In the event counsel submit an executed consent agreement, including the foregoing revision of Paragraphs 9 and 10 within 30 days of the date of this order,

It is ordered, That upon receipt of such agreement, the matter be withdrawn from adjudication.

It is further ordered, That unless an amended executed consent agreement be received in accordance with the foregoing, this matter not be withdrawn from adjudication.

MISSOURI PORTLAND CEMENT COMPANY

Docket 8783. Opinion and Order, Aug. 13, 1969

Order denying respondent's motion to dismiss complaint on grounds of alleged prejudgment and remanding case to hearing examiner.

ORDER AND OPINION DENYING MOTION TO DISMISS COMPLAINT

This matter is before the Commission upon the hearing examiner's certification of the respondent's motion to dismiss the complaint, filed July 17, on the grounds of alleged prejudgment of the Commission, and complaint counsel's reply thereto filed July 31, 1969.

Respondent argues that the following points are evidence of the Commission's asserted prejudgment:

1. The claimed adoption of the staff economic Report on Mergers and Vertical Integration in the Cement Industry published in April 1966 (Economic Report);

2. The public hearings of the Commission on the cement industry held in 1966;

3. The adoption of the Commission's Enforcement Policy with Respect to Vertical Mergers in the Cement Industry; and

4. The Commission's asserted reliance upon the Economic Report in specific adjudicative proceedings.

The complaint in this matter was issued June 10, 1969, subsequent to the completion of the hearings in the cement industry in 1966 and to the issuance of a document on January 3, 1967, entitled "Enforcement Policy With Respect To Vertical Mergers In The Cement Industry." The issue here is similar to that of the alleged bias of the Commission in the case of *Federal Trade Commission* v. *Cement Institute*, 333 U.S. 683 (1948). In that case Marquette Cement Manufacturing Company charged that the Commission had previously prejudged the issues and to support such charge introduced exhibits which were mainly copies of Commission reports made to Congress or the President under Section 6 of the Federal Trade Commission Act. As to this, the Court said:

> These reports as well as the testimony given by members of the Commission before congressional committees, make it clear that long before the filing of this complaint the members of the Commission at that time, or at least some of them, were of the opinion that the operation of the multiple basing point system as they had studied it was the equivalent of a price fixing restraint of trade in violation of the Sherman Act. We therefore decide this contention, as did the Circuit Court of Appeals, on the assumption that such an opinion had been formed by the entire membership of the Com-

mission as a result of its prior official investigation. But we also agree with the court's holding that this belief did not disqualify the Commission. (*Id.* at 700.)

The Court reasoned in part that "* * * the fact that the Commission had entertained such views as the result of its prior *ex parte* investigations did not necessarily mean that the minds of its members were irrevocably closed on the subject of respondents' basing point practices," (*Id.* at 701.) The Court further stated:

Yet if Marquette is right, the Commission, by making studies and filing reports in obedience to congressional command, completely immunized the practices investigated, even though they are "unfair," from any cease and desist order by the Commission or any other governmental agency.

There is no warrant in the Act for reaching a conclusion which would thus frustrate its purposes. If the Commission's opinions expressed in congressionally required reports would bar its members from acting in unfair trade proceedings, it would appear that opinions expressed in the first basing point unfair trade proceeding would similarly disqualify them from ever passing on another. See *Morgan* v. *United States*, 313 U.S. 409, 421. Thus experience acquired from their work as commissioners would be a handicap instead of an advantage. Such was not the intendment of Congress. For Congress acted on a committee report stating: "It is manifestly desirable that the terms of the commissioners shall be long enough to give them an opportunity to acquire the expertness in dealing with these special questions concerning industry that comes from experience." Report of Committee on Interstate Commerce, No. 597, June 13, 1914, 63rd Cong., 2d Sess. 10–11. (*Id.* at 701–702.)

See also *Pangburn* v. *Civil Aeronautics Board*, 311 F.2d 349 (1st Cir. 1962); *All-State Industries of North Carolina, Inc., et al.*, Docket No. 8738 (order issued March 18, 1968) [73 F.T.C. 1242]; *Lehigh Portland Cement Company* v. *Federal Trade Commission*, 291 F. Supp. 628 (D.C.E.D. Va. 1968); *Lehigh Portland Cement Company*, Docket No. 8680; *Marquette Cement Manufacturing Company*, Docket No. 8685; and *Mississippi River Fuel Corporation*, Docket No. 8657 (order issued February 6, 1967) [71 F.T.C. 1618].

Respondent, of course, will have an opportunity for a full and complete hearing before the hearing examiner and the Commission in accordance with the Administrative Procedure Act. The burden of proving the allegations of the complaint will be upon complaint counsel and this in no way will be diminished or affected by the Commission's aforementioned statement of enforcement policy. Thus, there is no issue here of unfairness.

The Commission rejects the charges made by the respondent of prejudgment of the issues in this proceeding. Accordingly,

It is ordered, That respondent's motion to dismiss the com-

plaint on the grounds of alleged prejudgment be, and it hereby is, denied.

It is further ordered, That this proceeding be, and it hereby is, remanded to the hearing examiner for hearing.

CURTISS-WRIGHT CORPORATION

Docket 8703. Order, Aug. 14, 1969

Order denying respondent's request to file interlocutory appeal from examiner's denial of motion to stay compliance with subpeona duces tecum.

ORDER DENYING REQUEST FOR PERMISSION TO FILE INTERLOCUTORY APPEAL FROM ORDER DENYING MOTION TO STAY COMPLIANCE WITH SUBPOENA

This matter is before the Commission upon respondent's request for permission to file an interlocutory appeal from an order of the hearing examiner filed July 23, 1969, denying respondent's and Martin A. Sherry's (Sherry) motion to stay compliance with a subpoena *duces tecum* and fixing the return date for such subpoena.

Respondent and Sherry argue principally that they are in good faith in seeking judicial review of the order of the United States District Court for the District of Columbia (Civil No. 398–69) dated June 25, 1969, calling for compliance with the Commission's subpoena dated October 12, 1967, and that they should not be required to comply with the subpoena, which they assert may be invalidated upon review.

Respondent and Sherry fundamentally present one basic question, that is, whether or not the Commission should direct a stay of compliance with the aforementioned subpoena, as to which the District Court for the District of Columbia has directed compliance, for the purpose of providing respondent and Sherry time for review proceedings. Such issue was fully briefed before the hearing examiner. His order denying the request and setting the return date for compliance with the subpoena shows that he carefully considered all of respondent's arguments, which are essentially the same arguments which are now presented to the Commission. His reasons for the denial are clearly set forth. In all the circumstances we are not persuaded that his order is incorrect. Furthermore, respondent has not justified its appeal under Section 3.23 (a) of the Commission's Rules of Practice. Accordingly,

It is ordered, That respondent's request for permission to file an interlocutory appeal from the hearing examiner's order filed July 23, 1969, denying respondent's and Martin A. Sherry's motion to stay compliance with a subpoena *duces tecum* be, and it hereby is, denied.

Commissioner Elman not concurring.

HARRY'S LINOLEUM COMPANY, ET AL.

Docket 8275. Order, Aug. 27, 1969

Order to show cause why decision of Commission dated December 27, 1961, should not be reopened and prior cease and desist order modified to require recordkeeping to substantiate claims relative to prices and savings.

ORDER TO SHOW CAUSE WHY PROCEEDING SHOULD NOT BE REOPENED AND PRIOR CEASE AND DESIST ORDER ALTERED OR MODIFIED

The Commission on December 27, 1961, having adopted the hearing examiner's initial decision herein issued November 8, 1961, and

It appearing that the order therein requires the respondents, in connection with the offering for sale, and sale and distribution of merchandise to cease and desist from:

1. Representing directly or by implication:

(a) That any amount is respondents' usual and customary retail price of merchandise unless such amount is the price at which the merchandise has been usually and customarily sold at retail by respondents in the recent regular course of business.

(b) that any saving is afforded in the purchase of merchandise from the respondents' retail price unless the price at which the merchandise is offered constitutes a reduction from the price at which said merchandise is usually and customarily sold at retail by the respondents in the recent regular course of business.

(c) that any merchandise, sold or offered for sale is guaranteed, unless the nature and extent of the guarantee and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed.

(d) that any merchandise is given away "free" with a purchase of other merchandise, or in any other manner, unless such is the fact.

(e) that carpeting made from duPont 501 Nylon is indestructible.

(f) that respondents are the only sellers of duPont 501 Nylon carpeting in a trade area where such a representation is made, unless such is the fact.

2. Using the words "made to sell for" or any other words or terms of similar import in connection with prices of merchandise unless such prices are

those at which the merchandise has been sold by respondents in the recent regular course of business, or unless such prices are those at which the merchandise has usually and customarily been sold at retail in the trade area where the representations are made.

3. Misrepresenting in any manner, the amount of savings available to purchasers of respondents' merchandise, or the amount by which the price of merchandise has been reduced either from the price at which it has been usually and customarily sold by respondents in the recent regular course of business, or from the price at which it has been usually and customarily sold at retail in the trade area where the representation is made.

It appearing to the Commission that subsequent to the entry of the order to cease and desist, respondents have continued to make representations directly and by implication, as to former prices, comparative prices, and the usual and customary retail prices of merchandise, and as to savings afforded to purchasers, but have failed to maintain records adequate to establish the accuracy of such representations so that compliance with the cease and desist order may be determined; and

The Federal Trade Commission having authority under Section 5(b) of the Federal Trade Commission Act to reopen a proceeding whenever, in its opinion, conditions of fact or law have so changed as to require such action or the public interest so requires, and after appropriate proceedings, to alter, modify, or set aside, in whole or in part, its order previously entered; and

The Commission having concluded that the public interest may require it to reopen and alter, or modify, the order to cease and desist so as to prohibit respondents from failing to maintain adequate records by which the accuracy of their representations as to former prices, comparative prices, and the usual and customary retail prices, and as to savings afforded to purchases, may be established;

Therefore it is ordered, Pursuant to Section 5(b) of the Federal Trade Commission Act and Section 3.72(b) of the Commission's Rules of Practice, that on or before the thirtieth day after service of this Order To Show Cause upon them, the respondents, may show cause, if any there be, why the public interest does not require the Commission to reopen this proceeding and alter, or modify, the order herein so that as altered or modified it will read as above with the addition of a new paragraph numbered 4 which will read:

4. Failing to maintain adequate records which disclose the facts upon which representations as to former prices, com-

parative prices, and the usual and customary retail prices of merchandise, and as to savings afforded to purchasers, and similar representations of the type dealt with in Paragraphs 1(a) and (b), 2 and 3 of this order, are based, and from which the validity of any such claim can be established.

THE PAPERCRAFT CORPORATION

Docket 8779. Order, Aug. 27, 1969

Order denying respondent's motion for issuance of requests for special reports from 510 companies pursuant to Section 6(b) of the FTC Act.

ORDER DENYING MOTION TO ISSUE SECTION 6(b) REPORTS

This matter is before the Commission upon the examiner's certification of August 1, 1969, of respondent's motion of July 30, 1969, for the issuance of special reports pursuant to Section 6(b) of the Federal Trade Commission Act.

Respondent states that it "has strong reason to believe that the figures recited in the complaint regarding the size of the market are grossly understated, and incorrect to an exceptional degree." Hence, respondent argues that only through the use of Section 6(b) reports can a reasonably accurate estimate of the market be obtained. Respondent seeks to survey 510 companies.

The examiner recommends that respondent's motion be denied because respondent has failed to demonstrate that it cannot obtain equally probative and substantial evidence without a Section 6(b) survey. The examiner also states that he does not agree with respondent's assertion that a denial of the motion would constitute a denial of a due process.

We concur in the examiner's recommendation. Accordingly,

It is ordered, That respondent's motion for the issuance of special reports pursuant to Section 6(b) of the Federal Trade Commission Act be, and it hereby is, denied.

Commissioners Elman and Nicholson concurring in the result.

BANTAM BOOKS, INC.

Docket 6802. Opinion and Order, Sept. 8, 1969

Order denying respondent's request that it be permitted to use new titles for its reprinted books.

OPINION OF THE COMMISSION

Respondent has filed a petition to reopen this proceeding, seeking to have the order, which was issued November 24, 1958, and modified by Commission order of October 28, 1968, further modified so that respondent will no longer be required to disclose the original English title under which a book has been published outside the United States.

Paragraph 2 of the order entered by the Commission on November 24, 1958, prohibited respondent, a major seller and distributor of paperback books, from using a new title in place of the original title of a reprinted book. The order was subsequently modified on October 28, 1968.[1] As modified, Paragraph 2 of the order prohibits respondent from:

> Using or substituting a new title in place of the title under which a book was first published in the English language unless a statement which reveals the first English language title and that it has been published previously thereunder and each and every title under which said book was previously published in the English language in the United States and that it has been published previously thereunder appears in clear, conspicuous type upon the front cover and upon the title page of the book, either in immediate connection with the title or in another position adapted readily to attract the attention of a prospective purchaser.

Respondent states that the purpose of the order is to protect a consumer in the United States from purchasing the same book twice, under different titles. It urges that this purpose will be fulfilled if the order is modified to prohibit it from:

> Using or substituting a new title in place of the title under which a book was first published in the English language in the United States unless a statement which reveals the first English language title in the United States and that it has been published previously thereunder and each and every title under which said book was previously published in the English language in the United States and that it has been published previously there-

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[1] Similar orders against other publishers of paperback books were earlier modified in similar fashion on January 11, 1965, in *New American Library of World Literature, Inc.*, Docket No. 5811 (as revised October 28, 1968) [74 F.T.C. 1109], and *A. A. Wyn, Inc.*, Docket No. 6792 [74 F.T.C. 1113].

under appears in clear, conspicuous type upon the front cover and upon the title page of the book, either in immediate connection with the title or in another position adapted readily to attract the attention of a prospective purchaser.

