IN THE MATTER OF

MARCOS SALES COMPANY, ET AL.

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

Docket 8770. Complaint, Nov. 27, 1968—Decision, Feb. 25, 1971

Order requiring Chicago, Ill., sellers and distributors of numerous articles of merchandise to the public by means of a lottery scheme to cease supplying to others push cards or other devices for the sale of merchandise by means of a game of chance or lottery or selling any merchandise by such means.

COMPLAINT

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

PARAGRAPH 1. Respondent Marco Sales Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois with its principal office and place of business located at 30 West Washington Street, in the city of Chicago, State of Illinois.

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

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale and sale or distribution, through others, of numerous articles of merchandise to the public by means of a lottery scheme, game of chance or gift enterprise.

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

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

PAR. 4. In the course and conduct of their aforesaid business, respondents sell or distribute said articles of merchandise, through others, by a means of a lottery scheme, game of chance or gift enterprise. Their operational plan is as follows:

Respondents cause to be distributed, through the mails, to operators and to members of the public, certain materials, literature and instructions including, among other things, push cards, order blanks, circulars including thereon illustrations and descriptions of their merchandise, and circulars explaining respondents' plan of selling and distributing their merchandise and of allotting it as premiums for its prizes to the operators of such push cards; and as prizes to members of the purchasing and consuming public who purchase chances or pushes on said card.

Among and typical, but not all inclusive, of such push cards are those which bear 23 masculine and feminine names with columns on the back of said card for writing on the name of the purchaser of the push corresponding to the masculine or feminine name selected. Each such push card has 23 partially perforated discs. Each of said discs bears one of the masculine or feminine names corresponding to those on the list. Concealed within each disc is a number which is disclosed only when the customer pushes or separates the discs from the card. The push card also has a larger master seal and within the master seal is one of the masculine names or one of the feminine names appearing on a disc. The person selecting the name corresponding with the name under the master seal receives a camera or other stated prizes. The push card depicts a camera or other prizes, discusses the camera's features, and bears the following legend or instruction:

Lucky name under seal gets this AUTOMATIC FLASH CAMERA
No. 1 pay 1¢, No. 7 pays 7¢, No. 9 pays 9¢, No. 11 pays 11¢, No. 25 pays 25¢.
All others pay only 39¢. NONE HIGHER.
LUCKY NUMBERS, 4, 12, 17, 22 PAY NOTHING.

On the right of said push card is the said master seal. Printed thereon is the following: "Do Not Remove Seal Until Entire Card Is Sold". Directly underneath the said master seal is the following:

Push out with pencil.

Another of respondents' push cards depicts an ash tray or other prizes and bears 24 names and corresponding perforated discs and

master seal as aforesaid. In addition to discussing the merits of the ash tray this push card contains the following legend or instruction:

LUCKY NAME UNDER SEAL RECEIVES THIS original Barbeque Fireplace Ash Tray. . . .

No. 1 pays 1¢ No. 5 pay 5¢ No. 9 pays 9¢ No. 12 pays 12¢ No. 16 pays 16¢ All other pay 24¢ NONE HIGHER.

In the center of the said push card is the said master seal. Printed thereon is the following:

Do Not Remove Seal Until Entire Card is Sold.
No. 18 Receives Smooth Writing Ball Pen. . . .

Sales and distribution of respondents' merchandise by means of said push cards are made in accordance with the above described legends or instructions and said prizes or premiums are allotted to the customers or purchasers from said card in accordance with the above legend or instructions. Whether a purchaser receives an article of merchandise or nothing for the amount of money paid, and the amount to be paid for the merchandise, or the chance to receive said merchandise, are thus determined wholly by lot or chance. Many if not all of the articles of merchandise have a value substantially greater than the price paid for each chance or push.

PAR. 5. Many of the persons to whom respondents furnish and have furnished said push cards use the same in selling and distributing respondents merchandise in accordance with the aforesaid sales plans. Respondents thus supply to and place in the hands of others the means of conducting games of chance, gift enterprises or lottery schemes in the sale or distribution of their merchandise in accordance with the aforesaid sales plans.

The sale or distribution of merchandise in accordance with the aforesaid sales plans described in Paragraph Four hereof also constitutes the sale or distribution of merchandise by means of a chance or gaming device since the amount of money to be expended is unknown to the purchaser until the disc is removed from the push card.

The use by respondents of the aforesaid sales plans in the sale or distribution of their merchandise by and through the use thereof and by the aid of the aforesaid plans is a practice which is contrary to the established public policy of the Government of the United States and constitutes an unfair practice within the intent and meaning of the Federal Trade Commission Act.

PAR. 6. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and constituted, and now constitute, unfair acts and practices in

commerce in violation of Section 5 of the Federal Trade Commission Act.

Mr. Roy B. Pope and *Mr. Mario V. Mirabelli* for the Commission.
Mr. Charles Rowan and *Mr. Willis Hagen*, Milwaukee, Wis., Attorneys for respondents.

INITIAL DECISION BY WALTER R. JOHNSON, HEARING EXAMINER

JUNE 30, 1969

Respondents, in a complaint issued by the Commission on November 27, 1968 (mailed December 10, 1968), are charged with unfair acts and practices, in commerce, in violation of Section 5 of the Federal Trade Commission Act, through the use of lottery methods in the sale and distribution of their merchandise. Respondents filed an answer to the complaint, and on January 30, 1969, complaint counsel and counsel for respondents participated with the hearing examiner in a telephonic conference and an order was issued reciting the results thereof. Pursuant to the provisions of the order, counsel for the parties submitted trial briefs setting forth anticipated issues and disclosing, among other things, the names of witnesses and the documentary exhibits which each planned to introduce. Hearings were held and completed at Chicago, Illinois, on April 15 and 16, 1969. On the first day, complaint counsel called ten witnesses (respondent Marvin O. Baer and nine so-called consumer witnesses) and put in their case-in-chief. Respondents' defense was put in on the following day by the use of two witnesses. Complaint counsel offered no rebuttal, and the record was closed for the receipt of evidence. Thereafter proposed findings and conclusions were submitted by counsel for the parties. The hearing examiner has given full consideration thereto, and all proposed findings and conclusions not hereinafter specifically found and concluded are herewith rejected. Upon consideration of the entire record herein, the hearing examiner makes the following findings of fact and conclusions:

Respondent Marco Sales Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 30 West Washington Street, in the city of Chicago, State of Illinois (CX 1–A).

Respondent Marvin O. Baer is now and has been president of the corporate respondent since its inception on June 1, 1966, and he formulates, directs and controls the acts and practices of the corpo-

rate respondent, including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent (CX 1–A; Tr. 15).

Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale and sale or distribution, through others, of numerous articles of merchandise to the public by means of a lottery scheme, game of chance or gift enterprise (Answer, Par. 2; Tr. 17–18).

In the course and conduct of their business, respondents cause, and for some time last past have caused, their said products and devices, when sold, to be shipped from their place of business in the State of Illinois to purchasers thereof located in various other States of the United States, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act. The volume of such commerce by the corporate respondent for the year 1968 was in excess of $150,000 (CX 1–G; Tr. 4).

In the course and conduct of their business, respondents sell or distribute said articles of merchandise, through others, by means of a lottery scheme, game of chance or gift enterprise. Their operational plan is as follows:

Respondents cause to be distributed, through the mails, to members of the public, certain materials, literature and instructions including, among other things, push cards, order blanks, circulars including thereon illustrations and descriptions of their merchandise, and circulars explaining respondents' plan of selling and distributing their merchandise and of allotting it as premiums for its prizes to the operators of such push cards; and as prizes to members of the purchasing and consuming public who purchase chances or pushes on said card.

Among and typical, but not all inclusive, of such push cards (CX 65) are those which bear 23 masculine and feminine names with columns on the back of said card for writing on the name of the purchaser of the push corresponding to the masculine or feminine name selected. Each such push card has 23 partially perforated discs. Each of said discs bears one of the masculine or feminine names corresponding to those on the list. Concealed within each disc is a number which is disclosed only when the customer pushes or separates the discs from the card. The push card also has a larger master seal and within the master seal is one of the masculine names or one of the feminine names appearing on a disc. The person selecting the name corresponding with the name under the master seal receives a

camera or other stated prizes. The push card depicts a camera or other prizes, discusses the camera's features, and bears the following legend or instruction:

Lucky name under seal gets this AUTOMATIC FLASH CAMERA

* * * * * * *

No. 1 pays 1¢, No. 7 pays 7¢, No. 9 pays 9¢, No. 11 pays 11¢, No. 25 pays 25¢
All others pay only 39¢. NONE HIGHER.
LUCKY NUMBERS 4, 12, 17, 22 PAY NOTHING.

On the right of said push card is the said master seal. Printed thereon is the following: "Do Not Remove Seal Until Entire Card Is Sold." Directly underneath the said master seal is the following: "Push out with Pencil."

The operator of the push card sells the chances among his friends and coworkers. After all the chances have been sold and the money collected, he remits the total amount to respondents and respondents ship him two of the cameras, one to be delivered to the person punching the lucky disc and the other to be retained by the operator in return for his services. (See testimony of nine consumer witnesses, Tr. 35–94.)

The respondents make no inquiry or check as to the age of the persons to whom they distribute their push cards and sales plans through the mails. As a result, the aforesaid push cards and sales plans are mailed to minors and thus supply to minors the means of conducting games of chance, gift enterprises or lottery schemes. Respondent Baer testified (Tr. 19–20) that the respondents obtain the names of prospective customers from list brokers, and that these lists of prospective customers to whom the respondents send their push cards and sales plans are not checked as to age or economic background. Witness Bobby Heflin testified (Tr. 74) that he was 20 years old when he took a chance on one of respondents' push cards and won a doll. When the doll was sent to him by the respondents, included in the box were other punch cards (Tr. 71). Heflin also testified that he sold some chances on one of respondents' cards to his wife's sister who was somewhere around 13 years of age (Tr. 76). Witness Jean Heflin testified (Tr. 78) that she obtained a push card from her husband similar to CX 46 and used it when she was 19 or 20 years old. She also testified that she sold some of the chances on some of respondents' push cards to minors (Tr. 81). Witness Connie Sue Alexander, a minor, testified (Tr. 56) that when she was 15 years old she obtained from her sister one of respondents' push cards which had been sent to her sister, age 13, by the respond-

ents. She stated (Tr. 57–58) that she used the push card and sold chances to other minors and that she received more push cards from the respondents (Tr. 60). She further testified that her brother, age 14, also used one of the respondents' push cards and sold chances to minors (Tr. 60–62).

The foregoing findings of fact hereinbefore set forth are not disputed by the parties. During the outset of the hearings, respondents' counsel stated, ". . . we have stipulated to or through our answer admitted . . . all of the allegations of the complaint [ex]cept the allegation that respondents' practices are unfair or contrary to public policy" (Tr. 19). In support of this defense, respondents showed through the testimony of two expert witnesses, Dr. Clifford E. Larson, associate dean of the School of Business Administration (Tr. 110–146) and Professor David H. Strother, a lecturer (Tr. 147), both at the University of Wisconsin at Milwaukee, Wisconsin, and through documentary exhibits (RX 1–65; RX 74–77) that a number of the country's leading business concerns, in advertising and marketing their products, employ games, contests and various methods where prizes are awarded and in which there is an element of chance. Among these business organizations, but not limited thereto, are: Mobil Oil Corporation ("$434,025 'BE A WINNER' SWEEPSTAKES" [RX 18A–D]); Columbia Record Club ("$250,000 SWEEPSTAKES!" [RX 36A–D]); 3M Company ("SIX THOUSAND SEVEN HUNDRED AND EIGHTY-SIX . . . PRIZES" [RX 49]); Reader's Digest ("$990,000 SWEEPSTAKES" [RX 60]); and Phillips Petroleum Company ("28,794 PRIZES—$250,000 HARVEST OF PRICES" [RX 63A–D]). According to the witnesses, the nationwide popularity and overwhelming success of promotional plans involving the use of prizes and chance, as well as legislation in most states extending the perimeters of legal gaming, reflects an evolving attitude on the part of the public of the United States of America which recognizes and accepts, as legitimate, the needs and wants of a large segment of such public of what they regard as the innovating, interesting activity and enjoyment provided by plans, devices and games involving prizes, chance and benefits and detriments to the parties concerned.

It is respondents' position that the complaint should be dismissed for the following reasons:

1. The acts and practices of respondents are consistent with prevailing practices in industry, enjoy public acceptance and approval and stimulate the economy, and do not injure the public nor constitute unfair acts or practices; and for the further reason that the

Commission failed to prove its cause of action in that it introduced no evidence to prove the allegations contained in Paragraphs 5 and 6 of the complaint.