Respondent contends that the public interest does not require disclosure of a title under which a book was previously published in the English language outside the United States and that the modification of the order to require disclosure only of the English language titles previously used in the United States will meet the purposes of the order.[2]

We are not persuaded by respondent's argument. If the order were modified as Bantam requests, respondent could publish, under a new title, a book originally published outside the United States in an English-speaking country without disclosure of that title. Those who purchase books by mail from such countries may well be deceived into believing that a retitled reprint is a different work. Even if not misled into purchasing the same book twice, purchasers of the retitled book may believe they are buying something which they are not, *i.e.*, a new or unfamiliar work by an author whose name is familiar to them rather than a work by that author which they have seen reviewed or otherwise know under a different title.

Respondent also contends that the present requirements of the order "could possibly cause confusion for consumers might assume that the previous English language title was used in the United States when such is not the case." The short answer to that argument is that such confusion can be avoided by a clear disclosure of the facts accompanying the disclosure of the original English title.

We do not think that respondent has made a convincing showing that it would be in the public interest to modify the order so that disclosure of the original title of retitled books published outside the United States should no longer be required. Therefore, respondent's petition will be denied. An appropriate order will be entered.

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[2] Respondent indicates that it reads the order as requiring the disclosure of all former English language titles used outside the United States; however, it is only the original English language title of the titles used outside the United States which must be disclosed under the order.

ORDER DENYING PETITION FOR REOPENING

Respondent, by petition filed August 6, 1969, having requested the Commission to reopen the proceeding for the purpose of further modifying the cease and desist order issued herein on November 24, 1958, and subsequently modified by Commission order of October 28, 1968, and the Bureau of Deceptive Practices having filed an answer in opposition thereto; and

The Commission having considered said petition and, for the reasons stated in the accompanying opinion, having determined that respondent's request should be denied:

It is ordered, That respondent's petition for reopening be, and it hereby is, denied.

UNIVERSE CHEMICALS, INC., ET AL.

Docket 8752. Opinion and Order, Sept. 19, 1969

Order denying respondent's request for interlocutory appeal from hearing examiner's denial of respondent's motion for mistrial and remanding for further hearings.

ORDER AND OPINION DENYING REQUEST TO FILE INTERLOCUTORY APPEAL

This matter is before the Commission upon respondents' motion, filed August 18, 1969, for permission to file an interlocutory appeal from the ruling of the hearing examiner, of August 11, 1969, denying their motion for mistrial, and complaint counsel's answer thereto, filed August 19, 1969.

Respondents moved for a mistrial on the ground that the Commission's order of April 2, 1969, directing a trial *de novo,* was violated because the proceeding allegedly was being conducted on the basis of the complaint amended in the prior hearing.

The hearing examiner denied respondents' motion for a mistrial because of his belief that the complaint had been amended in this proceeding without objection from the respondents (Tr. 555, 580–581). The examiner, however, had not been advised, and he was apparently not sure, of his exact ruling on the issue. He stated at one point: "My recollection is that I discussed this matter during the pre-hearing conference, and at that time I indicated that there was no need to amend the complaint further, it had already been amended. And I think in connection

with it, there was no disagreement at the time" (Tr. 556). The examiner also observed elsewhere as follows: "I want to state, I regard this as a matter which should have been brought up at the time I first mentioned the fact I was ruling on the basis of the amended complaint. There was no statement made at that time" (Tr. 568).

The transcript shows that on the occasion of the prehearing conference of June 23, 1969, the hearing examiner expressly dealt with and ruled on the issue of the amendment of the pleadings. We quote in part from the transcript as follows:

> HEARING EXAMINER BENNETT: It was helpful to the Hearing Examiner to have the discussion.
>
> Next, it was decided that there was no desire to amend the pleadings, but this amendment which has heretofore been made, of course, stands.
>
> There was an order, and I take it there is no objection with respect to that?
>
> MR. LAZARUS: No objection.
>
> HEARING EXAMINER BENNETT: Because quite obviously I would probably issue an amendment, so there is no point in our concerning ourselves. (Tr. 531.)

It thus appears, though we make no finding or conclusion on the merits of the question, that the examiner did raise and dispose of the issue of the complaint amendment without any objection from respondents. In other words, at this point in the new proceeding, respondents' counsel, as we understand the transcript, accepted without objection the prior order which amended the complaint.

In view of this, we conclude that no issue is presented justifying an appeal to the Commission. Respondents' contentions, if any, which they may have with respect to the hearing examiner's prehearing ruling of June 23, 1969, should be presented to the examiner. No claim is made that the amendment of the complaint involved was an amendment beyond the authority of the hearing examiner to make. The amendment issue and the hearing examiner's handling of it suggest to us that the essential issues are of a procedural nature and within the examiner's general authority to pass on in the normal conduct of the trial.

The Commission's Rule 3.23(a) states that permission to file an interlocutory appeal will not be granted except upon a showing "that the ruling complained of involves substantial rights and will materially affect the final decision, and that a determination of its correctness before conclusion of the hearing is essential to serve the interests of justice." Respondents have raised no such

substantial question as would justify an appeal under this rule. Accordingly,

It is ordered, That respondents' request to file an interlocutory appeal be, and it hereby is, denied.

It is further ordered. That this matter be remanded to the hearing examiner for resumption of hearings at the earliest possible date.

THE PAPERCRAFT CORPORATION

Docket 8779. Order, Sept. 30, 1969

Order denying respondent's request to file interlocutory appeal seeking "applicant" material requested by respondent.

ORDER DENYING REQUEST FOR INTERLOCUTORY APPEAL

This matter is before the Commission upon respondent's request of September 4, 1969, for permission to file an interlocutory appeal from the examiner's ruling upon respondent's motion to produce pursuant to Section 3.23(a) of the Rules of Practice. On September 15, 1969, complaint counsel filed their opposition to this request.

The ruling from which an appeal is sought upholds complaint counsel's position that respondent is not entitled to the so-called "applicant" material which respondent requested in its motion to produce. The Commission's Rules of Practice state that

> It has been and now is Commission policy not to publish or divulge the name of an applicant or complaining party, except as required by law. (Section 2.2(d).)

It is respondent's position that this is an instance in which "the production of such information is a requirement of the law as we know it." We are unable to agree, nor does respondent cite any authority for its position.

Respondent further contends that since a Commission proceeding is accusatory and punitive in nature, elementary principles of fairness and justice, as well as the right of cross-examination, require the production of this information. In addition, respondent seeks to demonstrate the need for this material by referring to the allegation in the complaint as to the size of the relevant market. Respondent contends that "no effort was made by the Commission to study the size of this market, and that to a very con-

siderable degree this crucial allegation in the complaint is based solely upon whatever information was contained in the applicant's submissions to the Commission."

We fail to see how these contentions are in any way connected with "applicant" material. With respect to the complaint allegation as to the size of the market, it is sufficient to point out that during the course of this proceeding complaint counsel will have to introduce evidence in support of this allegation. At that time respondent will have every opportunity to address itself to the validity of this allegation. As to respondent's contention that it needs this material for the purpose of preparing its defense, we note that complaint counsel have been ordered by the examiner to turn over to respondent a list of witnesses and copies of *all* documents they intend to introduce at least 30 days prior to the beginning of hearings. Knowledge of the identity of the applicant would neither add to nor detract from respondent's ability to prepare a knowledgeable and effective defense. The desirability of protecting the applicant in this instance far outweighs any reasons respondent has advanced for disclosure of this material.

Finally, respondent takes exception to the examiner's ruling on its request for production of "any written report, or any portion thereof, which reflects in a substantially verbatim manner any oral statement made by any third parties to a Commission attorney or employee * * *." In view of complaint counsel's assertion that they do not have any substantially verbatim reports, this issue is left to the examiner for his determination.

Section 3.23 of the Commission's Rules of Practice sets out the conditions for the filing of an interlocutory appeal.

> * * * Permission will not be granted except upon a showing that the ruling complained of involves substantial rights and will materially affect the final decision, and that a determination of its correctness before conclusion of the hearing is essential to serve the interests of justice.

We conclude that respondent has not met these conditions. Accordingly,

It is ordered, That respondent's request of September 4, 1969 for permission to file an interlocutory appeal be, and it hereby is, denied.

ASH GROVE CEMENT CO.

Docket 8785. Opinion and Order, Oct. 14, 1969

Order denying respondent's motion that complaint be dismissed on grounds of alleged prejudgment and remanding case to hearing examiner.

ORDER AND OPINION DENYING MOTION TO DISMISS THE COMPLAINT

This matter is before the Commission upon the hearing examiner's certification of respondent's motion, filed September 16, 1969, requesting the Commission "to dismiss the complaint on the grounds that a fair trial of the issues has been made impossible by prejudgment on the part of the Commission."

Respondent contends that it will be unable to obtain a fair hearing and an impartial decision on the issues raised by the complaint because the Commission allegedly has already prejudged all or certain of the significant issues raised in the complaint in asserted contravention of the Commission's Rules of Practice, the Administrative Procedure Act, the Federal Trade Commission Act, the Clayton Act, and respondent's constitutional right to a fair hearing conducted according to the law.

Respondent states that the alleged prejudgment of the issues is demonstrated by reference to (1) the Commission's Enforcement Policy With Respect To Vertical Mergers In The Cement Industry, dated January 3, 1967; (2) the claimed adoption by the Commission of the staff Economic Report on Mergers and Vertical Integration in the Cement Industry, published in April of 1966; and (3) the Commission's asserted reliance upon the aforementioned Economic Report in certain prior adversary proceedings.

The issue raised by this motion is the same as that presented recently to the Commission in *Missouri Portland Cement Company*, Docket No. 8783 (order and opinion issued August 13, 1969 [p. 1064 herein]). The Commission denied the request there and will do so in this matter for the same reasons. Respondent has made no showing in the references to the prior actions of the Commission in the cement industry to justify its charge that the Commission has prejudged the issues in this case. The courts have held that agencies are not disqualified by such prior investigations and reports. *Federal Trade Commission* v. *Cement Institute*, 333 U.S. 683 (1948); *Pangburn* v. *Civil Aeronautics Board*, 311 F.2d 349 (1st Cir. 1962). Accordingly,

It is ordered, That respondent's motion to dismiss the com-

plaint on the grounds of alleged prejudgment be, and it hereby is, denied.

It is further ordered, That this proceeding be, and it hereby is, remanded to the hearing examiner for hearing.

HOLLYWOOD CREDIT CLOTHING CO., INC., ET AL.

Docket 8796. Order, Oct. 14, 1969

Order denying respondent's motion to dismiss complaint on ground of discrimination.

ORDER RULING ON EXAMINER'S CERTIFICATION OF MOTION TO DISMISS

This matter is before the Commission upon the examiner's certification of September 30, 1969, of respondents' motion of September 10, 1969, to dismiss the complaint on the ground of discrimination, and complaint counsel's answer in opposition dated September 22, 1969.

The reasons advanced by respondents are threefold:

1. Respondents state that previously they have tendered an assurance of voluntary compliance in disposition of this matter. As part of this assurance respondents had attached a contingent consent agreement, capable of execution by the Commission in case it found that respondents were violating the assurance. In addition, respondents had offered to execute a bond as evidence of their good faith and to insure compliance with the assurance.

2. Respondents contend that the complaint consists for the most part of trivia and does not warrant the expenditure of further time and money on behalf of the United States.

3. Lastly, respondents assert that in the case of *First Buckingham Community, Inc.,* Docket No. 8750, the Commission accepted less positive assurances than those offered in the instant matter. Hence, to deny respondents' request constitutes an uneven application of the law and discriminates against respondents.

With respect to respondents' efforts to dispose of the matter by an assurance of voluntary compliance coupled to a contingent consent order to cease and desist, together with the execution of a bond, it is noted that the Commission's Rules of Practice do not provide for such a procedure. Nor does the Commission have the authority to accept a bond to insure compliance with an assurance.

Respondents' contention that the complaint consists of trivia presents a question of judgment. In deciding to issue this complaint the Commission determined that to do so would be in the public interest and absent changed circumstances of fact or law this determination will not be disturbed.

Finally, the fact that different cases are disposed of in a different manner does not support a request for dismissal of a complaint. The Commission's choice of remedy is discretionary and not subject to the probing of respondents. This is particularly pertinent here, where respondents seek to compare situations involving different facts and different circumstances.

For the foregoing reasons respondents' request will be denied. Accordingly,

It is ordered, That respondents' motion to dismiss the complaint on the ground of discrimination be, and it hereby is, denied.

THE PAPERCRAFT CORPORATION

Docket 8779. Order, Oct. 20, 1969

Order granting complaint counsel's request for a continuance to January 5, 1970, with Commissioners Elman and Nicholson voting in the negative.

ORDER GRANTING CONTINUANCE OF HEARING

This matter is before the Commission on complaint counsel's request of October 8, 1969, for permission to appeal the examiner's order of October 3, 1969, resetting the hearing date from November 3, 1969, to November 18, 1969, in response to complaint counsel's request for a continuance to January 5, 1970. Complaint counsel respectfully urge that this request, if granted, be treated as the substantive appeal. The request and the procedure suggested by complaint counsel are not opposed by respondent.

The examiner is, of course, charged with the conduct of the hearing, including the ruling on requests such as these, and, absent a clear abuse of discretion, the Commission will not disturb his ruling. No such abuse is found in this instance. However, the Commission, in considering this matter, must keep in mind other proceedings presently assigned to complaint counsel. Thus, we note that hearings in the *Allied Chemical Corporation* case, Docket No. 8767, are expected to continue until October 22, 1969, or three days after the October 19, 1969, date set by the examiner

for submission of a list of witnesses and documents in this proceeding. In addition to the *Allied* case, complaint counsel is responsible for the *Kennecott Copper Corporation* case, Docket No. 8765, in which findings were submitted on September 10, 1969, and reply briefs are due on October 9, 1969. The Commission, therefore, feels that adherence to the schedule ordered by the examiner in this proceeding may jeopardize the effective presentation of the *Allied* and *Kennecott* cases, as well as the instant case. In view of the foregoing, and considering the various cases presently in progress, the Commission has concluded to grant the request, consider the request as the substantive appeal and grant the time requested by complaint counsel. Accordingly,

It is ordered, That complaint counsel's request for a continuance to January 5, 1970, be, and it hereby is, granted.