2. This proceeding constitutes an unreasonably discriminatory application of the Federal Trade Commission Act, as amended, against respondents and seeks to deprive them of their liberty and property without due process of law, all in violation of the Fifth and Ninth Amendments of the Constitution of the United States of America.

3. The acts and practices of respondents are consistent with public behavioral norms and do not come within the scope of the Federal Trade Commission Act, as amended, and the proposed order, accompanying the complaint on file herein, would constitute an arbitrary and invalid exercise of police power by the Commission, all in violation of the Fifth, Ninth and Tenth Amendments of the Constitution of the United States of America.

The hearing examiner finds that there is no merit to the position taken by the respondents.

In the Matter of Bear Sales Co.,[1] Docket No. 8627 [68 F.T.C. 37, 42–43], the most recent case involving similar facts and an identical defense as stated herein, the hearing examiner said in part:

> In summary, respondents' position appears to be that whatever may have been the situation in the past, the use of lotteries and games of chance in the sale of merchandise is not now in contravention of public policy and therefore is not in violation of the Federal Trade Commission Act.
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> The contention must be rejected. Insofar as the state statutes are concerned, they merely provide exceptions to the general rule against gambling. As for the games, contests and other methods used by major business concerns, it is obvious that most of them do not constitute lotteries. If any of them are in fact lotteries, their use is insufficient to show a change in public policy.
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> Since the decision in *Federal Trade Commission* v. *Keppel*, 291 U.S. 304 (1934) innumerable decisions have held that the sale of merchandise by lottery means is in contravention of public policy and an unfair practice within the meaning of the Federal Trade Commission Act. A very recent case, which would appear to be decisive of the issue here, is *Dandy Products, Inc.* v. *Federal Trade Commission*, 332 F. 2d 985 (1964). Referring to a contention made there which is very similar to, if not identical with, the contention made here, the United States Court of Appeals for the Seventh Circuit said:
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> "Without agreeing that morals are relative, as petitioners argue, we have considered petitioners' arguments that there are many contests, involving prizes, used by major companies; that in some states gambling is permitted and in others punchboards are held not to be gambling equipment; that gambling is not immoral per se, and is involved in stock brokerage and other businesses; and that a gambling 'instinct' seems to be a weakness in human

[1] It should be noted that the attorneys, who represent the respondents in this proceeding, represented the respondents in the *Bear Sales Co.* and *Dandy Products* cases.

nature. All these arguments were addressed to the Commission below, and in one degree or another have been addressed to this court, without success, in *Wren Sales*, *Peerless* and *Modernistic Candies*. We are not persuaded that this merchandising practice is less an "unfair method of competition" today than it was in the time of *Keppel*."

In the opinion of the Commission on appeal, it said:

Respondents contend that complaint counsel failed to prove that the practice of selling merchandise by chance is an unfair act or practice under Section 5 of the Federal Trade Commission Act and further contend that this practice is not contrary to the established public policy of the United States. Both of these arguments are rejected. Respondents failed to demonstrate that the public's concern with lotteries as evidenced by the various state and federal laws dealing with lottery and related practices had changed significantly to enable the Commission to conclude that lotteries were no longer against public policy. Similar attempts to show a change in public policy have been rejected by the Commission and the Courts. *Dandy Products, Inc.* v. *Federal Trade Commission*, 332 F. 2d 985 (7th Cir. 1964), *Wren Sales Co.* v. *Federal Trade Commission*, 296 F. 2d 456 (7th Cir. 1961), *Goldberg* v. *Federal Trade Commission*, 283 F. 2d 299 (7th Cir. 1960) and *Surf Sales Co.* v. *Federal Trade Commission*, 259 F. 2d 744 (7th Cir. 1958).

The Court of Appeals of the Seventh Circuit stated in *Bear Sales Company* v. *F.T.C.*, 362 F. 2d 96 (1966), *cert. den.*, 385 U.S. 933:

The record establishes that petitioners are engaged in a typical "push card" merchandising operation such as that recently considered by this Court in *Dandy Products, Inc.* v. *Federal Trade Commission*, 7 Cir., 332 F. 2d 985, and found to constitute an unfair method of competition which violated the Federal Trade Commission Act. In *Dandy Products* we rejected as unpersuasive the contention that *Federal Trade Commission* v. *R. F. Keppel & Bro., Inc.*, 291 U.S. 304, 54 S.Ct. 423, 17 L.Ed. 814, should no longer be considered an authoritative precedent because of what was represented to be "a change in the 'moral' climate of the business community." We find equally unconvincing petitioners' attempt to now distinguish *Dandy Products* on the basis that the prize contests etc. there alluded to as furnishing the predicate for a change in the standards by which to measure the fairness of merchandising methods were not, as here, the subject matter of proof contained in the record.

We adhere to our reliance upon *Keppel* and we regard *Dandy Products* as a dispositive of the refurbished and embellished contentions made by the petitioners.

It is concluded that respondents' practice constitutes an unfair practice in commerce in violation of the Federal Trade Commission Act and is to the prejudice of the public. The present proceeding is in the public interest.

ORDER

It is ordered, That respondents Marco Sales Company, a corporation, and its officers, and Marvin O. Baer, individually and as an officer of said corporation, and respondents' representatives, agents

and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of articles of merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Supplying to or placing in the hands of others, push cards or any other device designed or intended to be used in the sale or distribution of merchandise to the public by means of a game of chance, gift enterprise, lottery scheme, chance, or gaming device.

2. Selling or otherwise disposing of any merchandise by means of a game of chance, gift enterprise, lottery scheme, chance or gaming device.

FINAL ORDER

This matter is before the Commission upon the cross-appeals of complaint counsel and respondents from the hearing examiner's initial decision; and

The Commission having considered the entire record herein, including the reargument of the appeals on February 3, 1971, and having determined that it will not in the circumstances and posture of this proceeding grant the modification of the order sought by complaint counsel on his appeal; and having further determined that the hearing examiner, in his initial decision, considered and disposed of the same arguments as those made to the Commission by respondents in their appeal briefs and on reargument and that his initial decision constitutes an adequate and proper disposition of this proceeding in all respects and therefore should be adopted by the Commission as its own:

It is ordered, That complaint counsel's appeal be, and it hereby is, denied.

It is further ordered, That respondents' appeal be, and it hereby is, denied.

It is further ordered, That the hearing examiner's initial decision herein, filed July 1, 1969, be, and it hereby is, adopted as the decision of the Commission.

It is further ordered, That respondents Marco Sales Company, a corporation, and Marvin O. Baer, individually and as an officer of said corporation, shall, within sixty (60) days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist contained in the adopted initial decision.

IN THE MATTER OF

H. MYERSON SONS, ET AL.

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

Docket 8808. Complaint, Feb. 25, 1970—Decision, Feb. 25, 1971

Order requiring Philadelphia, Pa., importers, retailers and wholesalers of fabrics to cease misbranding its textile fiber products and wool products.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, the Textile Fiber Products Identification Act and the Wood Products Labeling Act of 1939, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that H. Myerson Sons, a partnership, and Windsor Fabrics, a partnership, and Morris Myerson and Isadore Myerson, individually and as copartners trading as H. Myerson Sons and as Windsor Fabrics, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Wool Products Labeling Act of 1939 and the Textile Fiber Products Identification Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent H. Myerson Sons is a partnership with its office and principal place of business located at 770 South Fourth Street, Philadelphia, Pennsylvania.

Respondent Windsor Fabrics is a partnership with its office and principal place of business located at 405 Catherine Street, Philadelphia, Pennsylvania.

Respondents Morris Myerson and Isadore Myerson are individuals and copartners trading as H. Myerson Sons and Windsor Fabrics. They formulate, direct and control the acts, practices and policies of said respondent partnerships. Their addresses are the same as those of the said partnerships.

Respondents are importers, wholesalers and retailers of textile fiber products and wool products.

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 trans-

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

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

Among such misbranded textile fiber products, but not limited thereto, were textile fiber products, namely fabrics, with labels on or affixed thereto which represented the fiber content as "all silk" or "all rayon," whereas, in truth and in fact, said products contained different fibers and amounts of fibers than represented.

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

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

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

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

PAR. 5. Certain of said textile fiber products were misbranded in violation of the Textile Fiber Products Identification Act in that they were not labeled in accordance with the Rules and Regulations promulgated thereunder in the following respects:

(a) Fiber trademarks were used on labels in conjunction with the required information without the generic name of such fiber appearing in immediate conjunction therewith and in type or lettering of equal size and conspicuousness, in violation of Rule 17(a) of the aforesaid Rules and Regulations.

(b) Generic names and fiber trademarks were used on labels without a full and complete fiber content disclosure appearing on such labels, the first time the generic name or fiber trademark appears on the label in violation of Rule 17(b) of the aforesaid Rules and Regulations.

PAR. 6. Respondent Windsor Fabrics, a partnership, and individual respondents Morris Myerson and Isadore Myerson, individually and as copartners trading as Windsor Fabrics, furnished false guaranties under Section 10(b) of the Textile Fiber Products Identification Act with respect to certain of their textile fiber products by falsely representing in writing that said respondent Windsor Fabrics had a continuing guaranty on file with the Federal Trade Commission, when said respondent Windsor Fabrics did not, in fact, have such a guaranty on file.

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

PAR. 8. Respondents, now and for some time last past, have introduced into commerce, sold, transported, distributed, delivered for shipment, shipped, and offered for sale, in commerce, as "commerce" is defined in the Wood Products Labeling Act of 1939, wool products as "wool product" is defined therein.

PAR. 9. Certain of said wool products were misbranded by respondents within the intent and meaning of Section 4(a)(1) of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, in that they were falsely and deceptively stamped, tagged, labeled, or otherwise identified with respect to the character and amount of the constituent fibers contained therein.

Among such misbranded wool products, but not limited thereto, were certain wool products, namely fabrics, with labels on or affixed thereto which represented the fiber content as "all silk," whereas, in truth and in fact, said fabric contained different fibers and amounts of fibers than represented, including woolen fibers.

PAR. 10. Certain of said wool products were further misbranded by respondents in that they were not stamped, tagged, labeled, or otherwise identified as required under the provisions of Section 4(a)(2) of the Wool Products Labeling Act of 1939 and in the manner and form as prescribed by the Rules and Regulations promulgated under said Act.

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

PAR. 11. The acts and practices of the respondents as set forth in Paragraphs Nine and Ten were, and are, in violation of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, and constituted, and now constitute, unfair and deceptive acts and practices and unfair methods of competition in commerce, within the intent and meaning of the Federal Trade Commission Act.

Mr. James G. Mills and *Mr. Frank W. Vanderheyden* supporting the complaint.

Mr. Frank Fogel, Philadelphia, Pa., for respondents.

INITIAL DECISION BY WALTER K. BENNETT, HEARING EXAMINER

JUNE 24, 1970

PRELIMINARY STATEMENT

This proceeding deals with alleged mislabeling and failure to label textile products in violation of the Textile Fiber Products Identification Act and the Wool Products Labeling Act of 1939, and the rules and regulations issued under said acts.[1]

[1] The provisions of 4(a) and 4(b) of the Textile Fiber Products Identification Act (15 U.S.C.A. 70b) are as follows:

"Sec. 4. (a) Except as otherwise provided in this Act, a textile fiber product shall be misbranded if it is falsely or deceptively stamped, tagged, labeled, invoiced, advertised, or otherwise identified as to the name or amount of constituent fibers contained therein.

(b) Except as otherwise provided in this Act, a textile fiber product shall be misbranded if a stamp, tag, label, or other means of identification, or substitute therefor authorized by section 5, is not on or affixed to the product showing in words and figures plainly legible, the following:

(1) The constituent fiber or combination of fibers in the textile fiber product, designating with equal prominence each natural or manufactured fiber in the textile fiber product by its generic name in the order of predominance by the weight thereof if the weight of such fiber is 5 per centum or more of the total fiber weight of the product, but nothing in this section shall be construed as prohibiting the use of a non-deceptive trademark in conjunction with a designated generic name: *Provided,* That exclusive of permissible ornamentation, any fiber or group of fibers present in an amount of 5 per centum or less by weight of the total fiber content shall not be designated by the generic name or the trademark of such fiber or fibers, but shall be designated only as 'other fiber' or 'other fibers' as the case may be, but nothing in this section shall be

The Pleadings

The complaint issued February 25, 1970, charges H. Myerson Sons, a partnership; Windsor Fabrics, a second partnership; and Morris Myerson and Isadore Myerson, as individuals and as partners, with misbranding textiles:

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construed as prohibiting the disclosure of any fiber present in a textile fiber product which has a clearly established and definite functional significance where present in the amount contained in such product.