Commissioners Elman and Nicholson voting in the negative for the reason that they do not believe the Commission should interject itself, through interlocutory appeals, in schedules established by the hearing examiner unless there is a clear and substantial abuse of discretion, which they did not find here.

BANTAM BOOKS, INC.

Docket 6802. Opinion and Order, Oct. 31, 1969

Order denying respondent's request for reconsideration of an earlier denial of permission to republish books with new titles if originally published outside U.S.

OPINION OF THE COMMISSION

This matter comes before the Commission upon respondent's request that the Commission reconsider its order and opinion of September 8, 1969. The Bureau of Deceptive Practices has filed an answer to respondent's request for reconsideration.

In its order of September 8, 1969 [. 1070 herein], the Commission denied respondent's request that the Commission reopen these proceedings and modify the order against respondent; the order requires respondent to disclose "the title under which a book was first published in the English language" whether such publication was in the United States or in a foreign country.[1] In setting forth the reasons for its decision, the Commission stated:

[1] The order also requires respondent to disclose "each and every title under which said book was previously published in the English language *in*

If the order were modified as Bantam requests, respondent could publish, under a new title, a book originally published outside the United States in an English-speaking country without disclosure of that title. *Those who purchase books by mail from such countries may well be deceived into believing that a retitled reprint is a different work.* Even if not misled into purchasing the same book twice, purchasers of the retitled book may believe they are buying something which they are not, i.e., a new or unfamiliar work by an author whose name is familiar to them rather than a work by that author which they have seen reviewed or otherwise know under a different title.[2]

Respondent's request for reconsideration focuses upon the italicized portion of the above-quoted statement from the Commission's opinion. Citing the provisions of 17 U.S.C. Sections 16, 107, respondent argues that, in taking this position, the Commission has overlooked the fact that "importation by mail of copyrighted works in the English language which are manufactured abroad is unlawful." Consequently, respondent concludes, the Commission's decision rests upon a ground contrary to the letter and the policy of the copyright laws and ought therefore to be reconsidered.

Respondent's contention is without merit, for it places too broad a construction upon the provisions of the copyright law and too narrow a construction upon the Commission's opinion. The importation into the United States of a book published in the English language and manufactured abroad is not prohibited in all cases. If the author of the work is a foreign national not domiciled in the United States, the book may be lawfully imported into the United States so long as the book bears the appropriate copyright symbol and other provisions of the copyright statute are applicable, 17 U.S.C. Section 9(c). Thus, for example, a book manufactured in England and published by an English author may be lawfully imported into the United States so long as the requirements of 17 U.S.C. Section 9(c) are met. If the same book is reprinted in the United States under a different title than the title under which it was published in England, a purchaser who has obtained the book as originally published may be misled into the belief that the reprinted edition is a new work if the original title under which the book was published in England is not disclosed. The provision of the order challenged by respondent would eliminate this potential deception.

Moreover, as the quoted passage from the Commission's opinion clearly shows, protection of mail order purchasers is not the

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the United States * * *" (emphasis added) but respondent does not question this provision of the order.

[2] Slip op., p. 3 (emphasis added) [p. 1071 herein].

only purpose for which the provision of the order is deemed necessary. Respondent's request for reconsideration is therefore without merit and must be denied.

ORDER DENYING REQUEST FOR RECONSIDERATION

Respondent, by petition filed October 6, 1969, having requested the Commission to reconsider its opinion and order of September 8, 1969 [p. 1070 herein], in which the Commission denied respondent's petition of August 6, 1969, wherein respondent sought to have this proceeding reopened and the order against respondent modified, and the Bureau of Deceptive Practices having filed an answer in opposition to respondent's request for reconsideration; and

The Commission having considered said petition and, for the reasons stated in the accompanying opinion, having determined that respondent's request should be denied:

It is ordered, That respondent's request for reconsideration be, and it hereby is, denied.

MAREMONT CORPORATION

Docket 8763. Order, Nov. 6, 1969

Order cancelling Commission hearings pending district court's disposition of Commission's motion to dismiss court's order, and pending Commission decisions on interlocutory matters.

ORDER CANCELING HEARINGS

The Commission having been advised that on November 4, 1969, the United States District Court for the Northern District of Illinois, Eastern Division, issued an order in the case of *Maremont Corporation* v. *Federal Trade Commission,* Civil Action No. 69 C 2266, restraining the Commission from conducting hearings or otherwise going forward with this proceeding until further order of the court.

It is ordered, That the hearings presently scheduled to begin November 12, 1969, be canceled pending the district court's disposition of the Commission's motion to dismiss which will be filed on or before November 25, 1969, and pending the Commission's decisions on the interlocutory matters in this proceeding which are now before the Commission.

NATIONAL ASSOCIATION OF WOMEN'S AND CHILDREN'S APPAREL SALESMEN, INC.

Docket 8691. Order, Dec. 1, 1969

Order admitting into the record a decision of the NLRB relative to respondent's status as a labor union.

ORDER RECEIVING NLRB DECISION INTO THE RECORD

This matter is before the Commission upon complaint counsel's motion to file new documentary evidence, filed November 10, 1969; respondents' answer in opposition thereto, and complaint counsel's reply.

Complaint counsel, pursuant to Sections 3.71 and 3.72 of the Commission's Rules of Practice and Procedure request the Commission to receive as new evidence the Decision on Review and Order in *Bambury Fashions, Inc., et al., Employers, and National Association of Women's and Children's Apparel Salesmen, Inc., Petitioner,* 179 NLRB No. 75. In support of this motion, complaint counsel rely on the following grounds:

1. Since the complaint herein was issued, respondents have maintained that they are a labor organization, and as such are not within the jurisdiction of the Federal Trade Commission or that the activities complained of are exempt from antitrust liability pursuant to Sections 6 and 20 of the Clayton Act [15 U.S.C. § 17; 20 U.S.C. § 22].

2. As partial support for their assertion, counsel for respondents rely upon a decision of the Regional Director, Region 2, National Labor Relations Board, dated December 13, 1967, previously placed into evidence by stipulation of counsel dated January 24, 1968.

3. The Decision on Review and Order holds that the National Association of Women's and Children's Apparel Salesmen is disqualified from acting as a labor organization with regard to the traveling salesmen sought to be represented in that proceeding.

4. In view of the importance placed upon the determination of the Regional Director by respondents, counsel supporting the complaint believe that the Decision on Review and Order of the National Labor Relations Board is necessary to bring this matter up to date.

It should be noted that there is no dispute on the authenticity of the decision, which complaint counsel seek to put in the record. Respondents' counsel, by letter of November 4, 1969, to the Secretary of the Commission, themselves brought the decision to the attention of the Commission, stating:

We believe that you may wish to bring this decision of the Board to the attention of the Commission. Also, we wish to advise the Commission that NAWCAS intends to appeal this decision.

Respondents' counsel nevertheless oppose introduction of the decision into evidence on the ground that the Board's order is subject to appeal, and that the record on which the NLRB acted failed to "encompass evidence of a substantial nature dealing with the employee status of the traveling salesmen-members of many of the largest manufacturers in the industry, but rather deals only with the status of the traveling salesmen of the limited number of manufacturers against whom petitions for certification elections were filed."

The Commission, although it could take official notice of the decision in question, has determined that the Board's decision should be included in the record. The NLRB's decision was rendered upon an appeal from a decision of the Board's Regional Director, which has been placed into evidence in the record of this proceeding pursuant to stipulation of counsel. The Commission is of the view that the public interest will best be served if it is in a position to appraise the stipulated evidence on the basis of a complete record. It may be noted in this connection that respondents, by motion of January 25, 1968, urged the Commission to stay the proceedings pending the NLRB decision, which is the subject of complaint counsel's motion of November 10, 1969. Accordingly,

It is ordered, That the Decision on Review and Order of the National Labor Relations Board in *Bambury Fashions, Inc., et al., Employers, and National Association of Women's and Children's Apparel Salesmen, Inc., Petitioner,* 179 NLRB No. 75, be, and it hereby is, received in the record of this proceeding.

THE PAPERCRAFT CORPORATION

Docket 8779. Order, Dec. 1, 1969

Order denying respondent's request for permission to appeal the examiner's order of November 13, 1969, denying a continuance of the hearing date.

ORDER DENYING REQUEST FOR PERMISSION TO APPEAL

This matter is before the Commission upon respondent's request for permission to file an interlocutory appeal from the hearing examiner's ruling of November 13, 1969, denying respondent's motion for a continuance of the hearing date in this proceeding from January 5, 1970, to March 9, 1970. The request

was filed on November 19, 1969, and counsel supporting the complaint filed their opposition to the request on November 25, 1969.

Respondent advances two reasons for its request, which, if granted, it wishes to be considered as the substantive appeal.

> 1. The uncertainty surrounding the scheduling of these hearings due to the pending court proceeding brought by respondent, seeking to enjoin the Commission from further proceedings and seeking to compel the issuance of Special Reports by the Commission. (*Papercraft Corporation* v. *F.T.C., et al.*, Civil Action 69–1136, United States District Court for the Western District of Pennsylvania.) While we agree that the pendency of this proceeding in which respondent has until December 19, 1969, to file its response to the Commission's motion to dismiss and for summary judgment introduces an element of uncertainty we do not see how it involves substantial rights or will materially affect the final outcome of this proceeding. If respondent is successful in its suit for injunctive relief, a continuance of the hearings would result as a matter of course. A ruling against respondent in its injunctive suit would have no bearing on the issue of a continuance. Furthermore, the Commission has consistently held that absent a clear abuse of discretion by the examiner, who is charged with the conduct of the proceeding, the Commission will not interfere with his rulings. No such abuse has been alleged or can be found in the instant case before us.
>
> 2. Respondent alleges that the January trade shows will make it difficult to secure witnesses who might want to attend these shows and that this justifies a continuance. At the present juncture, it would appear premature to grant a continuance on the basis of conflicts which may arise. In any event, such matters as the scheduling of witnesses are within the province of the examiner, whose rulings on such matters should not be disturbed by the Commission.

For the foregoing reasons, respondent's request will be denied. Accordingly,

It is ordered, That respondent's request for permission to appeal the examiner's order of November 13, 1969 be, and it hereby is, denied.

DIAMOND CRYSTAL SALT CO.

Docket 7323. Opinion and Order, Dec. 9, 1969

Order reopening case and providing that Paragraph (4) of the order be modified to allow respondent to acquire a certain salt company noted in the first paragraph of the accompanying opinion.

OPINION OF THE COMMISSION

In January 1957, the respondent herein, a major dry salt producer, acquired control and ownership of another substantial dry salt producer, the Jefferson Island Salt Company. On December 2, 1958, the Commission issued a complaint against respondent charging that the acquisition violated Section 7 of the Clayton Act. On November 16, 1959, there was submitted to the hearing examiner an agreement between respondent and complaint counsel providing for entry of a consent order to cease and desist and to divest. The hearing examiner accepted the proposed order in an initial decision which was adopted as the decision of the Commission on February 4, 1960 [56 F.T.C. 818]. In addition to the provisions for divestiture and other provisions, the order prohibited respondent from acquiring for a ten-year period "any * * * interest in any corporation, in commerce, engaged in the business of producing and/or distributing salt in any form * * *." [1] Respondent now petitions the Commission to reopen this proceeding and modify the order so as to permit respondent to acquire a substantial interest in Compania Minera Santa Adriana, S.A. (Comisa), a Panamanian corporation, which "as its only significant asset holds marketable title to a vast, but largely undeveloped, rock salt deposit near Patillos, Chile." [2]

Respondent's request was placed on the public record and each salt producer in the United States was notified of the request by

[1] This provision, contained in Paragraph (4) of the order, was modified by the Commission on July 11, 1961 [59 F.T.C. 1481], to permit respondent to make certain acquisitions the details of which are not relevant to the present petition.

[2] Respondent's letter to the Commission dated September 23, 1969, received by the Commission on October 1, 1969, and treated herein as respondent's petition, p. 1. Specifically, respondent wishes to acquire "at a cost of $3.00 per share, 189,000 shares of the authorized but unissued common capital stock" of Comisa, which amounts to approximately 42% of the company's then issued and outstanding capital stock. Respondent also intends to purchase, at par, up to $750,000 worth of Comisa's convertible, subordinated debentures.

direct mailing. One of these producers, the Cayuga Rock Salt Company, Inc. (Cayuga), a competitor of respondent, has protested the proposed reopening and modification and requested that respondent's petition be denied. Complaint counsel, however, does not oppose granting respondent's request and has treated Cayuga's objections as not controlling. We agree with the result reached by complaint counsel; however, we believe that the objection raised against the request warrants a statement by the Commission of the reasons for its decision approving the request notwithstanding Cayuga's objection.

I

Respondent is the third largest American salt company.[3] However, it controls only one rock salt (as distinguished from evaporated salt) production facility; this facility is located in Louisiana. Respondent alleges, and complaint counsel does not dispute, that it is unable, in these circumstances, to supply significant amounts of rock salt to customers located in the East Coast and Great Lakes areas of the United States. These markets are served, however, by respondent's two larger competitors, International Salt Company and Morton Salt Company, which own or control nearby rock salt production facilities. To enable respondent to compete more effectively in the East Coast rock salt market, respondent has consummated a rock salt requirements contract with Comisa under which respondent has agreed to purchase up to 1.95 million tons of rock salt produced at Comisa's Chilean mine for resale along the East Coast of the United States.[4]

Respondent's interest in the Comisa mines is not, however, restricted to its desire to compete more effectively in the East Coast and Midwestern markets. According to respondent, the absence of any rock salt deposits west of Kansas has heretofore been a bar to distribution of rock salt (as opposed to solar salt) to West Coast markets. Respondent believes, however, that:

> The great and ever increasing demand for snow and ice removal rock salt in the eastern and mid-western states of the United States leads Diamond Crystal to believe that public acceptance of rock salt for this purpose on the west coast could be won if an intensive marketing effort was attempted. However, the time period required to obtain such market acceptance—and the costs and other risks involved—impel Diamond Crystal's management to

[3] Petition, p. 2.
[4] *Id.*, at p. 3.

the conclusion that the effort should not be made unless an equity position in Comisa can first be obtained.[5]

In short, acquisition by respondent of an equity interest in Comisa would provide respondent with certain access to Chilean rock salt supplies which would in turn enable it to become a more effective competitor in the East Coast market and open up the West Coast market for the first time to rock salt in competition with other products.

On the basis of the facts now before the Commission, we find no substantial objection to respondent's proposed acquisition insofar as it will enable respondent to distribute its product for the first time to the West Coast market. The objection which has been raised to respondent's petition relates to the East Coast market. At the present time there are, according to respondent, only three major suppliers of rock salt to the East Coast market (International Salt, Morton Salt, and respondent) and three lesser suppliers (Cayuga, Cargill, Inc., and Carey Salt Company).[6] Cayuga has objected to respondent's petition on the ground that if respondent is able to "bring in and ship foreign salt into [the] Eastern Seaboard at such low costs * * * Cayuga * * * will be faced with serious loss of tonnage to our Eastern Atlantic Coast destinations." Cayuga goes further in its claim and states that if respondent engages in an anticipated "extended sales effort" on the basis of its low cost foreign salt, Cayuga "will be forced to discontinue mining rock salt; [sic] as we can not meet these low costs." [7] In view of the small number of participants in this particular market and the apparently high concentration which prevails in the dry salt industry generally,[8] such a

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[5] *Id.*, at p. 5.

[6] *Id.*, at p. 6. It is worth noting the allegation in Paragraph 5(a) of the Commission's complaint herein that "The dry salt industry in the United States is highly concentrated in that the six largest dry salt producers, including Diamond Crystal and Jefferson Island, shipped in excess of three-fourth's of the total dry salt sold or used in the United States in 1955 * * *." [56 F.T.C. at 823.]

[7] Letter from Cayuga to the Commission dated October 28, 1969. Cayuga also apparently has requested the Commission to undertake "an early review of present ever increasing imports of salt" into the United States. However, as complaint counsel suggests in the answer to respondent's petition, the desirability *vel non* of governmental regulation of salt imports is a matter which goes beyond the issues raised by respondent's petition and is not relevant to those issues or to any concern of the Commission in the present matter.

[8] See note 6, *supra*.

claim warrants careful consideration. The possible elimination of one out of six participants in a given market is a factor which must be given weight in assessing the legality of a transaction which might lead to such a material reduction in the number of market forces. The Commission has, accordingly, weighed the potential risk to Cayuga incident to its granting respondent's request and concluded that, notwithstanding that risk, respondent's petition should be granted.

II

The gist of Cayuga's objection is that if respondent's petition is granted, respondent will be assured a low cost supply of foreign rock salt which will enable respondent to compete more effectively in the East Coast to the possible injury of Cayuga's participation in the market. No claim is made that respondent is seeking to obtain (or has the power to obtain) exclusive access to low cost rock salt. Indeed, Cayuga has provided the Commission with a table of imports of rock salt into the Eastern market for the past three years which indicates that the sources for foreign rock salt are numerous and that respondent is only one of many companies with access to imported salt in significant quantities. Moreover, there is nothing in the record before the Commission to suggest that, by obtaining an equity interest in Comisa, respondent will be foreclosing its competitors from a substantial share of any substantial market; see *Brown Shoe Co.* v. *U.S.*, 370 U.S. 294, at 323–324 (1962); *U.S.* v. *E. I. duPont de Nemours*, 353 U.S. 586, at 595 (1957). The rock salt deposits controlled by Comisa are, at the present time, largely undeveloped and respondent's proposed purchases will provide Comisa with the additional capital needed to exploit these deposits.[9] In short, except for Cayuga's expressed fear that it may be unable to withstand the rigors of a legitimate competitive effort by respondent and may therefore be eliminated as a competitor in an already concentrated market, every aspect of the proposed transaction suggests palpable benefits to the competitive process. It will permit the development of a largely unexploited resource; enable respondent to compete more effectively in the East Coast market and enter a wholly new market on the West Coast; and it will have no foreseeable substantial adverse competitive impact on the production or distribution of rock salt or any other type of salt in the United States.

[9] Petition, p. 2.

Against these benefits, the possible elimination of Cayuga from the marketplace, while warranting the consideration of the Commission, cannot be a decisive factor since it would spring, by Cayuga's own account, from wholly–lawful competitive factors. Cayuga's objection to respondent's petition cannot be sustained. No other reason appearing why respondent's petition should be denied, it is granted.

ORDER REPORTING PROCEEDING AND MODIFYING PREVIOUS ORDER

The respondent having filed a petition on October 1, 1969, which requests the Commission to reopen the proceeding herein and to modify its order so as to permit the respondent to purchase 189,000 shares of the authorized but unissued common capital stock of Compania Minera Santa Adriana, S.A., a Panamanian corporation, along with up to $750,000 of said company's convertible subordinated debentures; and

The Commmission having issued its decision in this proceeding on February 4, 1960 [56 F.T.C. 818], containing its order to divest and to cease and desist, which order, among other things and subject to an exception contained in a modification of the order made by the Commission on July 11, 1961 [59 F.T.C. 1481], prohibits the respondent from acquiring at any time during the ten years succeeding February 4, 1960, any interest in any corporation, in commerce, engaged in the business of producing and/or distributing salt; and

It appearing, for the reasons stated in the accompanying opinion and from the facts stated in the petition and in the answer filed by complaint counsel, who join in the request that the petition be granted, that there is no reasonable probability that any proscribed anticompetitive effects will result from the proposed purchase, and the Commission having further determined that the public interest will be served by reopening this proceeding solely for the purpose of altering and modifying the order so that it shall not prohibit the respondent from effectuating such acquisitions:

It is ordered, That this proceeding be, and it hereby is, heopened and that Paragraph (4) of the order to divest and to cease and desist be, and it hereby is, modified to read as follows:

(4) *It is further ordered,* That for a period of ten years from February 4, 1960, the respondent shall cease and desist from acquiring, directly or indirectly, through subsidiaries or otherwise, by merger, consolidation, or purchase, the physical assets, stock, share capital of, or any other interest in

any corporation, in commerce, engaged in the business of producing and/or distributing salt in any form, specifically including salt in a dry state produced by any dry mining method, or produced by any evaporation method, and salt in brine; *Provided, however,* That the respondent shall not be prohibited hereby from effectuating the proposed purchase of the assets referred to in the first paragraph of the Commission's order ruling on the petition filed by the respondent on June 7, 1961; *Provided further,* That the respondent shall not be prohibited hereby from effectuating the proposed purchases referred to in the first paragraph of the Commission's order ruling on the petition filed by the respondent on October 1, 1969.

TRADE ADVERTISING ASSOCIATES, INC., ET AL.

Docket 8582. Order, Dec. 9, 1969

Order reopening case for evidence whether name of publication "Trade Union News," etc., implies affiliation with a labor or trade union.

ORDER REOPENING PROCEEDING AND DIRECTING HEARINGS FOR RECEIPT OF EVIDENCE

The Commission having issued on June 19, 1969, an order requiring respondents to show cause, if any there be, why the Commission should not reopen this proceeding and alter and modify the order to cease and desist entered herein on May 15, 1964 [65 F.T.C. 650]; and

Respondents having filed, on August 25, 1969, and October 27, 1969, respectively, an answer to the order to show cause and a memorandum in support thereof; and

Complaint counsel having filed, on November 14, 1969, an answering brief supporting the Commission's order to show cause; and

The Commission having determined that the foregoing pleadings raise a substantial factual issue requiring the receipt of evidence pursuant to Section 3.72(b)(3) of the Commission's rules:

It is ordered, That this proceeding be, and it hereby is, reopened and that this matter be assigned to a hearing examiner for the receipt of such testimony and evidence as may be offered in support of and in opposition to the factual issue as to whether the use by respondents of the names or designations "Trade Union News" and "Trade Union News of New Jersey" or the use of words or phrases of similar import or meaning (such as trade, labor, union, guild, brotherhood, workers) in the titling of their publications (with or without a qualifying statement or statements) in itself constitutes, or may be understood, as an implied

representation that such publications are endorsed by, affiliated with, or are official publications of a labor or trade union or unions.

SKYLARK ORIGINALS, INC., ET AL.

Docket 8771. Order, Dec. 18, 1969

Order denying request of respondent that case be withdrawn from adjudication for the purpose of negotiating a consent order.

ORDER DENYING REQUEST TO WITHDRAW PROCEEDING FROM ADJUDICATION

This matter is before the Commission upon the certification of the hearing examiner on November 28, 1969, of respondents' "Motion for Consideration and Acceptance of Consent Settlement," which is, in effect, a motion to withdraw the proceeding from adjudication for settlement purposes, with the recommendation of the hearing examiner that the proposed consent order agreement be approved. Complaint counsel filed an answer to the motion on November 5, 1969, and a supplement to such answer on November 21, 1969, and therein has recommended that the consent order agreement be approved.

Under Section 2.34(d) of the Commission's Rules of Practice the Commission may, upon request, in exceptional and unusual circumstances and for good cause shown withdraw a matter from adjudication for the purpose of negotiating a settlement by the entry of a consent order. In their justification for the requested withdrawal respondents assert that they believe the differences between the proposed order served with the complaint and the order they propose is one of language and not of substance. They contend in effect that their proposed order will be adequate to protect the public and that its approval will save the time and expense of a trial. These considerations do not amount to exceptional and unusual circumstances and, so, respondents have not met the requirements of the applicable rule.

Moreover, the order proposed by respondents differs from that served with the complaint in substantial respects and the Commmission cannot determine without a record of the facts whether such revised order would be adequate to protect the public or not. Respondents, under Section 2.34(d), are not precluded from a settlement of the case by regular adjudicatory process through the

filing of an admission answer or submission of the case to the hearing examiner on a stipulation of facts and an agreed order. Accordingly,

It is ordered, That the request to withdraw this proceeding from adjudication be, and it hereby is, denied.

Commissioner Elman not concurring.

No. 349. Disclosure of Origin of Imported Components Used in Fork Lift Trucks.

In response to a request for an advisory opinion, the Commission advised a company that one of its statements would not be proper but that it would not object to its other proposed statement. The company had requested an opinion in regard to the proper marking and advertising of fork lift trucks made partly of imported components with specific reference to the following two statements:

(1) "Assembled in U.S.A."

(2) "Assembled in U.S.A. of components of USA & Imports".

The trucks will be sold to industrial users through various sales agencies throughout the United States, and the agencies will have on display at least one or two models to show to prospective purchasers. It is anticipated that parts imported from Bulgaria will represent approximately 40 percent of total production costs, parts, and labor assembly costs in the United States will represent 30 percent and the remaining 30 percent will represent parts imported from one of the following five countries: West Germany, France, England, Denmark, and Japan. Thus approximately 70 percent of total production costs will consist of imported components.

In the opinion which was rendered, the Commission concluded that it could not accept the first proposed statement as being in conformity with Section 5 of the FTC Act. However, the Commission said, it would interpose no objection to the use of the second proposed disclosure—"Assembled in U.S.A. of components of USA & Imports." (File No. 693 7129 Released July 2, 1969)

No. 350. Accreditation program for producers of concrete and concrete products.

The Commission rendered an advisory opinion involving a proposed accreditation program in the construction industry, includ-

* In conformity with policy of the Commission, advisory opinions are confidential and are not available to the public, only digests of advisory opinions are of public record. Digests of advisory opinions are published in the Federal Register.

ing the award of a certificate of accreditation. The program is designed to upgrade and maintain the quality of a building material.

Under the proposed program, the sole criterion for accreditation and the award of a certificate of accreditation of established firms will be provable ability to function effectively in the field of concrete construction, and any applicant who has a satisfactory record of accomplishment as certified by the architect or engineer for whom concrete work was done will be accredited. Certificates will be renewed annually solely on the basis of satisfactory performance during the preceding year. The failure to maintain satisfactory performance standards could result in deaccreditation and withdrawal of the right to use the certificate. General supervision of the proposed program of accreditations will be vested in a Board of Directors, no member of which will have any financial interest in the product as might affect his impartiality under the program. The Board will have the responsibility, among other matters, for insuring nondiscriminatory administration of and free access to the program.

There will be no requirement for any applicant as to the length of time in business, his capital, or size of operation. Applicant firms with no previous experience in the industry but having personnel of sufficient background and experience in concrete construction or related fields and which express a desire to engage in quality concrete constructions will be accredited. All present and future applicants will have free, unrestricted and nondiscriminatory access to the program, whether or not they are a member of any sponsoring organization. All nonmember applicants will be accorded an equal opportunity for accreditation at a cost no greater than and under conditions no more onerous than those imposed upon comparably situated organization members for whom comparable services may be rendered. A uniform certificate of accreditation will be awarded to all who qualify.

The Commission advised that it would not proceed against the practices so long as they are implemented in the manner described. The requesting party was advised further that in giving its approval to this request the Commission is expressing no opinion with respect to product standards which may be or are now established and that the approval will be of no force and effect should the proposed program of accreditation be implemented in contravention of Commission-administered law. The Commission added that should the proposed program be adopted the Commis-

sion may, from time to time, wish to assure itself that it is being used for the limited purposes intended. (File No. 693 7120 Released July 2, 1969)

No. 351. Use of symbols and names having fur-bearing animal connotations in labeling textile fiber products.