(2) The percentage of each fiber present, by weight, in the total fiber content of the textile fiber product, exclusive of ornamentation not exceeding 5 per centum by weight of the total fiber content: *Provided,* That, exclusive of permissible ornamentation, any fiber or group of fibers present in an amount of 5 per centum or less by weight of the total fiber content shall not be designated by the generic name or trademark of such fiber or fibers, but shall be designated only as 'other fiber' or 'other fibers' as the case may be, but nothing in this section shall be construed as prohibiting the disclosure of any fiber present in a textile fiber product which has a clearly established and definite functional significance where present in the amount stated: *Provided further,* That in the case of a textile fiber product which contains more than one kind of fiber, deviation in the fiber content of any fiber in such product from the amount stated on the stamp, tag, label, or other identification shall not be a misbranding under this section unless such deviation is in excess of reasonable tolerances which shall be established by the Commission: *And provided further,* That any such deviation which exceeds said tolerances shall not be a misbranding if the person charged proves that the deviation resulted from unavoidable variations in manufacture and despite due care to make accurate the statements on the tag, stamp, label, or other identification.

(3) The name, or other identification issued and registered by the Commission, of the manufacturer of the product or one or more persons subject to section 3 with respect to such product.

(4) If it is an imported textile fiber product the name of the country where processed or manufactured."

Rule 17(a) and 17(b) by the Federal Trade Commission under said Act are as follows:

"(a) A non-deceptive fiber trademark may be used on a label in conjunction with the generic name of the fiber to which it relates. Where such a trademark is placed on a label in conjunction with the required information, the generic name of the fiber must appear in immediate conjunction therewith, and such trademark and generic name must appear in type or lettering of equal size and conspicuousness.

(b) Where a generic name or a fiber trademark is used on any label, whether required or non-required, a full and complete fiber content disclosure shall be made in accordance with the Act and Regulations the first time the generic name or fiber trademark appears on the label."

The provisions of 4(a)(1) and 4(a)(2) of the Wool Products Labeling Act (15 U.S.C.A. 68b) are as follows:

"Sec. 4. (a) A wool product shall be misbranded—

(1) If it is falsely or deceptively stamped, tagged, labeled, or otherwise identified.

(2) If a stamp, tag, label, or other means of identification, or substitute therefor under section 5, is not on or affixed to the wool product and does not show—

(A) the percentage of the total fiber weight of the wool product, exclusive of ornamentation not exceeding 5 per centum of said total fiber weight, of (1) wool; (2) reprocessed wool; (3) reused wool; (4) each fiber other than wool if said percentage by weight of such fiber is 5 per centum or more; and (5) the aggregate of all other fibers: *Provided,* That deviation of the fiber contents of the wool product from percentages stated on the stamp, tag, label, or other means of identification, shall not be misbranded under this section if the person charged with misbranding proves such deviation resulted from unavoidable variations in manufacture and despite the exercise of due care to make accurate the statements on such stamp, tag, label, or other means of identification.

(B) the maximum percentage of the total weight of the wool product, of any nonfibrous loading, filling, or adulterating matter.

(1) By representing the fibers as all silk or all rayon when other fibers were represented (C. 3);[2]

(2) By failing to disclose the true percentage of fibers present by weight and by failing to use the true generic name of the fibers present (C. 4);

(3) Using trademarks without using the generic name in lettering of equal size or using generic names and trademarks without complete fiber content disclosure (C. 5);

(4) By the deceptive tagging of fabrics containing some wool fibers (C. 9); and

(5) Failing to label products containing wool fibers as required by the Wool Products Labeling Act by failing to disclose the percentage of total fibers by weight of each of the fibers as required by regulations thereunder (C. 10).

In addition, the complaint alleged that respondents falsely claimed to have filed a continuing guarantee with the Federal Trade Commission (C. 6). This charge was withdrawn during trial (Tr. 301–02).

Respondents' Answer to Complaint, filed May 4, 1970, admitted the allegations of the complaint that described the character and location of the partnerships (A. 1); but denied that the individuals had acted since July 1966 except as officers of a corporation, H. Myerson Sons, Inc., (A. 2) and denied all of the other allegations (A. 2–6, 7–11). The answer affimatively alleged that Windsor Fabrics had filed a continuing guarantee (A. 6).

Prehearing Conference

A non-public prehearing conference was held March 25, 1970, before Hon. Walter R. Johnson, the hearing examiner then assigned to this proceeding.[3] A prehearing order, filed March 26, 1970, set the date for the commencement of hearings and provided for the filing of trial briefs by the parties that would define and limit the proof and form the basis for the admission of the genuineness of documents.

(C) the name of the manufacturer of the wool product and/or the name of one or more persons subject to section 3 with respect to such wool product."

[2] The following abbreviations will hereinafter (sometimes) be used:
C.—Complaint followed by the paragraph number.
A.—Answer followed by the paragraph number.
CX—Complaint counsel's exhibit followed by the exhibit number.
RX—Respondents' exhibit followed by the exhibit number.
CF—Complaint counsel's proposed findings (including citations to record therein).
RF—Respondents' proposed findings (including citations to record therein).
Tr.—Transcript followed by the page number.

[3] Hearing Examiner Johnson requested that this matter be transferred. This was accomplished by order of Hon. Edward Creel dated May 7, 1970, appointing the undersigned hearing examiner.

The prehearing order was complied with. Trial briefs were filed by the parties, as directed; and the proof was limited, as required, except in a few instances where witnesses were substituted by consent and additional exhibits were offered also by consent.

Respondents, in their trial brief filed May 4, 1970, reiterated the claim that a corporation had succeeded to the business of the partnerships, admitted the results of the laboratory tests, insisted upon strict proof of the connection between the merchandise claimed to be misbranded and the respondents, and claimed that a continuing guarantee had been properly filed.

The Hearings

Hearings commenced at 2 p.m. on May 18, 1970, in the Federal Building, Philadelphia, Pennsylvania, and continued until May 10, 1970. Mr. Isadore Myerson was called as a witness and was recalled several times, and four representatives of the Bureau of Textiles and Furs of the Federal Trade Commission were also called. Forty-seven exhibits were offered by complaint counsel and forty-one received. Respondents offered two exhibits, and both were received.

It was stipulated that H. Myerson Sons, Inc., a Pennsylvania corporation was chartered July 1966 and that it does business at the address of the former partnerships (Tr. 21). The officers are the individual respondents, Isadore Myerson, president and treasurer; Morris Myerson, vice-president; and Teresa Myerson, Isadore Myerson's wife, secretary (Tr. 21, 22). It was also stipulated that the test reports on fabrics might be recieved without the necessity for calling as witnesses the technicians who made the tests (Tr. 20).

At the commencement of hearings, complaint counsel made a motion to amend the complaint to add the corporation, H. Myerson Sons, Inc., and the three officers thereof—Mrs. Myerson was also to be charged in her individual capacity. The hearing examiner immediately sustained respondents' objection to the inclusion of Mrs. Myerson as a party respondent (Tr. 25), and at a later point in the proceeding (Tr. 320), he sustained respondents' objection to the inclusion of the corporate entity as unnecessary, after hearing Mr. Isadore Myerson's testimony that he and his brother, the other individual respondent, controlled the policies of the corporation; and untimely, since complaint counsel had known of the existence of the corporation several weeks before the hearings (Tr. 320–21).

Almost 2 months after the hearings, complaint counsel filed on July 8, 1970, a paper entitled "Renewal of Motion to Amend Complaint." In this paper (page 3) complaint counsel failed to indicate

that one of the reasons for the refusal to amend was that it was unnecessary since an order against respondents', individually, would be adequate as the corporation was a true successor.[4] Respondents' counsel opposed the motion by letter dated July 15, 1970. The renewal motion is also denied for all the reasons originally stated.

The Evidentiary Problems and the Reasons for Their Resolution

During the course of the hearings, there was a continuing objection to the admission of any evidence following the incorporation of H. Myerson Sons, Inc. (Tr. 45). This objection was overruled for two reasons. First the corporation was a true successor to the business which had been conducted by the partnerships, and second, it was owned and controlled by the individual respondents and was, in effect, their agent for the conduct of the business.

There was also a problem of connecting the materials, tested by the Bureau of Textiles and Furs, with the respondents. In the case of Mr. Charles J. Taggart, a Commission investigator, the fabric was purchased directly from respondent Isadore Myerson at respondents' Philadelphia store. There was no testimony by any other purchaser. However, the following proof convinced the hearing examiner that it was more probable than not that the tested swatches were from fabrics sold by respondents. There was in each instance where the swatches were received in evidence either testimony or a record kept in the regular course of business that the fabric sample from which the swatch was taken was purchased at a department or fabric store that represented the fabric to be the same fabric sold to it by respondents. There was also in each instance a record of respondents that a sale had been made of some fabric to the fabric or department store. In each instance, respondent Isadore Myerson was unable to state what fabric was sold, and in each instance the salesperson who sold the fabric could not be produced as a practical matter. In the case of one purchase made by Commission attorney Paul Orloff, there was a description on a label that resembled that on the invoice (CX 38, 39, 41; Tr. 266).

While clearly such proof would be insufficient in a criminal proceeding, the rule of necessity and the lack of motive for a department store seller of the fabric to misrepresent its origin were deemed adequate (Tr. 247). Since the fabric purchased directly from respondent Isadore Myerson was improperly labeled, and since he himself testified that he relied on prior markings and other cir-

[4] See *P. F. Collier & Son Corp.* v. *FTC*, 427 F.2d 261 (6th Cir. May 27, 1970) No. 19549 [8 S. & D. 1188].

cumstances to determine the fabric content (Tr. 315, *et seq.*), the action was deemed appropriate.

In one instance the investigator stated that the assistant buyer from whom he had purchased the fabric believed that the fabric sold was that purchased from respondents, but the buyer had to check with someone else (Tr. 291, 296); the offer of the fabric in evidence was rejected. In another instance the test report (CX 28) did not correspond with the label facsimile (CX 25). In both instances because of these circumstances, the proof was not considered by the hearing examiner in making his decision.

Difficulties with Transcript

Although the taking of testimony in this matter was completed on May 20, 1970, the transcript of the May 19, 1970, hearing was not delivered until June 19, 1970. When it was delivered, it was accompanied by a letter indicating that in eight instances there had been a failure of the electric recorder and that the transcript was not complete. This difficulty had been explained by the reporter on June 9, 1970; and after a telephone conference with both counsel, the hearing examiner issued Post Hearing Order No. 1 dated June 10, 1970. This order approved the expressed intention of the parties to attempt to stipulate those portions of the transcript that were incomplete and to extend each counsels' time to file proposed findings, conclusions, briefs, and a proposed order to June 26, 1970. It also provided for a motion to reopen the proceedings in the event of a failure of the parties to stipulate. This time was thereafter extended to July 13, 1970, by the hearing examiner to allow 2 weeks following the receipt of the transcript for counsel to prepare their proposals and a week thereafter to reply. Complaint counsels' proposed findings were filed on July 10, 1970, and respondents' on July 6, 1970. On July 15, 1970, respondents wrote a letter of reply, and on July 17, 1970, complaint counsel filed a reply.

The attorneys, by exchange of letters, stipulated how blank spaces in the transcript should be completed and also stipulated that such stipulation might be considered part of the record. These and other stipulated corrections are incorporated in an order dated July 20, 1970.

BASIS FOR DECISION

This decision is made on the basis of all the evidence in this proceeding. In conformity with Commission Rule 3.51(b), principal supporting items contain references to the evidence, but the citation

of these references in no way indicate that the evidence as a whole has not been considered. Consideration has also been given to the demeanor of the witnesses in weighing their credibility. Accordingly, the hearing examiner makes the following Findings of Fact, Conclusions, and Order. All proposed findings of fact and conclusions not incorporated in terms or in substance are denied as immaterial, irrelevant, or erroneous.

FINDINGS OF FACT

1. Respondent H. Myerson Sons is a partnership with its office and principal place of business located at 770 South Fourth Street, Philadelphia, Pennsylvania (C., A.).

2. Respondent Windsor Fabrics is a partnership with its office and principal place of business located at 405 Catherine Street, Philadelphia, Pennsylvania (C., A.).

3. Respondents Morris Myerson and Isadore Myerson are individuals and copartners trading as H. Myerson Sons and Windsor Fabrics. They formulate, direct and control the acts, practices and policies of said respondent partnerships. Their addresses are the same as those of the said partnerships (C., A.).

4. Respondents are importers, wholesalers and retailers of textile fiber products and wool products (C., A.).

5. On or about July 1966 the business theretofore conducted by the partnerships was incorporated under the laws of the State of Pennsylvania and the individual partners became officers and stockholders thereof (together with Teresa Myerson, the wife of Isadore Myerson, who became seretary). The said officers have continued to formulate and direct the acts and practices of said corporation (Tr. 21, 22, 34), but the business has been at all times after 1966 that of the corporation (Tr. 317–18).