The Commission was requested to render an opinion with respect to the labeling of textile fiber products manufactured so as to simulate a fur or fur product.

The requesting party proposed to use a word closely resembling the name of a fur-bearing animal, the fur from which is commonly used in the manufacture of garments, in association with a fabric simulating that fur.

In the Commission's view, the use of the proposed term to describe such a fabric would probably violate the Textile Fiber Products Identification Act and/or that part of Section 5 of the Federal Trade Commission Act which makes deceptive acts or practices in commerce unlawful. (File No. 693 7123 Released July 3, 1969)

No. 352. Stereo Tape Cartridge Club; consumer credit regulations will apply.

The Commission issued an advisory opinion in response to an application from a businessman who proposed to organize a stereo tape cartridge club.

The Commission wrote the applicant:

You state that the idea of the club is to allow club members to exchange ten tape cartridges per month. A membership will cost $480, to be paid in 30 monthly installments of $16 each. That meets the definition of consumer credit which is credit offered or extended to a person primarily for personal, family, household, or agricultural purposes and for which a finance charge is imposed or which is repayable in more than four installments.

Enclosed for your guidance is a copy of the Federal Reserve press release of February 7, 1969, containing Regulation Z issued under the Truth In Lending Act. With some exceptions, the Federal Trade Commission has the principal enforcement duties. The Commission points out that all relevant provisions must be complied with by any one extending or arranging for consumer credit. A potential club member in your program is entitled to full disclosure of all financial arrangements, including the fact that a third party may hold the promissory note for collection.

In addition to your straight retail memberships, you contemplate a 'cooperative' membership to be offered in return for certain promotional cooperation. The Commission invites your attention to the enclosed copy of the Commission's Guides Against Deceptive Pricing, effective since January 8, 1964. You will note that it might be an actionable deceptive practice prohibited by law to identify a commodity as having a certain retail value unless that is a

price at which identical commodities have in fact been sold in substantial quantities. No conclusion of legality or illegality is possible in the instant matter on the basis of the brief information you have submitted.

Further, you are advised that it might also be an actionable deceptive practice prohibited by law to fail to fully inform a potential club member not only about all financial arrangements and the accurate retail value of the cartridge player but also about the nature and function of the player; *e.g.*, is the player a self-contained playing machine or does it need an amplifier and speakers to render performance?

For postal regulations, you should consult your local postmaster.

(File No. 693 7124 Released July 3, 1969)

No. 353. Use of the term "hand carved" to describe furniture.

The Commission issued an advisory opinion with respect to the use of the term "hand carved" to describe certain furniture.

The manufacturing procedure for the furniture calls for a prototype to be completely constructed and carved by hand. Then, the prototype becomes a pattern for an intricate machine which "rough cuts" the carvings on subsequent pieces for assembly production. Each piece so manufactured then has intricate hand detailing, carving and finishing to the extent that each piece is, in fact, different in artistic detail from the one which follows it. Each piece is numbered and signed by the craftsman who completes it.

The Commission expressed the view that using the term "hand carved" to describe furniture manufactured in the manner described would probably violate the Federal Trade Commission Act, Section 5. (File No. 693 7131 Released July 10, 1969)

No. 354. Tripartite promotional plan in the grocery field.

The Commission issued an advisory opinion with respect to a proposed tripartite promotional plan in the grocery field.

The applicant proposed to lease space at a fixed fee in each of all competing food stores in the top 50 markets in the country. On this leased space the applicant will install a display of 15 still-color illustrations of special food dishes. The applicant would sell advertising space to food packagers. The applicant would advertise the availability of his plan in the trade press and notify each store in a direct-mail program. Real estate brokers would also be used in an effort to secure participation by all competing retailers. Retailers with no floor space available for applicant's proposed display could participate by permitting the applicant to install 15 single modular units on shelves for which the retailers would receive the same compensation as retailers having applicant's displays.

The Commission advised the applicant that were the plan implemented as proposed, the Commission would have no objection to it. The Commission pointed out that were the plan implemented in a different manner, the promoter, the supplier, and the retailer might be acting in violation of Section 2 (d) or (e) of the Clayton Act, as amended, and/or Section 5 of the Federal Trade Commission Act. The Commission also told the applicant: "The promoter must make it clear to each supplier and each retailer that even though an intermediary is employed in this plan, it remains the supplier's responsibility to take all reasonable steps so that each of the supplier's customers, including those who do not purchase directly from the supplier, who compete with one another in reselling his products is offered an opportunity to participate in the promotional assistance plan on proportionally equal terms, which plan should include suitable alternatives if there are customers who may be unable as a practical matter to participate in the primary program; if not, the supplier, the retailer and the promoter participating in the plan may be acting in violation of Section 2 (d) or (e) of the Clayton Act and/or Section 5 of the Federal Trade Commission Act." (File No. 693 7122 Released July 10, 1969)

No. 355. Disclosure of origin of partly foreign-made textile products.

The Commission advised a manufacturer of men's and boys' slacks that it would not be necessary to disclose the fact that certain assembly and sewing operations are performed in a specified foreign country.

Under the facts presented to the Commission, the slacks consist of cotton and synthetic woven fabrics and threads, and steel hooks and eye enclosures, all of which are made in the United States. Said materials are inspected and cut to pattern in the United States and certain assembly steps, such as the sewing of belt loops and the attachment of zipper chains, are also performed domestically. Thereafter, they are shipped to the company's plant in a foreign country where they are further assembled and sewn. Finally, they are returned to the United States where the buttonholes are sewn, the buttons attached, and the pants are pressed, inspected, cured, and prepared for shipment to customers.

The cost of the foreign assembly and sewing operations is approximately 13.5 percent of total production costs, and the company wanted to know whether it would be necessary to disclose

the nature and extent of the foreign operations either under Section 5 of the FTC Act or Section 4(b)(4) of the Textile Fiber Products Identification Act. It was further understood that the company does not intend to label the slacks as "Made in U.S.A." or use any other words of similar import. (File No. 693 7127 Released July 10, 1969)

No. 356. Tripartite promotional plan in the grocery industry.

The Commission issued an advisory opinion with respect to a tripartite promotional plan in the grocery field.

The applicant proposed to rent space to advertisers on a mechanical device containing a moving message, the purpose of which is to advertise products at the shelf level in retail grocery stores. The applicant would offer retail stores having weekly gross sales of $30,000 or more $3 per 2-week period per device for at least five devices (with an option to install up to 20 devices) as rent for the area necessary for the installation of the advertising devices. Stores having weekly gross sales of less than $30,000 would be furnished signs for them to attach to their shelves or other suitable point-of-sale area of similar size to the mechanical device offered to the larger stores. Stores with weekly gross sales of less than $30,000 would also be furnished display materials such as aisle indicators and generic product ads. Stores with weekly gross sales of $20,000 to $30,000 would be paid $1.50 per 2-week period per sign; stores with weekly gross sales of less than $20,000 would be paid 19 cents per 2-week period per sign.

The Commission expressed the view that were the proposed promotional assistance plan implemented, the Clayton Act, Section 2 (d) and/or (e), as amended, and/or the Federal Trade Commission Act, Section 5 would probably be violated because neither the payments nor the services under the plan are offered on proportionally equal terms and the "alternatives" are not all made available to each competing customer. (File No. 693 7077 Released July 11, 1969)

No. 357. Supplier services furnished through third party.

The Commission advised a requesting party that his proposed plan would be governed by the provisions of Section 2(e) of the amended Clayton Act, as interpreted by the Commission's recently issued Guides for Advertising Allowances and Other Merchandising Payments and Services.

In return for chain officials' time in considering supplier proposals, a third party intermediary proposed to provide mer-

chandising advice of a perhaps general nature. The requesting party considered his proposed action to be outside the scope of Section 2(e).

The Commission concluded that implementation of the plan would be likely to result in a violation of Section 2(e) if the plan were to be offered only to chains and if usable and suitable alternatives were not offered to those competing customers who could not use the basic plan. (File No. 693 7116 Released July 11, 1969)

No. 358. Disclosure of foreign country where textile products are assembled.

The Commission advised two manufacturers of textile fiber products that it would not be necessary to disclose the name of the foreign country where certain finishing operations are performed.

In both cases, the fabric is of domestic origin. In one case, the company will ship its American-made fabric and findings to the Dominican Republic where the fabric will be cut, sewn, finished, and returned for resale to the industrial rental laundry industry. Labor services performed in the foreign country will represent approximately 30 percent of total production costs.

The other company, which is engaged in the manufacture and sale of ladies' undergarments, will cut the material in the United States and then ship it to Haiti where it will be sewn and finished. The company's foreign labor costs will represent approximately 20 percent of total production costs.

Both companies were advised by the Commission that it would not be necessary to disclose in the labeling the nature and extent of the foreign operations performed on the textile products either under Section 5 of the FTC Act or Section 4(b)(4) of the Textile Fiber Products Identification Act.

No. 359. Trade associations proposed compilation and publication of certain financial data.

The Commission issued an advisory opinion in response to a request from a trade association concerning a proposed survey to be conducted among its members.

The proposed survey seeks industry data for 1966, 1967, and 1968 confined solely to the following items:

(1) Percent return on total investment;
(2) Percent net profits (after taxes) to total sales;
(3) Percent advertising cost to gross sales;
(4) Percent direct labor cost to gross sales;

(5) Ratio current assets to current liabilities;
(6) Ratio net sales to inventory; and
(7) Ratio net sales to net working capital.

The association proposes to obtain the information from its members on a confidential basis, to tabulate the data without identifying any company, and then to publish the results.

The Commission advised the applicant that it does not object to the proposed survey, compilation and publication of industry financial data as outlined above and on the basis stated *i.e.,* that there will be no disclosure of the name of any company participating. It is to be understood that this advisory opinion is necessarily limited to this particular program. However, the Commission invites submittal of any other proposed financial surveys in definite form for Commission advisory opinions. (File No. 693 7128 Released July 11, 1969)

No. 360. Use of descriptive phrase to describe furniture.

The Commission issued an advisory opinion with respect to the use of a descriptive phrase such as "[Trade Name] furniture combines modern production methods with hand-carving and finishing" to refer to certain furniture.

The manufacturing procedure for the furniture calls for a prototype to be completely constructed and carved by hand. Then, the prototype becomes a pattern for an intricate machine which "rough cuts" the carvings on subsequent pieces for assembly production. Each piece so manufactured then has intricate hand detailing, carving, and finishing, to the extent that each piece is, in fact, different in artistic detail from the one which follows it. Each piece is numbered and signed by the craftsman who completes it.

The Commission expressed the view that using a descriptive phrase such as "[Trade Name] furniture combines modern production methods with hand-carving and finishing" to refer to furniture manufactured in the manner described, probably would not violate the Federal Trade Commission Act, Section 5. (File No. 693 7141 Released August 14, 1969)

No. 361. Credit reporting plan by trade association.

In response to a request for an advisory opinion, the Commission ruled that it would interpose no objection to a credit reporting plan by a trade association, as long as five conditions are met.

The proposed plan would cover only past due accounts in three

categories: (1) Where legal suit has been filed, (2) those accounts which have been turned over to a bona fide collection agency, and (3) where the debtor has gone into bankruptcy. The secretary of the association would keep a list of such accounts reported to her by the active members. In response to an inquiry from an active member concerning a particular customer, the secretary would, without disclosing the name of the reporting member, advise the inquiring member whether or not any one of the three aforementioned adverse credit actions had been reported. Available only upon the specific request of an active member, the credit information would not be for broad publication to all members of the association.

In addition, a reporting member would have to submit evidence in support of any one of the three adverse credit actions being reported. Absent such evidence, the reporting member would have to refer the secretary of the association of a reliable source where this information could be confirmed. The purpose of this requirement is to prevent the reporting of any rumors with respect to a customer's credit rating.

The Commission advised that the exchange of credit information concerning delinquent debtors through a trade association is not unlawful under Section 5 of the FTC Act provided:

(1) The members of the association are left free to determine on the basis of their individual judgment whether or not to sell to delinquent debtors and on what terms;

(2) There is no agreement among members in regard to credit terms, prices, or any other joint action which illegally restrains trade;

(3) That the reporting member indicates that a debt turned over to a collection agency was treated by the debtor as offset or was otherwise disputed, where that is the case;

(4) The association furnishes to the debtor the same credit information reported by a member at the time the request is answered; and

(5) In order for the debtor to have the opportunity to correct this credit record, if he believes it needs correcting, the association must pass on to the inquiring member any explanatory statements which the debtor may submit; the identity of the inquiring member need not be revealed to the debtor. As long as the proposed plan meets these five requirements in actual operation, the Commission would interpose no objection with respect thereto. (File No. 693 7115 Released August 14, 1969)

No. 362. Full disclosure of facts necessary when seller of one product makes gift of another product to purchaser in exchange for names of prospective purchasers.

In response to a request for an advisory opinion, the Commission advised a manufacturer under an order prohibiting it from representing, directly or indirectly, that its products can be had at no cost to the purchaser or that such products can be had in exchange for the names of a given number of prospective purchasers, unless a full and complete disclosure is made of the facts and circumstances surrounding the offer, that it considered the following to constitute sufficient disclosure:

Purchaser to furnish, at time of purchase, the names and addresses of six prospective purchasers.

Prospects must reside in the sales area of manufacturer's distributor making the original sale.

For voluntarily furnishing such names and addresses purchaser will receive, without charge, another specifically designated product of the manufacturer.

The additional product will be presented immediately upon completion by the purchaser of the names and addresses of the six prospective purchasers requested.

Any representation or arrangement not contained in this disclosure shall not be binding upon the manufacturer or its distributor.

No purchaser is required to participate in the program. Participation is strictly voluntary on the part of the purchaser. (File No. C–514 Released August 14, 1969)

No. 363. Pricing of replacement glass for automobiles.

The Commission issued an advisory opinion with respect to the pricing system of a dealer in replacement glass for automobiles.

The dealer would grant discounts from the list price of automobile window glass to all customers. If an individual purchases a window, he would receive a discount of 20 percent from list price. If an insurance company sends the individual in, the discount would be 30 percent. (In this case, the bill would be sent to the insurance company and the individual.) If an automobile garage purchases the glass, the discount would be 50 percent. All sales are made within one State.

The Commission expressed the view that implementation of the proposal in the manner described and under the circumstances

stated probably would not violate any law administered by the Commission. (File No. 693 7141 Released August 14, 1969)

No. 364. Origin disclosure of imported thread guides.

The Commission issued an advisory opinion relative to the disclosure of the foreign origin of imported ceramic textile and thread guides.

The Commission understood that the guides are the size of a dime and that it is difficult, if not impossible to mark the country of origin on each guide during production. Markings after production is completed would be very difficult and very expensive. The guides are not sold to the general public, but are used in industry for the manufacture of other products.

The Commission expressed the view that conspicuously marking on the package or container in which the guides would be shipped to their ultimate user the words "Made in [name of country] exclusively for [name of importer]" would be an adequate disclosure of the country of origin provided the guides were made exclusively for the applicant. (File No. 693 7148 Released September 24, 1969)

No. 365. Request denied for approval to sell dairy company under Commission order.

The Commission rendered an advisory opinion denying a request of a medium-sized dairy company for blanket approval to sell to any company under a Commission order.

The company was the largest independent dairy company in its large marketing area, had the largest sales volume of dairy products in the area, had sales in excess of $5 million, was profitable, no other hardships were demonstrated, and efforts to sell to companies not under order had not been adequately explored.

The Commission advised that it cannot give blanket approval to sell the company in question to any company under Commission order. It further advised that the denial of such request is without prejudice to the submission to the Commission by any company under order of a request to purchase such dairy. In such event, any such submission will be duly considered by the Commission, and it will then decide upon the basis of the facts then presented. Released September 24, 1969)

No. 366. Labeling of imported magnetic recording tape.

The Commission issued an advisory opinion with respect to the labeling of imported magnetic recording tape.

In commenting upon the proposed labels as submitted, the Commission expressed the view that (1) the words indicating the foreign country of origin should appear on the front or principal display panel; (2) the term "recording tape" should be used as the specification of the identity of the commodity and that it should comprise a principal feature of the principal display panel; (3) in view of its understanding that recording tape is of uniform width, the length of the tape should be expressed in terms of feet followed in parentheses by a declaration of yards and common or decimal fractions of the yard, or in terms of feet followed in parentheses by a declaration of yards with any remainder in terms of feet and inches; and (4) the place of business of the manufacturer, packer, or distributor should include the street address, city, State, and Zip Code; however the street address may be omitted if it is shown in a current city directory or telephone directory.

The Commission invited the applicant's attention to its regulations under Section 4 of the Fair Packaging and Labeling Act for additional information. (File No. 693 7146 Released September 24, 1969)

No. 367. Tripartite promotional assistance plan.

The Commission advised a requesting party that the Commission would not proceed against it or its customers, or suppliers if the following described promotional assistance plan were implemented under the following circumstances:

The requesting party has two plans for displaying advertising signs to be attached to grocery store shelves. Suppliers of grocery store products will pay the requesting party for the advertising of their products on these signs. Signs will be of two kinds. One sign will be a back-lighted moving color transparency; the other will be a fixed sign of approximately the same dimensions. The moving sign will be used as part of the requesting party's Plan A; the fixed sign as part of the requesting party's Plan B. Both fixed and moving signs will advertise one product and the same product during any given 2-week period.

All customers competing in the resale of the advertised product may elect to adopt Plan A, if they will. All such customers having an outlet doing in excess of $25,000 per week average gross business may have Plan A and Plan A only. Smaller customers may elect Plan B.

Outlets will be paid for the use of their space in one of two ways as they initially elect: (1) A percentage of the dollar value of the advertised product purchased during the 2 weeks in which the advertisement runs; (2) a fixed sum per 2-week period determined as a percentage of average weekly gross sales during the preceding fiscal year.

Those customers electing to have the moving display will be charged a service charge for each 2-week period. This will be computed at 2 dollars

per display per period. There will be no service charge for those electing to have the fixed display.

The requesting party will, as third party intermediary, enter into written agreement with suppliers, if suppliers so desire, to undertake supplier obligations under Sections 2 (d) and (e) of the amended Clayton Act as provided in Guide 13 of the Commission's Guides for Advertising Allowances and Other Merchandising Payments and Services. If there is a supplier-third party agreement that the requesting party will undertake supplier obligations, suppliers will perform as set forth in paragraph (b) of Guide 13. (File No. 693 7077 Released October 9, 1969)

No. 368. Disclosure of origin of imported plastic vinegar bottles.

The Commission had rendered an advisory opinion to a manufacturer of domestically-made vinegar that it would not be necessary to disclose the origin of its imported plastic vinegar bottles.

In the absence of any affirmative representation that the imported plastic bottles are made in the United States, the Commission said that it will not be necessary to disclose the Canadian origin of the containers. (File No. 703 7016 Released October 9, 1969)

No. 369. Disclosure of foreign origin required in mail order advertising.

The Commission rendered an advisory opinion to an importer of women's panty hose that it would be necessary to make a clear and conspicuous disclosure of the foreign origin of the hose in all mail order promotional material.

Under the factual situation presented to the Commission, the importer proposes to purchase the wearing apparel in West Germany for resale in the United States through the mail. The hose will be plainly marked with a "Made in Free West Germany" tab sewn into the back of the garment, and the same disclosure will also be made on a paper sticker attached to the front of each cellophane bag containing the hose.

Concluding that a disclosure would be required, the Commission said: "The underlying reason for the disclosure requirement is that mail order purchasers do not have the opportunity to inspect the merchandise prior to the purchase thereof and be apprised of a material fact bearing upon their selection." (File No. 703 7017 Released October 9, 1969)

No. 370. Origin of cashmere sweaters.

The Commission advised an importer of cashmere sweaters that it would not be necessary, under Section 5 of the FTC Act, to disclose they were knitted in Hong Kong or that the yarn was

spun in Japan, in the absence of an affirmative representation that the sweaters are entirely of domestic origin.

Under the factual situation presented to it, the sweaters will be knitted in Hong Kong from yarn which is spun in Japan. Thereafter, the sweaters will be shipped to a plant in the United States where they will be scoured, dyed, zippers added, steamed, and pressed. (File No. 693 7144 Released October 9, 1969)

No. 371. Use of "12 karat gold filled" to describe earrings.

The Commission issued an advisory opinion to a company, denying permission to apply the designation "12 karat gold filled" unqualifiedly to an earring where all the metallic parts, except the steel spring base, are composed of $\frac{1}{20}$ 12-karat-gold-filled precious metal.

It was alleged by the company seeking the opinion that the spring base performed a "spring" or tension function and is a spring within the meaning of that word in trade practice rules for the Jewelry Industry. Being a spring, it was further contended, exempts it in any assay for quality and permits unqualified use of the designation "12 karat gold filled."

In rejecting the company's position, the Commission said:

Even if we assume that the allegation of performing a spring or tension function is correct, this is not the primary purpose or function of the spring base. As we view the situation, the spring base serves primarily as a connecting link or arm between the clip, which is attached to the top, and the ornament which is attached to the bottom. Thus, simply because the spring base may perform a tension function, this does not mean that the component is a spring within the meaning of that word in Rule 22D of trade practice rules for the Jewelry Industry. Stated differently, performing a dual function does not necessarily make the component a spring. Accordingly, the Commission is of the opinion that the spring base is not a spring as that term is contemplated within the meaning of the rules and the component therefore is not exempt in assay for quality. Since the component is not a spring, it would therefore be improper under Rule 22B(4) and Rule 25 (a) of the trade practice rules to unqualifiedly designate the earring as '12 karat gold filled.' As you know, these two rule provisions prohibit the use of a quality mark, such as the one contemplated, in a manner which would misrepresent the metallic composition of the product or any part thereof. Since the spring base is composed of steel rather than the quality indicated in the proposed designation, it would therefore be deceptive to use such a quality mark unqualifiedly.

(File No. 703 7027 Released October 9, 1969)

No. 372. Use of "Made in U.S.A." label.

The Commission rendered an advisory opinion to a manufacturer of optical lens systems in regard to the labeling of its products as "Made in U.S.A."

Specifically, the company wanted to know what percentage of imported components a product could contain and still be properly labeled as "Made in U.S.A."

In the advisory opinion which was rendered, the Commission stated that it would construe a "Made in U.S.A." mark as an affirmative representation that the product is entirely of domestic origin. Concluding its opinion, the Commission said that it would be improper to use such a mark where the finished product contains imported components without clearly disclosing the foreign country of origin of the imported parts. (File No. 703 7013 Released October 9, 1969)

No. 373. Trade association code of conduct found unobjectionable.

The Commission advised a trade association of shippers' agents that the aims of its proposed Code of Conduct appear unobjectionable and that adherence by members to its provisions should not operate to effect any unreasonable restraints of trade so long as it is implemented in a fair and nondiscriminatory manner.

A "shippers' agent," as defined in the Interstate Commerce Act (49 U.S.C.A. 1002(c)(2)) and the proposed Code, is one whose operation consists solely of "consolidating or distributing pool cars, [and] whose services and responsibilities to shippers in connection with such operations are confined to the terminal area in which such operations are performed." Under this provision of law a shipper's agent's responsibility is confined to the consolidation of freight for proper shipment. He does not "break bulk" nor is he responsible for the ultimate distribution of freight. Were he to engage in this latter activity he would, by definition, no longer be a shippers' agent eligible for association membership. According to the requesting party the Code is intended primarily as a preventive measure to assure that members will conduct their business operations within the Act's limitations.

One provision of the Code requires that members indicate, in advertising and elsewhere, that their services and responsibilities to shippers are confined to the terminal area in which they operate. This follows the limitation of the Act and if adhered to by members, will serve to truthfully inform shipper-customers concerning this status.

Another provision requires that a member shall avoid any action or statement which could be construed as imputing to him a common carrier status or a status other than that embodied in the Act. This assures that members do not falsely imply to ship-

pers that they take a greater responsibility for the shipment and distribution of freight than is permitted by their status under the Act.

Other provisions provide in general terms that the members' conduct shall be characterized by "candor and fairness" in their relationships among themselves and with the public, and that they shall properly discharge their obligations and duties to the shippers who employ them.

It is a condition to membership in the Association that a shippers' agent agrees to subscribe to and abide by the Code. Repeated failure to discharge his obligations thereunder will, upon notice and a probationary period, constitute cause for expulsion of an offending member by the Board of Directors of the Association. Such expelled member may, however, exercise his right of appeal before the full membership.

While the Code contains provisions restricting the business operations of members, it appears from the materials submitted that the purpose of these restrictions is to insure that members remain within the Act's limitations and respect the confidential agency status created in their dealings with shipper-customers. The purpose is also to encourage Association members voluntarily to refrain from unfair or deceptive practices. In this context there is a greater public interest in protecting shippers from dishonest shippers' agents than there is in condemning the minimal restraints that might result from application of the Code.

Undoubtedly, unreasonable and therefore unlawful restraints might result if an Association member is arbitrarily or improperly expelled from membership, but the Commission believes that there is ample public interest in effectively encouraging Association members to refrain from the clearly pernicious practices condemned by the Code. On the assumption that the Code will be administered in such a way as to promote this end, and not so as to place unreasonable restraint on the ability of members to do business, the provision permitting the Association to expel non-conforming members is approved.

The Commission also noted that it had confined itself in its opinion to so much of the request as falls within its jurisdiction. The extent, if any, to which another governmental agency may be concerned with the Association's activity is a matter to be determined by reference to that agency. (File No. 703 7030 Released October 9, 1969)

No. 374. Tripartite promotional plan for larger supermarkets.

The Commission issued an advisory opinion concerning a proposed tripartite promotional plan for larger supermarkets.

The applicant proposed to solicit advertising from packagers of goods which are normally stocked in grocery stores. The applicant would arrange for the display of such advertising in its projector using a color sound film cartridge which would be installed in supermarkets that record an average of 7,500 transactions per week or have an annual sales volume in excess of $1 million. Consideration to participating retailers for the permission to install the projector units would be one of the three commercial spots on each film cartridge provided while the units are in their stores.

The Commission expressed the view that implementation of the proposed course of action in the manner described probably would violate the Clayton Act, Section 2(d) or 2(e), as amended, and/or the Federal Trade Commission Act, Section 5 for the reason that the proposed payment or services would be made available only to the larger supermarkets. See Guide 7 of the Commission's Guides for Advertising Allowances and Other Merchandising Payments and Services (May 29, 1969). The proposed plan makes no provision for retailers for whom the basic plan is not usable and suitable. (See Guide 9.) The plan makes inadequate provision for informing competing customers of the availability of the program. (See Guide 8.) (File No. 703 7030 October 9, 1969)

No. 375. "Made in U.S.A." label on clock-radios containing an imported component.

The Commission rendered an advisory opinion to a manufacturer of clock-radios which are partly domestic and partly of Japanese origin, and which the manufacturer wishes to label as "Made in U.S.A."

The finished product, except for the radio chassis which is of Japanese origin, will be manufactured and assembled in the United States. Although the imported chassis will be marked with the country of origin at the time of importation, the mark will not be visible to prospective purchasers after the imported part is assembled into the finished product. The imported chassis will cost approximately $2 or 29 percent of total production cost, with the remaining 71 percent being of domestic parts and labor.