6. The business conducted by the individual respondents was started about 1922 by Harry Myerson, the father of said respondents and their brother Benjamin Myerson (Tr. 36). It was started with a stand in front of the store and then property was accumulated (Tr. 32, 36). As the sons grew up, they were taken into the partnership. Ben Myerson was the policy maker after his father withdrew, and he continued in that guiding position until his death in 1962 (Tr. 35). Thereafter, the two individual respondents have been the policy makers. Both before and after the incorporation, the trade name, Windsor Fabrics, has been used and that trade name was registered in Harrisburg, Pennsylvania, and Philadelphia, Pennsylvania, by the corporation in 1966 (Tr. 28).

7. Respondents have conducted, as aforesaid, what is primarily a surplus fine-fabric retail and wholesale business. On the buying end, through their contacts with dress manufacturers, and in Europe also with textile mills, respondents buy "better goods, priced right" (Tr. 37). This is made possible through their willingness to pay promptly in cash for fabrics which dress manufacturers have overbought or mills have overproduced (Tr. 37–38, 42–43). On the selling side, respondents maintain a retail store in Philadelphia and also sell woolen and other textile fabrics to fabric stores and department stores outside the State of Pennsylvania. The buyers of both types of stores are knowledgeable people (Tr. 305). In making their interstate sales, respondents neither advertise their textiles nor utilize traveling salesmen (Tr. 39, 304–05, 307). Customers patronize them because they "have unusual things" and "good values" (Tr. 38). Their sales are about $700,000 a year (Tr. 33, 312) of which less than $100,000 of sales are of wool fabric (Tr. 313). Respondents' claim that their business is unique and that no one else "has his hands in every type of different textiles" (Tr. 306–07).

8. According to the testimony of Isadore Myerson, if a fabric comes with a manufacturer's label, the label is left on and the manufacturer's statement of fabric content is accepted (Tr. 315). If there is no label on the cloth, respondents put one on (Tr. 315). If the ticket is lost one "can generally look at the files of the kind of goods it was by another piece very similar to that, see" (sic) (Tr. 41). None of the unlabeled textile products or wool products are ever sent by respondents to a laboratory for analysis (Tr. 41). In most cases fabrics are labeled with their fiber content when received (Tr. 41), and, in rare cases, where the ticket has been lost, respondents attach a label "contents of fabric unknown" or some such terminology (Tr. 42).

Inspection at Respondents' Place of Business

9. In August 1966, Charles J. Taggart, an investigator for the Bureau of Textiles and Furs of the Federal Trade Commission, who had formerly been a detective sergeant with the Philadelphia Police Department (Tr. 87), made an inspection at respondents' premises (Tr. 89). A retail operation was being conducted there (Tr. 93). Mr. Taggart found that there were a number of bolts of fabric that had some foreign words describing their fiber content; that there were some bolts of fabric that had no fiber content tags; and that there were some fiber content tags without a generic name and also fiber trademarks in use (Tr. 91). When Mr. Taggart talked to Isadore

Myerson, Mr. Myerson told him that the business was a partnership conducted by his brother and himself and was established some 45 years previously (Tr. 94). Mr. Taggart drew the following deficiencies to Mr. Myersons' attention: the use of foreign words on some of the bolts of fabric; the use of fabric trademarks in lieu of generic names; and in some instances the bolts didn't have labels (Tr. 95). When questioned about how he could label fabric with the label missing, Mr. Myerson told Mr. Taggart that he had done the best he could. It was difficult because of the nature of his operation, and because he got fabric from so many different sources (Tr. 95). In one specific instance, Mr. Myerson told Mr. Taggart that he had labeled a fabric 100 percent wool because he always bought 100 percent wool from that particular supplier (Tr. 95, 98).

10. In July 1968, Mr. Taggart again visited respondents' place of business by direction of the Washington office (Tr. 100). On this occasion, he requested and obtained Isadore Myerson's permission to get sample swatches from various bolts of fabrics (Tr. 100). The swatches were then sent to Washington for testing (Tr. 100, 109).

11. The first swatch was part of an order invoiced from The Villager in Philadelphia (Tr. 104; CX 6). This swatch bore a label "70% Dacron, 30% wool" (CX 5–C). The test report (CX 7; Tr. 108) which corresponds to the swatch (Tr. 106–08) shows that the fabric consisted of 25–26 percent woolen fabrics, and 73–74 percent polyester (CX 7; Tr. 109).

12. The second swatch (CX 8–A) had a label (CX 8–B) on which no fiber content was stated. This fabric, which was invoiced from Charles Putnam & Co., Inc., of Worcester, Massachusetts (CX 9; Tr. 113), tested "all woolen fibers" (Tr. 117; CX 10).

13. On cross-examination it was brought out that there were seven items selected by Mr. Taggart. Only two were offered in evidence (Tr. 121). It was also elicited that the term Dacron is the Dupont trademark for polyester (Tr. 125).

Field Investigation at Houston, Texas

14. Records of the Federal Trade Commission in the form of field reports (CX 12, 13, 16, 23) made by Robert E. Suggs, deceased (Tr. 148), were identified by Robert C. Bledsoe, Jr., Assistant Chief to the Chief of the Division of Regulations, Bureau of Textiles and Furs of the FTC (Tr. 143). Mr. Bledsoe testified to facts which established that the reports were made in the regular course of the business of the FTC and that it was the duty of Mr. Suggs to make them (Tr. 143–150; CX 11).

15. One of Mr. Suggs' reports (CX 12) dated July 3, 1968 (received, Tr. 197), recited that he contacted Mr. Jerald V. Thomas, the fabric buyer at Joske's department store in Houston, and that he purchased one yard of fabric from each of four rolls identified by Mr. Thomas from order forms and invoices as having been purchased from Windsor Fabrics.

16. A statement by counsel supporting the complaint was made as to the impracticality of producing Mr. Thomas (Tr. 156). This was accepted by counsel for respondent without requiring counsel supporting the complaint to testify (Tr. 196).

17. Two pieces of fabric were marked for identification (CX 15 and CX 20). These bore identification tags signed by Investigator Suggs. They were transmitted to the Washington office by CX 16, a list of exhibits with an invoice (CX 18) and labels (CX 17 and 21). Isadore Myerson identified the labels as his, but he could not identify the handwriting on them that showed the fiber content (Tr. 190), nor could he state that his firm had sold the fabric under the invoice (CX 18) which admittedly showed a sale to Joske's of French Novelties (Tr. 189). Under these circumstances, the hearing examiner admitted the reports under the doctrines of probability and necessity (Tr. 196). The tests on the fabric (CX 19 and 22) were received in evidence without objection. The tests showed that one fabric (CX 15), labeled 51 percent Acrylic, 49 percent Cotton (CX 17), actually was all acrylic (CX 19); and the second fabric, labeled 55 percent Cotton, 45 percent Acetate (CX 21) actually was 46.0–46.3 percent acetate, 45.9–45.5 percent cotton, and 8.1–8.2 percent other fibers (CX 22).

18. A second report by Mr. Suggs (CX 13) dated January 4, 1967 (received, Tr. 247), recited that he contacted Milton L. Aucoin, Jr., of Joske's and secured four samples which Mr. Aucoin assured him had come from Windsor Fabrics although there were no identifying names or numbers. The samples were marked Aucoin Exhibits 1–4. An invoice (CX 26) was received without objection (Tr. 212) showing sales of various pieces of cloth by Windsor Fabrics to Joske's, November 1, 1966.

19. The sample of cloth bearing Mr. Suggs' signature on the label and a stamp designating it as Aucoin Exhibit 1, with the name Milton Aucoin in handwriting with a date "secured 1/4/67" was marked CX 24. A test report reciting that it related to Aucoin Exhibit 1 was received without objection as CX 29 (Tr. 217). This test report shows that the sample was made of silk and rayon. A drawing of three labels (CX 25; received, Tr. 247) bearing Mr. Suggs' sig-

nature, stamp, and identifying number for each label was identified by Mr. Bledsoe who testified that it was Mr. Suggs' duty to draw such labels and to send them to the FTC when labels on the fabric could not be obtained (Tr. 203). The first of these labels, taken from the swatch of cloth designated Aucoin Exhibit 1, indicates that the label on one side stated "Fabric Imported from India" and on the reverse side "All Silk Lot 5 20" (CX 25). The invoice, line 5, seems to read "6 Ps. 91–⅝ In. silk twist Lot #5 (CX 26).

20. Thus, the drawing of the label appears to relate to the Windsor Fabric invoice. Both indicate that the fabric sold was silk (CX 25, 26); whereas, in fact, the swatch was tested and found to contain silk and rayon (CX 29).

21. A second sample of cloth bearing Mr. Suggs' signature on the label and a stamp designating it as Aucoin Exhibit 3 and the name Milton Aucoin in handwriting with a date "secured 1/4/67" was marked CX 27. A test report reciting that it related to Aucoin Exhibit 3 shows that the content of the fabric was rayon and cotton (CX 28). The drawing of the label (CX 25) shows "Imported All Silk Yards 16⅝." This does *not* correspond with CX 28 which states that the product was represented to be all rayon and there is no internal evidence to connect this with respondents' invoice (CX 26). Hence, the sample here will not be attributed to respondent by reason of failure of the test report to correspond to the drawing of the label.

22. A third sample of cloth bearing Mr. Suggs' signature on the label and a stamp designating it Aucoin Exhibit 2 "secured 1/4/67" with the name Milton Aucoin in handwriting was marked CX 30. A test report, reciting that it related to Aucoin Exhibit 2, represented to be all silk, shows that the contents of the fabric was wool and silk (CX 31). The drawing of the label shows: "Imported all Silk Yards 15" (CX 25). It cannot be identified by internal evidence with respondents' invoice (CX 26).

23. A fourth sample of cloth marked Aucoin Exhibit 4 bears Mr. Suggs' signature and also the name Milton Aucoin in handwriting with the date "1/4/67" (CX 32). A test report stating that it related to Aucoin Exhibit 4 was received without objection as CX 33 (Tr. 228). A drawing of the label was offered (CX 35; Tr. 242). This shows "Made All Rayon L–7 in France Yards 18⁶". There is no internal evidence to connect this with respondents' invoice (CX 26). The test report shows that Aucoin Exhibit 4, represented as "All Rayon," was rayon and cotton (CX 33).

24. Because Milton Aucoin was also unavailable (Tr. 241, 247)

and because Mr. Myerson could not state whether or not the swatches of cloth were his (Tr. 235), the records of Mr. Suggs were accepted (Tr. 247). From the analysis above we find that two of the four Aucoin samples were mislabeled, one labeled as "all silk" (CX 24, 25) was silk and rayon (CX 29); the second, Aucoin Exhibit 4, was labeled "All Rayon" (CX 35) and tested rayon and cotton (CX 33). Each of these samples was sold and shipped in interstate commerce (CX 26).

Field Investigation at Kansas City, Missouri

25. Paul G. Orloff, an investigator for the Bureau of Textiles and Furs of the FTC, conducted an inspection at Leiter's Fabrics store in Kansas City, Missouri, on January 10, 1967 (Tr. 251–56). During the course of that inspection he secured a piece of fabric (CX 36), which bore a label (CX 38) (Tr. 256–57). The label was marked "Made in France" and Mr. Orloff in ink made a note "PTD Tergol". This has been scratched out (Tr. 257). Mr. Orloff identified it in this fashion because the label was devoid of fabric content information (Tr. 257). An invoice (CX 39) showed a sale by Windsor Fabrics to Leiter's Fabrics, among other things, of three pieces of printed Tergol, Lot #5, on December 23, 1966 (Tr. 260). In making the sale of the sample of the cloth (CX 36), Mr. James C. Leiter, Jr., the president of Leiter's Fabrics (Tr. 256), said that he had just recieved the fabric from Windsor Fabrics (Tr. 260) and that it was the cloth invoiced as printed Tergol. The test report (CX 40) shows that the product was polyester for which the French name is Tergol. Since the generic name was not used, the product was mislabeled.

26. On the same day Mr. Orloff secured a second sample of fabric from Leiter's Fabrics (CX 41; Tr. 264–66). This fabric according to Mr. Orloff corresponds with that portion of the invoice reading textured French Faccone (Tr. 266; CX 39). The tube on which the fabric was wound had the information "97% cotton, 3% crylor" (Tr. 269; CX 42). Although on test, this fabric appeared to be as labeled (CX 43; Tr. 270), the generic name was not used. Thus it was mislabeled (Tr. 270–71).

Field Investigation at Cleveland, Ohio

27. Mr. Paul A. Misch, an investigator for the Bureau of Textiles and Furs of the FTC, secured a piece of fabric and a label (CX 1, 2) from the Higbee Company (Tr. 276–77), one of the largest department stores in Cleveland (Tr. 278). The buyer had only been

at the store for a month, so she asked the assistant buyer to identify the fabric from Windsor Fabrics that Mr. Misch requested (Tr. 279). Later neither the buyer nor the assistant buyer could be located (Tr. 281, 283). Miss Jacobson apparently was not certain what fabrics were from Windsor Fabrics because she checked with a former buyer (Tr. 286, 288–90) and in his report Mr. Misch stated Miss Jacobson believed the fabric was from Windsor Fabrics. Had she definitely identified the fabric, he testified, he believed he would have said so (Tr. 290). There were no labels or markings on the fabric, so identification depended on the assistant buyer (Tr. 292). The same testimony was deemed to have been given with regard to a second piece of fabric (CX 45; Tr. 297).

28. In light of the uncertainty of identification, the hearing examiner has given the information with regard to the fabric purchased in Cleveland no weight (CX 1 & 2, rejected, Tr. 296).

REASONS FOR DECISION

The first problem the hearing examiner considered was whether or not the proper party (*i.e.*, the corporation) was being sued.

It was clear to the hearing examiner from the testimony of Mr. Taggart and from that of Isadore Myerson, one of the individual respondents, that the business now conducted by H. Myerson Sons, Inc., was a true successor to the family business and was still operated by the same individuals who are respondents (see *P. F. Collier & Son Corp.* v. *FTC*, 427 F. 2d 261 (6th Cir. May 27, 1970) No. 19549 [8 S. & D. 1188]. Thus, the activities of the corporation controlled by the two individual respondents either directly or thru the trade name Windsor Fabrics were, in reality, the acts of the individual respondents. This impression was reinforced by Mr. Taggart's testimony—not denied by respondents—that after the corporation was formed, respondent Isadore Myerson told him the business was that of a family partnership. Under these circumstances, the corporate entity must be disregarded.[5]

Having determined that the acts of the corporation were binding on the individual respondents and that a decree against them would effectively prevent the corporation from again violating the Textile Fiber Products Identification Act or the Wool Products Labeling Act of 1939, the hearing examiner did not consider it necessary to join the corporation as a party respondent. This was particularly

[5] *Joseph A. Kaplan & Sons, Inc.* v. *FTC*, 347 F. 2d 785, 787 (D.C. Cir. 1965); *North American* v. *SEC*, 327 U.S. 686 (1946); *Labor Board* v. *Deena Artwear*, 361 U.S. 398, 403 (1960).

true since respondents in their answer relied on the incorporation as a defense and since complaint counsel deferred action until the date of the commencement of trial to endeavor to change the parties. To change the parties then would, it seemed to the hearing examiner, raise problems of fairness that are wholly unnecessary. We pass now to respondents' contentions.

As respondents' counsel ably argues in his brief, there is no evidence that customers complained to respondents that they were misled; and respondents could not have built up a business such as theirs except through a reputation for fair dealing. Nonetheless, respondents sold fabric in their establishment and shipped in interstate commerce fabrics purchased from them that bore marks and labels contrary to the applicable laws and regulations. These laws and regulations are designed to protect not only the knowledgeable purchaser from fabric stores or department stores but also the run-of-the-mill consumer.

In providing for them Congress determined that it would create a system of marking and labeling, which would prevent inadvertent as well as intentional mislabeling, and would supply to the ultimate consumer information on the fabric tag adequate to insure that the consumer knew what fabric he or she was purchasing.

Motive and intent are wholly immaterial in this type of violation as is lack of proof of actual harm to a particular consumer. It is likewise immaterial that respondents' sought to supply the FTC with some assurance of compliance less than accepting a full order. The Commission's decision in this regard cannot be reviewed or even considered by the hearing examiner. Once the Commission has determined what action it should take the hearing examiner is limited to a determination of whether or not a violation has taken place. In this case, it is in the public interest to carry out the Congressional mandate. This is particularly true in a situation such as this one where the regulations appear to authorize special treatment for a business such as respondents' business. The "odd lots" and "remnants" exceptions would seem to apply where it is impracticable to test fibers in situations in which the contents of particular pieces of goods is not known.[6] Clearly, respondents cannot take advantage of the "odd lots" and "remnants" exceptions and at the same time claim that the fabric sold is of known constituent

[6] See 16 CFR 303.13, 303.14; and *In the Matter of Michael M. Turin, an individual formerly trading as International Yard Fair,* Docket 8757, Initial Decision of Hon. Walter R. Johnson dated January 9, 1969, adopted by the Commission April 11, 1969 [75 F.T.C. 681].

fibers. If a representation is made, respondents must be responsible for it, just as any other wholesale or retail dealer subject to the Acts must be. We turn now to the merits.

On the merits, the proof was clear, and was not denied, that on two occasions, when an inspection was made at respondents' premises, mislabeling was observed. It was also conceded that sales in interstate commerce were made both to Leiter's Fabrics in Kansas City, Missouri, and to Joske's department store in Houston, Texas, by Windsor Fabrics, the trade name used in the business conducted by the respondents. There was some evidence identifying at least one piece of fabric with an invoice concededly representing a sale by respondents. But, and more important, it was impractical to secure any evidence, except evidence of declarations of the purchasers' personnel identifying the respondents' product with that described in respondents' invoice. The purchasers' agent could not be located, as a practical matter, and respondent Isadore Myerson could not identify the product tested nor could he state that it was not sold by him. Hence, the declaration was received as circumstantial evidence of the truth of the statement that the product was the same as that sold by respondents.

The evidence as a whole convinced the hearing examiner that respondents were less than meticulous in their labeling practices. Thus, it was determined, both on the basis of the purchasers' declarations and on respondents' practices, to be more probable than not that the fabrics tested and found to be mislabeled originated from respondents.

Concededly, the fabrics sold to the investigator were misbranded. Accordingly, the hearing examiner decided that a burden was placed on respondents to go forward in the presentation of an adequate explanation. This burden the respondents failed to meet.

Hence, a decision must be rendered in favor of counsel supporting the complaint.

CONCLUSIONS

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

2. The activities of the individual respondents as officers guiding the non-respondent corporation are binding on them in their individual capacities.

3. H. Myerson Sons, Inc., was a *de facto* and *de jure* successor to H. Myerson Sons, the partnership in which the respondents as a family had engaged in the purchase and sale of textiles since 1922.

And, since incorporation, the individual respondents have directed and controlled the acts and practices of said corporation.

4. Respondents are engaged in interstate and foreign commerce within the meaning of the Federal Trade Commission Act, the wool Products Labeling Act of 1939, and the Textile Fiber Products Identification Act.

5. The evidence established that certain fabric located in respondents' Philadelphia store was not labeled in accordance with the rules and regulations adopted pursuant to the Textile Fiber Products Identification Act, and that certain fabric shipped by respondents outside the State of Pennsylvania was also not labeled in accordance with said rules and regulations.

6. The evidence also established that certain fabric located in respondents' Philadelphia store was not labeled in accordance with the rules and regulations adopted pursuant to the wool Products Labeling Act of 1939 and that certain fabric shipped by respondents outside the State of Pennsylvania was also not labeled in accordance with said rules and regulations.

7. The charge that respondents had falsely claimed to have filed a continuing guarantee was withdrawn and no evidence was received with respect to the falsity of the claim of having filed a continuing guarantee.

8. The following order should be issued:

ORDER

It is ordered, That respondents Morris Myerson and Isadore Myerson, individually or trading 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 misbranding textile fiber products by:

1. Falsely or deceptively stamping, tagging, labeling, invoicing, advertising, or otherwise identifying any textile fiber product as to the name or amount of constituent fibers contained therein.

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

3. Using fiber trademarks on labels affixed to such textile fiber products without the generic name of the fiber appearing on the said label in immediate conjunction therewith and in type or lettering of equal size and conspicuousness.

4. Using generic names or fiber trademarks on any labels whether required or nonrequired, without making a full and complete fiber content disclosure in accordance with the Act and Regulations the first time such generic name or fiber trademark appears on the label.

It is further ordered, That respondents Morris Myerson and Isadore Myerson, individually or trading under any name or names, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the offering for sale, sale, transportation, distribution, delivery for shipment or shipment, in commerce, of wool products, as "commerce" and "wool product" are defined in the Wool Products Labeling Act of 1939, do forthwith cease and desist from misbranding such products by:

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

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

Final Order

This matter is before the Commission on the appeal of respondents from the initial decision of the hearing examiner. Upon examination of the record and after full consideration of the issues of fact and law presented, the Commission has concluded that the initial decision

should be adopted and issued as the decision of the Commission. Accordingly,

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

It is further ordered, That respondents, Morris Myerson and Isadore Myerson, individually or trading under any other name or names, shall, within sixty (60) days after service of this order upon them, file with the Commission a report in writing, signed by such respondents, setting forth in detail the manner and form of their compliance with the order to cease and desist.

IN THE MATTER OF

TRI-STATE HOME IMPROVEMENT COMPANY, INC., ET AL.

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

Docket C-1877. Complaint Mar. 1, 1971—Decision, Mar. 1, 1971

Consent order requiring Milwaukee, Wisc., sellers and distributors of home improvement products to cease misrepresenting that a prospective customer's home has been specially selected as a model home, that owners of such homes will be granted a discount or that any price is special or reduced, failing to maintain adequate records of its operations for a period of five years, misrepresenting that offers to sell are limited in time, that prize contests are being conducted, that respondents' siding material will last a lifetime, failing to disclose the nature and extent of its guarantees, failing to disclose orally at time of sale the required provisions of Regulation Z of the Truth in Lending Act, and failing to include on the face of all negotiable instruments a notice that all holders of the note are subject to all defense available in an action on a simple contract.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Tri-State Home Improvement Company, Inc., a corporation, and George Spector and Howard D. Spector, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Tri-State Home Improvement Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Wisconsin, with its principal office and place of business located at 1830 North Third Street, Milwaukee, Wisconsin.

Respondents George Spector and Howard D. Spector are officers of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of home improvements, including residential siding, and in the installation thereof.

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

PAR. 4. In the course and conduct of their aforesaid business, and for the purpose of inducing the purchase of their products, respondents and their salesmen or representatives have represented, and now represent, directly or by implication, in advertising and promotional material and in oral solicitations to prospective purchasers, that:

1. Homes of prospective purchasers have been specially selected as model homes for the installation of respondents' products; after installation such homes would be used for demonstration and advertising purposes by respondents; and, that as a result of allowing their homes to be used as models, purchasers would receive allowances, discounts or commissions.

2. Respondents' products or services are being offered for sale at special or reduced prices, and that savings are thereby afforded purchasers from respondents' regular selling prices.

3. Respondents' offers are made for a limited time only.

4. Respondents have conducted a bona fide contest and individuals have won a valuable prize consisting of a discount from the prices at which the respondents' products are usually and customarily sold.

5. The products of respondents will last a lifetime and will never require repainting or repair; and that the products of respondents are impervious to storm, hail and other elements.

6. Respondents' siding materials and installations are "guaranteed" thereby representing that said products are unconditionally guaranteed in every respect for an unlimited period of time.

PAR. 5. In truth and in fact:

1. Homes of prospective purchasers are not specially selected as model homes for the installation of respondents' products; after installation such homes are not used for demonstration or advertising purposes by respondents; and purchasers, as a result of allowing their homes to be used as models, are not granted reduced prices nor do they receive allowances, discounts or commissions.

2. Respondents do not have regular selling prices but the prices at which respondents' products or services are sold vary from customer to customer depending on the resistance of the prospective purchaser.

3. Respondents' offer is not made for a limited time only. Said merchandise is offered regularly at the represented prices and on the terms and conditions therein stated.

4. Respondents do not conduct a bona fide contest. Said contests are schemes to sell respondents' products. Alleged winners of discount as an award or prize have not won a valuable prize. Prizes are valueless since the purported reductions are not from the net prices at which the products of respondents are usually and customarily sold by respondents in the normal course of their business.

5. The products of respondents are not everlasting and in the regular course of use they will require repainting or repair.

6. Respondents' siding materials and installations are not unconditionally guaranteed in every respect without condition or limitation for an unlimited period of time or for any other period of time. Such guarantee as may be provided is subject to numerous terms, conditions and limitations, and fails to set forth the nature and extent of the guarantee, the identity of the guarantor and the manner in which the guarantor will perform thereunder. Furthermore, in a substantial number of cases, respondents or their salesmen fail to furnish any written guarantee to the customer.

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

PAR. 6. In the further course and conduct of their business and in furtherance of a sales program for inducing the purchase of their home improvement products, including residential siding materials, respondents and their salesmen or representatives have engaged in the following additional unfair and false, misleading and deceptive acts and practices:

1. Respondents and their salesmen or representatives have failed to disclose the total purchase price of the sales contract, during the negotiation and the consummation of the contract and have informed the purchasers of only the approximate amount of monthly installment payments. In some instances, the purchaser learned the total amount of indebtedness for the first time when contacted by the finance company to which respondents had negotiated or assigned the sales contract and promissory note.