Concluding that such a product could not be unqualifiedly marked as "Made" in U.S.A.," the Commission said: "* * * it

would be improper to use the 'Made in U.S.A.' mark on the clock-radios without clearly disclosing the foreign country of origin of the imported radio chassis." (File No. 703 7024 Released October 9, 1969)

No. 376. Disclosure of foreign labor services performed on domestically produced textile fiber products.

The Commission advised a manufacturer of textile fiber products it would not be necessary to disclose that certain stitching and assembly operations were performed in Tijuana, Mexico, on domestically produced sportswear.

The manufactuer will cut and otherwise prepare American-made fabrics together with such findings as buttons, zippers, and threads which will be sent to a contract factory in Mexico for stitching and other assembly operations. The units will be then returned to the manufacturer's production facilities where final manufacturing procedures will occur. The manufacturer's foreign labor costs will represent between 15 percent and 20 percent of total production costs.

The manufacturer was advised by the Commission that it would not be necessary to disclose in the labeling the nature and extent of the foreign operations performed on the garments in Mexico under the laws it is empowered to enforce. (File No. 703 7020 Released October 9, 1969)

No. 377. Device for creasing cigarettes.

The Commission rendered an advisory opinion in regard to the advertising claims to be made for a device which allegedly provides the "answer to safer smoking."

Specifically, the manufacturer requested an advisory opinion in regard to the legality of the following proposed advertising:

The (name of device) is a revolutionary invention that provides the answer to safer smoking. It reduces gases as well as tar and nicotine. The device prevents formation of high temperature gases in cigarettes, thereby reducing the hazards of smoking. You can use the (name of device) on any popular brand of cigarette, including filter cigarettes. Independent laboratory tests substantiate the claim that the (name of device) significantly reduces tar, nicotine, and gases in the popular brands of cigarettes. The (name of device) re-engineers your cigarette to give a less harmful smoke. In addition, unsolicited testimonials state that the smoker enjoys a cooler and more flavorful cigarette, reduces smoker's cough and avoids harsh bite found in many brands of cigarettes.

In the advisory opinion which was rendered to the requesting party, the Commission said:

The Commission has carefully considered your request along with the laboratory reports and other material submitted in connection therewith and has concluded that the data do not support the claims made in the proposed advertising. The conclusions offered on the basis of the laboratory tests cannot be accepted because such tests do not provide statistically valid data from which tar and nicotine reduction claims may be justifiably made. Nor do the tests otherwise conform to the Commission's standards for cigarette testing described in the Commission's press release issued August 1, 1967. Moreover, tests by the Commission's Cigarette Testing Laboratory indicated that there are no statistically significant reductions in the tar or nicotine content of cigarettes decreased by means of the device.

In addition to the methodological infirmities of the submitted data, the Commission also notes that none of the reports submitted shows that the alleged reductions of tar, nicotine, and benzopyrene content result in a decrease in the incidence of cancer, coronary heart disease, bronchitis, pulmonary emphysema, or other diseases associated with cigarette smoking. Nor do the tests otherwise establish that the claimed reductions of tar, nicotine, or benzopyrene content obtained by means of your device significantly reduce the health hazards of smoking. In short, there appears to be no substantial scientific evidence in support of the claim that the device "provides the answer to safer smoking."

(File No. 703 7001 Released October 9, 1969)

No. 378. Savings claims based upon comparison with comparable merchandise.

A manufacturer of combination color television, radio, and phonograph sets requested an opinion from the Commission in regard to the legality of savings claims based upon the sale of comparable merchandise.

Specifically, the manufacturer wanted an opinion in regard to the legality of the alleged savings claim of $300. The manufacturer also wanted to know whether he should identify the three specific competitive manufacturers with which the comparison was being made, or should they be identified merely by referring to them as brand A, B, and C.

In response to the first question the Commission said that because it did not have the facts upon which to base a judgment, it cannot pass upon the legality of the alleged savings claim of $300. The Commission noted that it has laid down rather definitive guidelines for those who wish to utilize savings claims in their advertising which are based upon the sale of comparable merchandise. The Commission directed the manufacturer's attention to Guide 2 of the Guides Against Deceptive Pricing and noted

that advertising meeting the requirements outlined in Guide 2 would not be objected to by the Commission. Commenting further upon this question, the Commission said:

> Basically, Guide 2 outlines two fundamental requirements for determining the validity of savings claims based upon the sale of comparable merchandise. First, the other merchandise must be of essentially similar quality in all material respects to the advertiser's product. Second, the advertiser should be reasonably certain that the price advertised as being the price of comparable merchandise does not exceed the price at which such merchandise is being offered by representative retail outlets in the area.

In regard to the second question, the Commission said that it could express no opinion as to whether the manufacturer should identify the three specific competing manufacturers by name or merely identify them by referring to Brand A, B, and C. Its primary concern here, the Commission added, is to make certain that the advertising clearly discloses the basis for the comparison and that the statement is factually true. (File No. 703 7033 Released October 9, 1969)

No. 379. Refusal of alternatives in tripartite promotional assistance plan.

The Commission advised the requesting party herein that it would not object if a proposed tripartite promotional assistance plan were to be implemented as described.

The requesting party proposes to enter into agreements with grocery stores for use of the space immediately above store gondolas (oblong fixtures in a row, on the shelves of which products are displayed for sale). The space is to be used for display fixtures which will hold, back to back, 20″ x 24″ placards advertising supplier goods.

Smaller stores not possessing space to display these large placards will be given the option of obtaining smaller placards of shelf talkers (small signs suitable for being affixed to shelf edges).

Stores will be reimbursed for use of the space by being given a fixed percentage of the dollar value of purchases of the advertised products from suppliers during a specified period.

Notice to entitled customers and checking of customer performance will be as set forth in the Commission's Advertising Allowances Guides promulgated May 29, 1969. The requesting party will offer to perform seller obligations as provided by Guide 13.

In question was the requesting party's right to refuse an alternate plan to those outlets functionally able to use the larger sign.

To this the Commission had no objection. (File No. 703 7020 Released October 9, 1969)

No. 380. Use of order cards in packages of merchandise or in direct mailing material.

The Commission issued an advisory opinion with respect to the insertion of order cards in packages of merchandise or in direct mailings of advertising material.

The applicant, a distributor of various office supplies and general merchandise proposed to enclose an order card in the packages prepared for shipment of merchandise to customers, suggesting that they place these cards in the Key-Operator's manual. Also occasionally the cards would be included with some direct-mail literature sent to prospective customers.

The Commission expressed the view that it would not initiate action against the applicant were the proposed course of action implemented in the manner described. (File No. 703 7029 Released October 9, 1969)

No. 381. Disclosure of origin of imported ignition coil parts.

Manufacturers of automotive ignition coils sold as replacement parts were advised it would not be necessary to disclose the Japanese origin of the coil windings used in the production of such products.

In the factual situation involved, the imported coil windings will cost about 84 cents each which represents approximately 45 percent of total production costs. The remaining parts, such as the voltage terminal, insulating tower, etc., and labor will be of domestic origin and will cost about $1.04, representing approximately 55 percent of total production costs.

Advising that the country of origin disclosure would not be required under these circumstances, the Commission said: "In the absence of any affirmative representation that the automotive ignition coils are made in their entirety in the United States, or any other representation that might mislead purchasers as to the country of origin, the Commission is of the opinion that, under the facts as presented, the failure to mark the origin of the imported coil windings will not be regarded by the Commission as deceptive." (File No. 703 7023 Released October 29, 1969)

No. 382. Franchise agreement with fair trade price schedule.

The Commission issued an advisory opinion with respect to a franchise agreement in the recreational equipment industry.

A significant provision of the proposed agreement related to fair trade prices. A Schedule of Fair Trade Prices was to be attached to and made a part of the agreement and the dealer must agree that he will not advertise, offer for sale, or sell any products at less than the fair trade prices, nor make any refunds, discounts, allowances, or concessions which will have the effect of decreasing those prices, nor offer any of the fair traded items in combination with other merchandise at a single, combination or joint price. The agreement further provided that this provision should be applicable only in those States where agreements of this character are lawful.

The Commission advised that in view of the McGuire Act amendment to Section 5 of the Federal Trade Commission Act it could see no objection to inclusion of the provision in the agreement as long as the seller does not fix dealer prices outside of fair trade States.

The Commission further advised that, subject to the caveat above stated, it would not initiate action were the proposed course of action implemented in the manner described. (File No. 693 7151 Released October 29, 1969)

No. 383. Labeling of leather gloves partly domestic and partly of foreign origin.

The Commission advised a manufacturer of industrial work gloves, which are partly domestic and partly of foreign origin, that it could not use representations which implied that the gloves were entirely of domestic origin. Specifically, permission was requested to use one of the following three representations on the plastic containers of the gloves:

Made from American Split Cowhide
Made from American Split Leather
American Leather Exclusively Used

According to the Commission's understanding of the facts, the company purchases semiprocessed split cowhide leather in America which is shipped to Taiwan where it is further processed, cut, and sewn into industrial work gloves. Foreign production costs represent approximately 37½ percent of the finished gloves, with the remaining 62½ percent representing the cost of the American-made leather. One dozen gloves will be packaged in each plastic container and each pair of gloves will be labeled as having been "Made in Taiwan." However, this label will appear on the inside wrist of the gloves and will not be seen through the plastic

container. Moreover, the container will not be opened until the sale has been consummated.

The Commission said that it would not object to the use of the first two representations, provided they were qualifieid by a disclosure of equal prominence indicating the gloves were made in Taiwan. As qualified, the two representations would read:

Made in Taiwan from American Split Cowhide
Made in Taiwan from American Split Leather

Without the qualification, the Commission believes that a substantial number of prospective purchasers would misinterpret the two proposed statements to mean that the gloves were made in America from American-made split cowhide.

Similar qualification would be required to the third proposed representation. In addition, it would also be necessary to qualify the word "leather" because that word standing alone means top grain leather. Since the leather in question is not top grain but split, it would be deceptive to make unqualified use of the word "leather" under these circumstances. Therefore, the Commission concluded that it would not object to the use of the third representation if it were revised to read as follows:

Made in Taiwan—American Split Leather Exclusively Used

(File No. 703 7035 Released October 29, 1969)

No. 384. Special discount package price to new dealers.

The Commission issued an advisory opinion with respect to a proposed special discount package price to new dealers in the building materials industry.

The applicant proposed to offer to new retail dealers a special discount package on certain building materials plus an in-store display. In addition to the in-store display facility the new dealer would be offered a price approximately one-third below the price at which the merchandise is offered to existing dealers. The proposal would be a one-time promotion.

The Commission expressed the opinion that "it is unlikely that injury could result from this one shot offer in view of its nature and the start up costs which new dealers are apt to experience." Therefore, the Commission would not object to the plan if implemented as described in the preceding paragraph.

(File No. 703 7005 Released October 29, 1969)

No. 385. Disclosure of origin of imported locks.

The Commission advised concerning locks imported from England and Italy that it would be necessary to make a clear and conspicuous disclosure of the foreign country of origin on the locks. If the locks are displayed at the point of sale in a container so that the disclosure of origin is not likely to be seen, it would also be necessary to make the same disclosure of foreign origin on the containers in which they are packaged.

Under the facts involved in the ruling, the locks will be used for both residential and commercial purposes and some of them could be marketed under the trade name of a domestic company, which contains the name of a well-known American city. (File No. 703 7036 Released October 29, 1969)

No. 386. Origin of imported brush for hair roller.

The Commission issued an advisory opinion with regard to the question of whether it is necessary to disclose the origin of the imported brush which is assembled with American made components to form a brush hair roller.

It is proposed to produce a hair roller in the United States. The roller consists of three components: spiral spring, netting, and brush insert. The brush insert is manufactured in a foreign country. The spiral spring and netting are manufactured in the United States. All assembling is done in the United States. The cost of the brush accounts for less than 25 percent of the total cost of the hair roller as marketed. The question involved is whether the foreign origin of the brush must be marked on the printed card which will be used in packaging the roller.

The Commission expressed the opinion that, in the absence of any affirmative representation that the product is made in the United States, or any other representation that might mislead the public as to the country of origin, and in the absence of other facts indicating actual deception, the failure to mark the origin of the imported component would not be regarded by the Commission as deceptive. (File No. 703 7028 Released October 29, 1969)

No. 387. Tripartite promotional plan in the grocery field.

The Commission issued an advisory opinion with respect to a proposed tripartitie promotional plan which proposed to secure advertising from packagers of food and grocery products and place ads in retail stores. The display ad will measure 22″ x

21" and can be located in the middle of the store with or without aisle directory information or it can be divided in half and placed on the wall of the store. Payments to stores would be calculated in terms of the number of ads installed, the rate per ad to vary with the monthly traffic in the store, the minimum payment to be $4.25 per month per ad, and the smaller grocery stores will be paid more proportionally than larger stores. Competing retailers would be informed of the opportunity to participate in the plan through personal solicitations, advertisements in trade journals, and direct mailings to every grocery retailer in the country which has been in business for a period of at least 6 months.

The Commission stated that the proposed method of calculating payments to stores, if implemented as stated, would not violate the requirements of proportionally equal terms in Guide 7 of the Commission's Guides for Advertising Allowances and Other Merchandising Payments and Services (May 29, 1969). The proposed method of informing competing retailers of the opportunity to participate in the plan, if implemented in good faith, seems to satisfy the requirements of Guide 13(a)(1). As long as non-food items and food items likely to be sold in stores other than supermarkets are not advertised, a plan to provide availability to all grocery stores of all sizes would meet the requirements of availability to all competing customers as required by Guide 9. The proposed ad which can be used in an aisle or on the wall of a store would appear to be "usable in a practical business sense" in a store of any size. Thus the plan satisfies the requirements of Guide 9 that the plan "* * * should in its terms be usable in a practical business sense by all competing customers." Therefore, no alternative plan seems to be required in the absence of proof that some customers cannot in fact make use of the proposed ads.