Therefore, the acts and practices as set forth in Paragraph Six hereof were and are unfair and false, misleading and deceptive acts and practices.

PAR. 7. In the course and conduct of their aforesaid business, and at all times mentioned herein, respondents have been, and now are, in substantial competition, in commerce, with corporations, firms and individuals in the sale of home improvements, including residential siding of the same general kind and nature as that sold by respondents.

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

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

DECISION AND ORDER

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

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admis-

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

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

1. Respondent Tri-State Home Improvement Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Wisconsin, with its office and principal place of business located at 1830 North Third Street, Milwaukee, Wisconsin.

Respondents George Spector and Howard D. Spector are officers of said corporation. They formulate, direct and control the policies, acts and practices of said corporation. Their business address is the same as that of 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 Tri-State Home Improvement Company, Inc., a corporation, and its officers, and George Spector and Howard D. Spector, individually and as officers of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution or installation of home improvements, including residential siding, or any other products or services, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

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

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

3. Representing, directly or by implication, that any price for home improvements or any other products or services is a special or reduced price, unless such price constitutes a significant reduction from the price at which respondents have in good faith offered for sale or sold substantially similar home improvements or any products or services for a reasonably substantial period of time in the recent regular course of their business.

4. Failing to maintain adequate records:

(a) For a period of five (5) years which disclose the factual basis for any representations or statements as to special or reduced prices, as to usual and customary retail prices, as to savings afforded to purchasers, and as to similar representations of the type described in Paragraphs 2 and 3 of this order.

(b) For a period of five (5) years, with regard to each and every contract hereafter entered into between respondents and their customers, which disclose, in itemized form, what each customer was charged, exclusive of interest or finance charges, for materials and for labor, and for those contracts involving siding, or the installation of siding, or both, additional information as to the total amount of siding materials and other materials installed or delivered to the customer, the type and grade of said siding and other materials, a description of the installation performed, the total amount of money paid to salesmen, agents or representatives for the solicitation of the said contracts, and what each customer was charged exclusive of interest or finance charges per square foot for the performance of the said contract.

(c) For a period of five (5) years invoices, notices for payment and all similar documents which respondents receive in the conduct of their business from suppliers, subcontractors and other persons, and for a period of five (5) years copies of all contracts entered into between respondents and their customers.

5. Representing, directly or by implication, that any offer to sell products is limited as to time, or is limited in any other

manner unless any represented limitation as to time or other represented restriction is actually imposed and in good faith adhered to by respondents.

6. Representing, directly or by implication, that contests to select the winners of prizes or awards are being conducted when all of such winners are not selected on the basis of a bona fide drawing or other competitive elimination.

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

8. Representing, directly or by implication, that respondents' siding materials will last a lifetime or will not require repainting or repair for the life of the structure on which they are applied; or misrepresenting, in any manner, the efficacy, durability, efficiency, composition, or quality of respondents' products.

9. Representing, directly or by implication, that any of respondents' products are guaranteed, unless the nature and extent of the guarantee, the identity of the guarantor and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed; or making any direct or implied representation that any of respondents' products are guaranteed unless in each instance a written guarantee is given to the purchaser containing provisions fully equivalent to those contained in such representations.

10. Failing to disclose orally at the time of sale and in writing to each customer who executes a conditional sales contract, promissory note, or other negotiable instrument, with such conspicuousness and clarity as is likely to be read and observed by the customer of all the following items:

(a) The cash price of the merchandise purchased.

(b) The sum of any amounts credited as down payment (including any trade-in).

(c) The difference between the amount referred to in Paragraph (a) and the amount referred to in Paragraph (b).

(d) All other charges, individually itemized, which are included in the amount of credit extended but which are not part of the finance charge.

(e) The amount to be financed (the sum of the amount described in Paragraph (c) plus the amount described in Paragraph (d)).

(f) The amount of the finance charge.

(g) The finance charge expressed as an annual percentage rate.

(h) The total credit price (the sum of the amounts described in Paragraph (e) plus the amount described in Paragraph (f) and the number, amount, and due dates or periods of payments scheduled to pay the total credit price).

(i) The total amount of charges, penalties or other consequences in the event of any default in payments.

(j) A description of any security interest held or to be retained or acquired by respondents in connection with the extension of credit, and a clear identification of the property to which the security interest relates.

For the purpose of this paragraph, the definition of the term "finance charge" and computation of the annual percentage rate is to be determined under Sections 106 and 107 of Public Law 90–321, the "Truth in Lending Act," and the regulations promulgated thereunder.

11. Failing to clearly and conspicuously incorporate the following statement on the face of all negotiable instruments executed by respondents' customers:

"NOTICE"

"Any holder of this note shall take this note subject to all defenses of any party which would be available in an action on a simple contract."

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

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

It is further ordered, That respondent notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

It is further ordered, That the respondent 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

GRAYEL ENTERPRISES, INC., ET AL.

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

Docket C-1878. Complaint, Mar. 8, 1971—Decision, Mar. 8, 1971

Consent order requiring Baltimore, Md., sellers and distributors of household appliances, books, tools and other merchandise to cease misrepresenting that respondents are conducting a market survey and that prospective customers have won a prize or have been specially selected, misrepresenting that respondents' purpose is to introduce the EMDEKO brand products, soliciting promises from buyers that they will not sell or give away any of respondents' products, failing to disclose that persons invited to visit respondents' place of busines will be urged to buy respondents' products, operating a lottery, using the words "comparative value" to refer to prices in excess of prices in the trade area, misrepresenting that customers purchasing respondents' products are afforded savings, and failing to maintain adequate records to substantiate savings claims; respondents are also required to place on the face of all sales contracts a statement that the contract may be sold to a third party who is not liable for the execution of the contract; respondents shall also cease making sales contracts effective before the expiration of three days, failing to disclose to the buyer that he may rescind the sales contract prior to midnight of the third day, and negotiating any customer note to a third party before the expiration of five days.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Grayel Enterprises, Inc., a corporation, and Grayson W. Foster and Elinor O'Connor Foster, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARARGAPH 1. Respondent Grayel Enterprises, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland, with its principal office and place of business located at 6600 York Road, Baltimore, Maryland.

Respondents Grayson W. Foster and Elinor O'Connor Foster are officers of said corporation. They formulate, direct and control the acts and practices of the corporate respondent, including the acts

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

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of household appliances, books, tools and other merchandise to the public.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their agents, representatives, and employees to contact various persons by telephone and by post in the District of Columbia for the purpose of inducing such persons to travel into the State of Maryland to the respondents' place of business so that they might be sold merchandise by the respondents' agents, representatives and employees, and at all times herein mentioned have maintained a substantial course of trade in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of the respondents' business, and for the purpose of inducing the purchase of respondents' merchandise, respondents' agents, representatives and employees have made, and are now making, numerous statements and representations, directly or by implication, to prospective customers that:

Respondents are conducting a market survey for future potential buying in the area.

Prospective customers have won a prize by correctly answering a simple question.

Prospective customers are especially selected.

Customers are receiving a special introductory price.

Customers are receiving additional merchandise at no additional cost.

The respondents' purpose is to introduce and make known in the area the EMDEKO brand name in preparation for the placing of EMDEKO products in local retail stores.

PAR. 5. In truth and in fact:

1. The respondents are not conducting a market survey. Respondents are only seeking information about a person's appliance needs and credit rating to determine whether an attempt should be made to sell merchandise to that person.

2. Persons do not win a prize by correctly answering a simple question, but are so notified because such persons appear to be good prospects for the sale of merchandise. The awarding of a prize to all persons who appear to be good credit risks is the means used to induce prospective customers to make an appointment with respondents' agents, representatives and employees.

3. Respondents' customers are not especially selected. On the contrary, said merchandise is available to anyone with the money or credit rating to buy it.

4. Respondents' customers do not receive a special introductory price but are offered merchandise at prices which are higher than those charged for comparable merchandise in the respondents' trade area.

5. Respondents' customers do not receive additional merchandise at no additional cost, but the price of any additional items of merchandise is included in the price that such customers pay for the major, or principal, item selected, and the major item selected has never been sold separately in substantial quantities at the price being asked for such major item.

6. The respondents' true purpose is to sell merchandise to the public at a profit. EMDEKO brand products are not sold in regular retail stores, but are sold only by methods similar to those used by the respondents.

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

PAR. 6. In the course and conduct of the respondents' business, and for the purpose of inducing in prospective buyers the belief that said prospective buyers would receive a special introductory price in return for the rendering of a valuable advertising service to the respondents and to National Housewares, respondents' agents, representatives and employees have solicited from prospective buyers:

1. Written promises that said prospective buyers will write testimonial letters concerning merchandise they purchase from respondents.

2. Oral promises that said prospective buyers will not sell or give away, during the following year, merchandise they purchase from respondents.

PAR. 7. In truth and in fact all respondents' customers have been required to make such promises as part of a sales scheme and such customers do not receive a special introductory price.

PAR. 8. The aforesaid solicitations set forth in Paragraph Six hereof had, and now have, the capacity and tendency to deceive, and have in fact deceived, members of the purchasing public into believing that they were receiving a special introductory price in return for the rendering of a valuable advertising service.

PAR. 9. In the course and conduct of their business, and for the purpose of inducing prospective customers to visit respondents' place of business, respondents operated, or pretended to operate, various

lotteries in which valuable merchandise was allotted by lot or chance for consideration, the consideration being the prospective customer's visit to respondents' place of business.

PAR. 10. The uses by the respondents of the aforesaid lotteries, or pretended lotteries, were, and are, all to the prejudice and injury of the public and of respondents' competitors.

PAR. 11. In the course and conduct of their business, respondents, in the operation of a lottery, have represented that they were giving away $12,500 in sample products, from the EMDEKO brand name product line, to include major and minor sales items.

PAR. 12. In truth and in fact:

1. The respondents did not give away $12,500 in sample products in the aforesaid lottery.

2. Most of the sample products listed to be given away were not given away in the aforesaid lottery.

3. Those items of lesser value which were given away in aforesaid lottery were not part of the EMDEKO brand name product line in that they were never offered for sale by the respondents.

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

PAR. 13. In the course and conduct of respondents' business, and for the purpose of inducing the purchase of respondents' merchandise, respondents' agents, representatives and employees have made, and now make, numerous statements and representations, directly or by implication, to prospective customers that said prospective customers:

1. Have a gift waiting for them at respondents' "office."

2. Are invited to listen to and evaluate a presentation of the EMDEKO marketing program.

3. Will be entered in an EMDEKO contest.

PAR. 14. The respondents, when making such statements and representations as shown in Paragraph Thirteen have failed to disclose to said prospective customers the following material facts:

1. Respondents' agents, representatives and employees will attempt to sell respondents' merchandise to persons who arrive at respondents' place of business to pick up a gift.

2. Respondents' agents, representatives and employees will attempt to sell respondents' merchandise to persons who listen to a presentation of the EMDEKO marketing program upon completion of the presentation.

3. It is necessary for a person to listen to a presentation of the EMDEKO marketing program in order to be eligible to enter the EMDEKO contest.

Therefore, the statements and representations set forth in Paragraph Thirteen hereof were, and are, deceptive.

PAR. 15. In the course and conduct of the respondents' business, and for the purpose of inducing the purchase of respondents' merchandise, the respondents' agents, representatives and employees have made numerous statements and representations to prospective buyers with respect to the "value" or "comparative value" of respondents' merchandise.

PAR. 16. By and through the use of said statements and representations, respondents have represented, and are now representing, directly or by implication, that said "values" or "comparative values" are not appreciably in excess of the prices at which substantial sales of comparable merchandise have been made in the recent regular course of business in the trade area where such representations were made.

PAR. 17. In truth and in fact:

The aforesaid stated "values" or "comparative values" appreciably exceeded the prices at which substantial sales of comparable merchandise have been made in the recent regular course of business in the trade area where such representations were made.

Therefore, the statements and representations set forth in Paragraphs Fifteen and Sixteen hereof were, and are, false, misleading and deceptive.

PAR. 18. In the conduct of their business, and at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of household appliances, books, tools and other merchandise of the same general kind and nature as that sold by respondents.

PAR. 19. The use by the respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of respondents' products by reason of said erroneous and mistaken belief.

PAR. 20. The aforementioned acts and practices of the respondents, as herein alleged, were, and are, all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

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

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

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

1. Respondent Grayel Enterprises, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland, with its office and principal place of business located at 6600 York Road, Baltimore, Maryland.

Respondents Grayson W. Foster and Elinor O'Connor Foster are individuals and officers of Grayel Enterprises, Inc., and they formulate, direct and control the acts and practices of said corporation, including the acts and practices hereinafter set forth. Their address is the same as that of said corporation.

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

ORDER

I

It is ordered, That respondents Grayel Enterprises, Inc., a corporation, and its officers, and Grayson W. Foster and Elinor O'Connor

Foster, individually and as officers of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of household appliances, books, tools or any other product, in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that:

(a) Respondents are conducting a market survey for future potential buying in the area.

(b) Prospective customers have won a prize by correctly answering a simple question.

(c) Prospective customers are especially selected.

(d) Customers are receiving a special introductory price.

(e) Customers are receiving additional merchandise at no additional cost.

(f) The respondents' purpose is to introduce and make known in the area the EMDEKO brand name in preparation for the placing of EMDEKO products in local retail stores.

2. Soliciting in any manner:

(a) Testimonials, or promises of future testimonials, from a buyer concerning the merchandise being offered for sale, prior to the consummation of any sales transaction, or prior to the termination of any period for rescission available to the buyer, whichever is later.

(b) Promises from a buyer that said buyer will not sell or give away merchandise being offered for sale, except where necessary to protect a security interest.

3. Operating a lottery.

4. Failing to disclose to all persons contacted for the purpose of selling respondents' merchandise to them that:

(a) Respondents' agents, representatives and employees will attempt to sell merchandise to persons invited to respondents' place of business to pick up a gift.

(b) Respondents' agents, representatives and employees will attempt to sell respondents' merchandise to persons who are invited to listen to, and evaluate, a presentation of the EMDEKO marketing program.

(c) It is necessary for a person to listen to a presentation of the EMDEKO marketing program in order to be eligible to enter the EMDEKO Sweepstakes Contest, provided that the EMDEKO Sweepstakes Contest has been brought to the attention of said person.

5. Using the words "value" or "comparative value," or words of similar import and meaning, to refer to any price amount which is appreciably in excess of the prices at which substantial sales of comparable merchandise have been made in the recent, regular course of business in the trade area where such words are used and unless respondents have in good faith conducted a market survey which establishes the validity of the trade area prices; or misrepresenting, in any manner, the price at which merchandise has been sold in any trade area.

6. Representing, in any manner, that by purchasing respondents' merchandise, customers are afforded savings amounting to:

(a) The difference between respondents' stated price and the respondents' former price unless such merchandise has been sold, or offered for sale in good faith, at the former price by respondents for a reasonably substantial period of time in the recent, regular course of their business.

(b) The difference between respondents' stated price and a compared price for said merchandise in respondents' trade area unless a substantial number of the principal retail outlets in the trade area regularly sell said merchandise at the compared price or some higher price.

(c) The difference between respondents' stated price and a compared value price for comparable merchandise, unless substantial sales of merchandise of like grade and quality are being made in the trade area at the compared price or a higher price and unless respondents have in good faith conducted a market survey or obtained a similar representative sample of prices in their trade area which establishes the validity of said compared price and it is clearly and conspicuously disclosed that the comparison is with merchandise of like grade and quality.

7. Misrepresenting, in any manner, the amount of savings available to purchasers or prospective purchasers of respondents' merchandise at retail.

8. Failing to maintain adequate records (a) which disclose the facts upon which any savings claim, including former pricing claims and comparative value claims, and similar representations of the type described in Paragraphs 5–7 of this order are based, and (b) from which the validity of any savings claim, including former pricing claims and comparative value claims, and similar representations of the type described in Paragraphs 5–7 of this order can be determined.

9. Representing, directly or by implication, that any offer is limited in point of time or restricted in any manner, unless the represented limitation or restriction is actually imposed and in good faith adhered to by respondents.

It is further ordered, That the respondents herein shall, in connection with the offering for sale, sale or distribution of respondents' products or services, incorporate the following statement on the face of all contracts executed by respondents' customers with such conspicuousness and clarity as is likely to be observed, read and understood by the purchaser:

Important Notice

If you are obtaining credit in connection with this contract, you will be required to sign a promissory note. This note may be purchased by a bank, finance company or any other third party. If it is purchased by another party, you will be required to make your payments to the purchaser of the note. You should be aware that if this happens you may be required to pay the note in full to the new owner of the note even if this contract is not fulfilled.

II

It is further ordered, That the respondents herein shall, in connection with the offering for sale, sale or distribution of respondents' products or services, forthwith cease and desist from:

1. Contracting for any sale whether in the form of trade acceptance, conditional sales contract, promissory note, or otherwise which shall become binding on the buyer prior to midnight of the third day, excluding Sundays and legal holidays, after the date of execution.

2. Failing to disclose, orally prior to the time of sale and in writing on any trade acceptance, conditional sales contract, promissory note or other instrument executed by the buyer with such conspicuousness and clarity as is likely to be observed and read by such buyer, that the buyer may rescind or cancel the sale by directing or mailing a notice of cancellation to respondents' address prior to midnight of the third day, excluding Sundays and legal holidays, after the date of the sale. Upon such cancellation the burden shall be on respondents to collect any goods left in buyer's home and to return any payments received

from the buyer. Nothing contained in this right-to-cancel provision shall relieve buyers of the responsibility for taking reasonable care of the goods prior to cancellation and during a reasonable period following cancellation.

3. Failing to provide a separate and clearly understandable form which the buyer may use as a notice of cancellation.

4. Negotiating any trade acceptance, conditional sales contract, promissory note, or other instrument of indebtedness to a finance company or other third party prior to midnight of the fifth day, excluding Sundays and legal holidays, after the date of execution by the buyer.

Provided, however, That nothing contained in Part II of this order shall relieve respondents of any additional obligations respecting contracts required by federal law or the law of the state in which the contract is made. When such obligations are inconsistent, respondents can apply to the Commission for relief from this provision with respect to contracts executed in the state in which such different obligations are required. The Commission, upon proper showing, shall make such modifications as may be warranted in the premises.

III

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 respondents deliver a copy of this order to cease and desist to all present and future personnel of respondents engaged in the offering for sale, or sale of any product or in any aspect of preparation, creation or placing of advertising, and that respondents secure a signed statement acknowledging receipt of said order from each such person.

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.

It is further ordered, That respondents notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent, such as dissolution, assignment or sale, resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of this order.

IN THE MATTER OF

THE ELMO COMPANY, INC.

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

Docket 5959. Complaint, Feb. 28, 1952—Decision, Mar. 18, 1971

Order granting complaint counsel's motion that the complaint in this matter, 48 F.T.C. 1379, be dismissed without prejudice.

ORDER GRANTING MOTION TO DISMISS COMPLAINT

Complaint counsel, by motion filed December 2, 1970, having requested that the complaint in this matter be dismissed without prejudice, and respondent not having filed an answer to said motion;

It is ordered, That complaint counsel's motion, filed December 2, 1970, be, and it hereby is, granted.

IN THE MATTER OF

NORFOLK-HILL, LTD., ET AL.

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

Docket C-1879. Complaint, Mar. 18, 1971—Decision, Mar. 18, 1971

Consent order requiring an inactive corporation now located in East Orange, N.J., which formerly sold MEMOCORD tape recorders, books, automatic coin banks, painting sets and other articles to cease failing to make proper refunds, failing to clearly reveal the nature of deductions from refunds, making deceptive guarantees, failing to make shipment of merchandise within ten days of receipt of order and misrepresenting the length of continuous operation of its tape recorders.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Norfolk-Hill, Ltd., a corporation, and Norman Eisner and Richard A. Jasper, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a preceeding 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 Norfolk-Hill, Ltd., is a corporation organized and existing under and by virtue of the laws of the State of New York. When the corporate respondent was actively engaged in business its principal office and place of business was located at 35 Ninth Avenue, New York, New York.

Said corporate respondent is not now actively engaged in business and its only address is in care of its vice-president, 320 South Harrison Street, East Orange, New Jersey.

Respondents Norman Eisner and Richard A. Jasper are officers of the corporate respondent and when the said corporate respondent was actively engaged in business, they formulated, directed and controlled the acts and practices hereinafter set forth. The residence address of the respondent Norman Eisner is 16 Shady Brook Road, Great Neck, New York. The residence address of the respondent Richard A. Jasper is 320 South Harrison Street, East Orange, New Jersey.

PAR. 2. Respondents are not now, but for some time last past had been, engaged in the advertising, offering for sale, sale and distribution of MEMOCORD tape recorders, books, automatic coin banks, painting sets, records, toy cars and other articles of mail-order merchandise.

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

PAR. 4. In the course and conduct of their aforesaid business, and at all times mentioned herein, respondents were in substantial competition, in commerce, with corporations, firms and individuals in the sale of products of the same general kind and nature as those sold by respondents.

PAR. 5. In the course and conduct of their mail-order business and for the purpose of inducing the sale of their said merchandise, respondents have made certain statements and representations with respect to performance, refunds, guarantees and delivery in advertisements in magazines, in brochures, in newspapers and through other advertising media.

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

15 DAY FREE TRIAL

15-day trial with immediate
refund if not satisfied

3-DAY FREE TRIAL

30-day trial with immediate
refund if not satisfied

NO-RISK TRIAL

10-day FREE TRIAL OFFER

10 days free trial

Full money back at once fully guaranteed

refund guaranteed if you
decide to return the book

You can read this exciting book
entirely at our risk for 10
full days . . . After 10 days,
if you do not want to keep
the book . . . simply return it and
your money will be instantly refunded.

PAR. 6. By and through the use of the statements and representations quoted in Paragraph Five herein, and others similar thereto but not expressly set forth herein, respondents have represented, directly or by implication, that they unconditionally guaranteed that the full purchase price of the merchandise will be refunded promptly and voluntarily upon demand by the purchaser and return of the merchandise.

PAR. 7. In truth and in fact:

1. In numerous instances the purchase price of merchandise was not refunded upon demand of the purchaser, or was refunded only after a delay of several months and after repeated requests to respondents and pleas for assistance to Better Business Bureaus and governmental agencies and substantial inconvenience, irritation and hardship to the purchaser.

2. In cases where refund was made of the purchase price, it was not in full but a deduction was made from the amount of the purchase price for a service charge including postage and handling.

3. Said refund guarantee was not unconditional but was subject to the foregoing and other conditions and limitations. Furthermore respondents by their aforesaid failure to make refunds substantially failed to perform under the represented terms of the guarantee.

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

PAR. 8. In addition to the representations set forth in Paragraph

Four as to all of the merchandise, the following additional statements and representations were made with respect to MEMOCORD tape recorders in the aforesaid advertising media:

One Hour on Single Tapes
Uninterruption for Two Hours

PAR. 9. By and through the use of the statements and representations quoted in Paragraph Eight hereof, and others of similar import and meaning but not expressly set forth herein, the respondents represented that one or two hours, as the case might be, of continuous and uninterrupted use can be recorded on a single tape by the said MEMOCORD tape recorder.

PAR. 10. In truth and in fact, it is necessary to make some adjustment or change of the tape approximately every fifteen minutes over the period of one or two hours.

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

PAR. 11. In the course and conduct of their mail-order business, as aforesaid, respondents, on numerous occasions and in a substantial number of instances either have failed altogether to deliver pre-paid merchandise or have delivered such merchandise after a long lapse of time and after several demands therefor have been made to respondents and pleas for assistance have been made to Better Business Bureaus and to governmental agencies. Such practices have resulted in substantial inconvenience, hardship and irritation to purchasers.

Therefore, the said practice was, and is, unfair and is misleading and deceptive.

PAR. 12. The use by respondents of the aforesaid unfair practices and false, misleading and deceptive statements and representations had the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were true and into the purchase of substantial quantities of respondents' products by reason of said erroneous and mistaken belief.

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

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with

violation of the Federal Trade Commission Act, and the respondents having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

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

The Commission having considered the agreement and having accepted the same, the agreement containing consent order was placed on the public record for a period of 30 days, and having duly considered the comments thereafter filed pursuant to Section 2.34(b) of its Rules, now in further conformity with the procedure prescribed in Section 2.34(b) of its Rules, the Commission hereby issues its complaint in the form contemplated by this agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Norfolk-Hill, Ltd., is a corporation organized and existing under and by virtue of the laws of the State of New York. When the corporate respondent was actively engaged in business its principal office and place of business was located at 35 Ninth Avenue, New York, New York.

Said corporate respondent is not now actively engaged in business and its only address is in care of its vice-president, Richard A. Jasper, 320 South Harrison Street, East Orange, New Jersey.

Respondents Norman Eisner and Richard A. Jasper are officers of the corporate respondent and when the said corporate respondent was actively engaged in business, they formulated, directed and controlled the acts and practices of said corporation. The residence address of the respondent Norman Eisner is 16 Shady Brook Road, Great Neck, New York. The residence address of the respondent Richard A. Jasper is 320 South Harrison Street, East Orange, New Jersey.