The Commission advised that were the plan implemented as proposed, the Commission would have no objection to it. The Commission pointed out that were the plan implemented in a different manner, the promoter, the supplier, and the retailer might be acting in violation of Section 2(d) or (e) of the Clayton Act, as amended, and/or Section 5 of the Federal Trade Commission Act. (File No. 703 7031 Released October 29, 1969)

No. 388. "Bonus" portable typewriter offer.

The Commission issued an advisory opinion relative to proposed advertising of "bonus" typewriters. The proposed advertisement would offer a portable typewriter as a "bonus" to any one accepted for enrollment in a correspondence course. Readers

were invited "to write for information," but the prerequisites to the receipt of the "bonus" typewriter were not disclosed.

The Commission advised that it

* * * is of the view that the advertisement in the circumstances described would be misleading and deceptive and in possible violation of Section 5 of the Federal Trade Commission Act in several respects. For one thing, the "bonus" offer is to be a continuing offer, which means that the regular price for the training course of $595 includes the typewriter; the typewriter would not, therefore, be a "bonus." Also, the proposed advertisement does not make clear that what is being sold for a fee is a training course in motel management and that the so-called "bonus" typewriter is offered only in connection with such course.

Moreover, even were the typewriter to be given as a true bonus, as, for example, if a time-limited offer was made without a change in tuition, the proposed advertisement would still be deceptive and misleading because the terms and conditions for the receipt of the typewriter are not disclosed, including, it appears, an advance payment of $595 tuition for a motel training course.

Furthermore, the proposed advertisement is deceptive because, taken as a whole, it tends to convey the impression that service is not being sold but, rather, that a gift is to be given to specially qualified persons who are willing to consider a career in motel management.

(File No. 693 7147 Released October 29, 1969)

No. 389. Disclosure of foreign assembly operations on ladies' blouses.

The Commission advised that it would not be necessary to disclose the foreign country of origin where certain assembly operations are performed on ladies' blouses.

Under the factual situation involved in the ruling, the synthetic fabric, buttons and thread will all be of domestic origin. The fabric will be cut in the United States and thereafter shipped to Trinidad where it will be assembled. Assembly operations in Trinidad will consist of sewing, pressing and trimming. Approximately 26.4 percent of total production costs will be of foreign origin, with the remaining 73.6 percent representing domestic costs.

Concluding that a disclosure would not be required under Section 4(b)(4) of the Textile Fiber Products Identification Act or Section 5 of the FTC Act, the Commission said: "In the absence of any affirmative representation that the finished product is made entirely in the United States, the Commission has concluded that it will not be necessary to disclose the nature and extent of the foreign operations performed on the ladies' blouses." (File No. 703 7039 Released November 18, 1969)

No. 390. Offer of incentive bonus to customers.

The Commission advised that to offer an incentive bonus to open credit account customers to encourage the payment of invoices within established terms and conditions of sale would not be objectionable.

Most sales are made to open credit account purchasers of plumbing supplies and it was proposed to offer all such customers, as well as all new accounts, a bonus of 1 percent based on the aggregate total of monthly purchases to be given in the form of a credit certificate. This certificate will be honored by a selected local travel agency to apply toward vacation travel, and to be issued to those who adhere to established credit terms. Customers will present their certificates to the travel agency as partial or complete payment of their vacation expenses within 18 months from date of issuance.

The Commission expressed the view that the proposed program, as stated, should be considered as a proposal to increase established credit terms and conditions of sale by 1 percent and as such the program probably would not be unlawful except to the extent, if any, the additional discount may effect unlawful price discriminations within the meaning of Section 2(a), amended Clayton Act. However, because the program will be offered and made available to all open credit account customers and because the single qualifying requirement is adherence to established credit terms and conditions of sale it is not likely that implementation of proposed program would result in any adverse competitive effects.

The Commission advised it would initiate no proceedings so long as the proposed program is implemented in the manner and for the purpose intended.

(File No. 703 7040 Released November 18, 1969)

No. 391. Labeling of products composed of ground leather and fabric.

The Commission is of the opinion that a product which consists of reconstituted leather applied to a fabric base may not be described as "leather" without proper qualification and may not be described as "genuine milled leather."

This product may not be described as "leather" unless the word is accompanied by a clear statement as to the product's true composition. The term "leather" used alone means top grain leather and the product referred to, composed of ground leather on a fab-

ric backing, does not come within such a definition. The use of the unqualified term "leather" to describe such product would tend to deceive prospective customers and possibly violate Section 5 of the Federal Trade Commission Act.

The product may not be described as "genuine milled leather" with or without qualification. It is not clear what is intended by the word "milled" but the phrase as a whole suggests top grain leather in a manner which would make any attempted qualification a contradiction in terms. Use of this phrase would tend to mislead and deceive prospective customers as to the true composition of the product and might violate the Federal Trade Commission Act.

The close resemblance of the product to leather may tend to mislead prospective purchasers into the belief that the product is top grain leather. Accordingly, the product should be labeled to indicate its true composition or, optionally, that it is imitation or simulated leather or nonleather.

Finally, the backing of the product appears to be a textile fiber product subject to the Textile Fiber Products Identification Act, and, accordingly, certain information must be disclosed as to the composition of such fabric.

The product may be described appropriately in a number of ways, among which are the following:

Ground leather laminated to fabric (60 percent polyester, 40 percent rayon).
Shredded leather laminated to fabric (60 percent polyester, 40 percent rayon).
Pulverized leather laminated to fabric (60 percent polyester, 40 percent rayon).
Imitation leather laminated to fabric (60 percent polyester, 40 percent rayon).
Simulated leather laminated to fabric (60 percent polyester, 40 percent rayon).
Nonleather fabric backing (60 percent polyester, 40 percent rayon).

(File No. 703 7019 Released November 18, 1969)

No. 392. Disclosure of origin of partly foreign-made foundation garments.

The Commission expressed an opinion that it would not be necessary to disclose the name of the foreign country where certain finishing operations are performed on ladies' foundation garments.

The fabric, which is of domestic origin, will be cut to shape in the United States and shipped to Mexico where it will be sewn

and finished. The foreign labor costs of producing the finished garment will represent approximately 20 percent of total production costs.

The Commission is of the opinion that it will not be necessary to disclose in the labeling the nature and extent of the foreign operations performed on the foundation garments, either under Section 5 of the Federal Trade Commission Act or Section 4(b)(4) of the Textile Fiber Products Identification Act. The Commission noted, however, that inquiry should be made of the Bureau of Customs as to any marking requirements under Section 304 of the Tariff Act of 1930. (File No. 703 7022 Released November 18, 1969)

No. 393. Request for reconsideration of Advisory Opinion 333 (§ 15.333) pertaining to wholesaler-manufacturer relationship; Freight saving as cost justification.

The Commission was requested to reconsider the advice given in Advisory Opinion Digest No. 333 (Section 15.333) concerning manufacturers' selling relationships with wholesalers. The Commission also considered the question of passing along freight savings to customers.

After concluding that it would adhere to the advice given in the earlier Advisory Opinion the Commission noted that the issue of potential price discrimination between competing wholesalers, some receiving 40 percent and others 25 percent discounts off list prices, no longer existed since only one discount rate is now involved.

Negative advice was given in connection with the following three factual situations because, in the Commission's opinion, applicable antitrust law prohibits suppliers from taking certain punitive action against wholesalers with whom they have been dealing:

(1) A manufacturer refuses to deal further with a wholesaler who has changed his method of doing business and has undertaken to franchise subjobbers whom he prohibits from buying directly from the manufacturer and requires that they purchase all the manufacturer's products through the wholesaler.

(2) A manufacturer discontinues sales to a wholesaler who ceases to maintain salesmen at all times who regularly call upon beauty salons and advise licensed professional hairdressers "on the safe and proper methods of applying the manufacturer's products and who keep sufficient supplies" on hand for current needs of their beauty salon customers.

(3) A manufacturer refuses to deal further with a wholesaler who, without the manufacturer's authorization, resells to independent subjobbers and other wholesalers.

With respect to the problem of cost justification the Commission advised that applicable provisions to Section 2(a) of the amended Clayton Act permit a supplier to pass along freight savings to customers but only to the extent of such savings and only if available to all customers competing in the resale of his products. (File No. 693 7059 Released December 16, 1969)

No. 394. Approval for merger of privately owned carpet tufting machinery and equipment manufacturers.

The Federal Trade Commission granted clearance to privately owned manufacturers of carpet tufting machinery and related equipment to merge their operations into one corporation whose voting stock will be offered for sale to the general public.

The merging companies manufacture machinery and related equipment used by textile mill operators in the production of rugs, carpets, and other textiles. Some of the companies have a common ownership and are competitors; another is not a competitor but manufactures machinery used by customers of the others. Some have about the same market shares in an industry of five manufacturers, about one-fifth of the market share of the dominant company, a substantial national conglomerate enterprise. One firm to be merged competes with ten others in its related industry.

After having considered all available information the Commission concluded that the effect of the proposed merger is not likely to result in any lessening of competition nor the creation of a monopoly in the manufacturing of tufting machinery and equipment. The Commission is of the opinion that the beneficial competitive effects flowing from the amalgam of the privately owned enterprises into a publicly owned corporation will be to give greater competition to its giant rival. (File, Tuftco-processed by McMahill December 16, 1969)

No. 395. Retailer price reporting plan.

The Commission issued an advisory opinion governing a proposed price checking service designed to publicize various current retail prices for grocery store products. Underlying data would be obtained in part by direct observation of posted prices and in part by reference to information supplied by wholesalers and re-

tailers. The service would be available, for a fee, to anyone interested.

In the Commission's view, exchange of price data may lend itself to price fixing and may result in the elimination of price competition and the legality of the proposed course of action would depend on its implementation. (File No. 693 7140 Released December 16, 1969)

No. 396. Use of term "Peat Moss-Pifine and Sedge."

The Commission rendered an advisory opinion concerning a proposal to describe peat with the following terminology:

..... Peat Moss Pifine and Sedge

The product is composed of at least 75 percent peat by weight, with the remaining 25 percent comprised of such soil substances as are commonly intermixed with peat as found in its natural state. It is derived from three non-moss substances; namely, Pifine (Paille Finne), or commonly referred to as maiden cane grass, cut grass, and saw grass. Pfine comprises the bulk of the plant residue present in the product.

Three provisions of the Commission's Trade Practice Rules for the Peat Industry govern the use of the term "Peat Moss" in this particular situation. First, there is the definition of the word "peat," which is as follows:

"Peat." Any partly decomposed vegetable matter "which is accumulated under water or in a water-saturated environment through decomposition of mosses, sedges, reeds, tule, trees, or other plants."

The second pertinent provision is Rule 2, which prohibits use of the word "Peat" to describe any product "which is not in fact composed predominantly of peat to the extent that at least 75 percent (by weight) of the product is composed of peat, with such other materials as may be present in the content, and constituting the remaining percentage, being comprised of such soil substances as are customarily intermixed with peat as found in its natural state."

Third, Rule 3 covers use of the terms "Moss Peat" and "Peat Moss," and has been codified under Section 185.3 of this Title 16.

On the basis of the foregoing facts, the Commission expressed the opinion that the proposed terminology complies with the requirements of Rule 3(b) of the Trade Practice Rules for the "Peat Industry." However, the opinion also noted that some of the art work used the words "Peat Moss" without qualification or

without conspicuous qualification. Such a representation, the Commission said, would not be in compliance with Rule 3(b). Concluding its opinion, the Commission said: "It is necessary under the pertinent rule * * * to disclose the kinds of peat of which (the) product is composed, *i.e.*, Pifine and Sedge, and that such disclosure be of equal size and conspicuousness and be placed in immediate conjunction with the words 'Peat Moss' whenever they are used in labeling or advertising. If the proposed terminology is used in such manner, the Commission would interpose no objection thereto." (File No. 703 7043 Released December 16, 1969)

No. 397. Origin of dresses partly made in United States and Haiti.

The Commission rendered an advisory opinion in regard to the proper marking of dresses partly made in the United States, Puerto Rico, and Haiti.

The fabric will be of American origin representing 73 percent of total production costs; cutting and sorting in Puerto Rico—8 percent of production costs; sewing in Haiti—8 percent of production costs; hem sewing, ironing, final checking and sorting, packing and attaching hand tags in the United States—11 percent of production costs.

The question considered involved which of the following three labels must be applied to the dresses:

(1) "Made in U.S.A."
(2) "Made in Haiti"
(3) "Made in Haiti with U.S. component parts."

The first claim constitutes an affirmative representation that the product is made in its entirety in the United States. Since a substantial portion of the manufacturing process on the dresses is performed in Haiti, it would be improper to use the "Made in U.S.A." claim without clearly disclosing that the dresses are sewn in Haiti.

Similarly, a "Made in Haiti" claim would be misleading because the dresses are not made in their entirety in that particular country.

Except for the word "made," the third proposed claim would be unobjectionable. There are two principal steps in the manufacturing process of dresses; namely, cutting and sewing. Since approximately one-half of the manufacturing process (the cutting) takes place in another country, a more accurate description of

what is being done in Haiti would be to substitute the word "sewn" for the word "made." Thus, the claim as revised would read: "Sewn in Haiti with U.S. component parts."

Although not specifically asked, the Commission further advised that in the absence of any affirmative representation that the dresses are entirely of United States' origin, it will not be necessary to disclose the fact that the dresses are sewn in Haiti. Finally, that this opinion does not relieve anyone from complying with all applicable rules and regulations of the Bureau of Customs. (File No. 703 7047 Released December 16, 1969)

No. 398. Advertising of hamburgers made of chuck and plate.

The Commission issued an advisory opinion relative to advertising of hamburger patties consisting of 85 percent chuck and 15 percent plate. The Commission advised that the use of the phrase "* * *'s Hamburgers are made with ground chuck" in advertising would be violative of Section 12, Federal Trade Commission Act. (File No. 703 7046 Released December 16, 1969)