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 Norfolk-Hill, Ltd., a corporation, and its officers, and Norman Eisner and Richard A. Jasper, indi-

vidually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of tape recorders, books, coin banks, painting sets, records, toys, or any other product, in commerce as "commerce" is defined in the Federal Trade Commission Act, do hereafter forthwith cease and desist from:

1. Failing, when requested, pursuant to a guarantee (hereafter made) of satisfaction or a full refund, to refund the purchase price in full of merchandise together with all charges paid by purchasers in connection with such purchase (hereafter made) voluntarily and within the time specified in respondents' advertisements, or if no time is specified, within a reasonable time not to exceed 15 days; or failing to make any other refunds to which a purchaser is entitled within 15 days from the date of the receipt of the request for such refund.

2. Representing, directly or by implication, that respondents will make refunds in full for goods or merchandise which is returned when such refunds are subject to any deductions whatsoever; failing clearly and conspicuously to reveal in all advertising and promotional material the amount and nature of any deductions from refunds of purchase prices; or misrepresenting, in any manner, the amount of or deduction from refunds of purchase prices.

3. Representing, directly or by implication, that any product or service is guaranteed, unless the nature and extent of the guarantee, the identity of the guarantor and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed, and the guarantor does in good faith promptly perform all of the actual and represented obligations under the terms of the guarantee.

4. Failing to make shipment of advertised goods or merchandise within 10 days from the date of receipt of the order and payment therefor or to return the full purchase price therefor to the purchaser.

5. Representing, directly or by implication, that tape recorders or any other kind of sound recording or reproduction device provide continuous or uninterrupted use when the user is required to make any change or adjustment whatsoever in the operation of the machine or device or when the sound recording or reproduction is in any manner interrupted during the represented period of time; or misrepresenting, in any manner, the

performance or performance characteristics of respondents' products.

It is further ordered, That respondents notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent by assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising of this order.

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 of their compliance with this order.

IN THE MATTER OF

HERBERT BENARD, ET AL.*

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

Docket C-1880. Complaint, Mar. 18, 1971—Decision, Mar. 18, 1971

Consent order requiring a San Francisco, Calif., individual trading as a retailer of furs to cease misbranding, falsely invoicing, deceptively advertising, and failing to keep adequate price records on his fur products.

COMPLAINT

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

PARAGRAPH 1. Respondent Herbert Benard is an individual formerly trading as Herbert's Furs with his office and principal place of business located at 133 Geary Street, San Francisco, California.

Respondent is a retailer of fur products.

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*Formerly trading as Herbert's Furs.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the introduction into commerce, and in the sale, advertising, and offering for sale in commerce, and in the transportation and distribution in commerce, of fur products; and has sold, advertised, offered for sale, transported and distributed fur products which have been made in whole or in part of furs which have been shipped and received in commerce, as the terms "commerce," "fur" and "fur product" are defined in the Fur Products Labeling Act.

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

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

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

1. To show the true animal name of the animal or animals which produced the fur used in such fur products.

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

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

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

1. To show the true animal name of the animal or animals which produced the fur used in such fur products.

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

PAR. 6. Certain of said fur products were falsely and deceptively invoiced with respect to the name or designation of the animal or animals that produced the fur from which the said fur products had been manufactured, in violation of Section 5(b)(2) of the Fur Products Labeling Act.

Among such falsely and deceptively invoiced fur products, but

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

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

PAR. 8. Certain of said fur products were falsely and deceptively invoiced with respect to the name of the country of origin of imported furs used in such fur products, in violation of Section 5(b)(2) of the Fur Products Labeling Act.

Among such falsely and deceptively invoiced fur products, but not limited thereto, were fur products invoiced to show the name of the country of origin of furs contained in such fur products as Canada when the country of origin of said furs was, in fact, a country other than Canada.

PAR. 9. Certain of said fur products were falsely and deceptively invoiced in violation of the Fur Products Labeling Act in that they were not invoiced in accordance with the Rules and Regulations promulgated thereunder inasmuch as required item numbers were not set forth on invoices, in violation of Rule 40 of said Rules and Regulations.

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

Among and included in the aforesaid advertisements, but not limited thereto, were advertisements of respondent which appeared in issues of the San Francisco Chronicle, a newspaper published in the city of San Francisco, State of California and having a wide circulation in California and in other States of the United States.

Among such false and deceptive advertisements, but not limited thereto, were advertisements which failed:

1. To show the true animal name of the animal or animals which produced the fur used in such fur products.

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

PAR. 11. By means of the aforesaid advertisements and others of similar import and meaning not specifically referred to herein, respondent falsely and deceptively advertised fur products in that certain of said fur products were falsely or deceptively identified with respect to the name or designation of the animal or animals that produced the fur from which the said fur products had been manufactured, in violation of Section 5(a)(5) of the Fur Products Labeling Act.

Among such falsely and deceptively advertised fur products, but not limited thereto were fur products advertised as "Broadtail" thereby implying that the furs contained therein were entitled to the designation "Broadtail Lamb" when in truth and in fact the furs contained therein were not entitled to such designation.

PAR. 12. In advertising fur products for sale, as aforesaid respondent made pricing claims and representations of the types covered by subsections (a), (b), (c) and (d) of Rule 44 of the Regulations under the Fur Products Labeling Act. Respondent in making such claims and representations failed to maintain full and adequate records disclosing the facts upon which such claims and representations were based, in violation of Rule 44(e) of said Rules and Regulations.

PAR. 13. The aforesaid acts and practices of respondent, as herein alleged, are in violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder and constitute unfair methods of competition and unfair and deceptive acts and practices in commerce under the Federal Trade Commission Act.

DECISION AND ORDER

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

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an

admission by respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Acts, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed 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 Herbert Benard is an individual formerly trading as Herbert's Furs with his office and principal place of business located at 133 Geary Street, San Francisco, California.

Respondent is a retailer of fur products.

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

ORDER

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

A. Misbranding any fur product by:

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

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

B. Falsely or deceptively invoicing any fur product by:

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

2. Setting forth on an invoice pertaining to such fur product any false or deceptive information with respect to the name or designation of the animal or animals that produced the fur contained in such fur product.

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

4. Misrepresenting in any manner, on an invoice directly or by implication, the country of origin of the fur contained in such fur product.

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

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

1. Fails to set forth in words and figures plainly legible all the information required to be disclosed by each of the subsections of Section 5(a) of the Fur Products Labeling Act.

2. Falsely or deceptively identifies any fur product as to the name or designation of the animal or animals that produced the fur contained in the fur product.

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

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

IN THE MATTER OF

HENRY HERLINGER FURS, LTD., ET AL.

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

Docket C-1881. Complaint, Mar. 18, 1971—Decision, Mar. 18, 1971

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

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Henry Herlinger Furs, Ltd., a corporation, and Henry Herlinger, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Fur Products Labeling Act, 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 Henry Herlinger Furs, Ltd., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York.

Respondent Henry Herlinger is an officer of the corporate respondent. He formulates, directs and controls the policies, acts and practices of the said corporate respondent including those hereinafter set forth.

Respondents are manufacturers of fur products with their office and principal place of business located at 224 West 30th Street, New York, New York.

PAR. 2. Respondents are now and for some time last past have been engaged in the introduction into commerce, and in the manufacture for introduction into commerce, and in the sale, advertising, and offering for sale in commerce, and in the transportation and distribution in commerce, of fur products; and have manufactured for sale, sold, advertised, offered for sale, transported and distributed fur products which have been made in whole or in part of furs which have been shipped and received in commerce, as the terms

"commerce," "fur" and "fur product" are defined in the Fur Products Labeling Act.

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

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

PAR. 4. Certain of said fur products were falsely and deceptively invoiced by the respondents in that they were not invoiced as required by Section 5(b)(1) of the Fur Products Labeling Act and the Rules and Regulations promulgated under such Act.

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

1. To disclose that the fur contained in the fur products was dyed, when such was the fact.

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

PAR. 5. The aforesaid acts and practices of respondents, as herein alleged, are in violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder and constitute unfair methods of competition and unfair and deceptive acts and practices in commerce under the Federal Trade Commission Act.

DECISION AND ORDER

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

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

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

The Commission having thereafter considered the matter and having determined that it has 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 Henry Herlinger Furs, Ltd., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its office, and principal place of business located at 224 West 30th Street, New York, New York.

Respondent Henry Herlinger is an officer of the said corporation. He formulates, directs and controls the policies, acts and practices of said corporation and his address is the same as that of the said corporation.

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

ORDER

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

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

2. Falsely or deceptively invoicing any fur product by failing

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

It is further ordered, That respondents notify the Commission at least 30 days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

It is further ordered, That the corporate respondent 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

PRECEPT, INC., ET AL.

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

Docket C-1882. Complaint, Mar. 18, 1971—Decision, Mar. 18, 1971

Consent order requiring Fuless, Texas, manufacturers and distributors of disposable hospital products, including "nurses' caps" and "infants' shirts," to cease violating the Flammable Fabrics Act by distributing any fabric which fails to conform with the standards of said Act.

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 Precept, Inc., a corporation, and Van Hubbard and Jerry L. Tims, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts, and the Rules and Regulations promulgated under the 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 Precept, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Texas. Individual respondents Van Hubbard and Jerry L. Tims are officers of corporate respondent. They formulate, direct and control the acts, practices and policies of said corporation.

The respondents are engaged in the manufacture, sale and distribution of disposable hospital products, including but not limited to, wearing apparel. Among the items of wearing apparel manufactured, sold and distributed are "nurses' caps" and "infants' shirts." The respondents principal place of business is located at 1110–A Pamela Drive, Euless, Texas.

PAR. 2. Respondents are now and for some time last past have manufactured for sale, sold and offered for sale, in commerce, 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, products; and have manufactured for sale, sold, and offered for sale, products made of fabrics or related materials which have been shipped and received in commerce, as the terms "commerce," "product," "fabric" and "related material" are defined in the Flammable Fabrics Act, as amended, which products and fabrics fail 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 products were "nurses' caps" and "infants' shirts."

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 as such constitute unfair methods of competition and unfair and deceptive acts and practices in commerce, within the intent and meaning of the Federal Trade Commission Act.

DECISION AND ORDER

The 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 Consumer Protection 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 Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed agreement and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the porcedure 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 Precept, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Texas.

Respondents Van Hubbard and Jerry L. Tims are officers of the corporate respondent. They formulate, direct and control the acts, practices and policies of said corporation.

The respondents are engaged in the manufacture, sale and distribution of disposable hospital products, including but not limited thereto, wearing apparel. Among the items of wearing apparel manufactured, sold and distributed are "nurses' caps" and "infants' shirts." The respondents' principal place of business is located at 1110 A Pamela Drive, Euless, Texas.

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

ORDER

It is ordered, That the respondents Precept, Inc., a corporation, and its officers, and Van Hubbard and Jerry L. Tims, individually and as officers 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 product, fabric or related material; or manufacturing for sale, selling, or offering for sale any product made of fabric or related material which has been shipped or received in commerce, as "commerce," "product," "fabric" and "related material" are defined in the Flammable Fabrics Act, as amended, which product, fabric or related material 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 notify all of their customers who have purchased or to whom have been delivered the products which gave rise to this complaint of the flammable nature of such products and effect recall of such products from said customers.

It is further ordered, That the respondents herein either process the products which gave rise to the complaint so as to bring them within the applicable flammability standards of the Flammable Fabrics Act, as amended, or destroy said products.

It is further ordered, That the respondents herein shall, within ten (10) days after service upon them of this order, file with the Commission an interim report in writing settling forth the respondents' intentions as to compliance with this order. This interim report shall also advise the Commission fully and specifically concerning the identity of the products which gave rise to the complaint and (1) the amount of such products in inventory, (2) any action taken and any further actions proposed to be taken to notify customers of the flammability of such products and effect recall of such products from said customers, and of the results of any such actions, (3) any disposition of such products since January 1970, and (4) any action taken or proposed to be taken to flameproof or destroy such products and the results of such action. Such report shall further inform the Commission whether respondents have in inventory any fabric, product or related material having a plain surface and made of paper, silk, rayon and acetate, nylon and acetate, rayon, cotton or combinations thereof in a weight of two ounces or less per square yard, or having a raised fiber surface made of cotton or rayon or combinations thereof. Respondents will submit samples of any such fabric, product or related material with this report. Samples of the fabric, product or related material shall be of no less than one square yard of material.

It is further ordered, That respondents notify the Commission at least 30 days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence

of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

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 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

JEWEL CASE, INC., ET AL.

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

Docket C-1883. Complaint, Mar. 18, 1971—Decision, Mar. 18, 1971

Consent order requiring New York City importers and distributors of women's and misses' wearing apparel, including ladies' scarves, to cease violating the Flammable Fabrics Act by distributing any fabric which fails to conform to the standards of said Act.

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 Jewel Case, Inc., a corporation, and Christian Bounaix, 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 Jewel Case, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York. Its address is 385 Fifth Avenue, New York, New York.

Respondent Christian Bounaix is an officer of the corporate respondent. He formulates, directs and controls the acts, practices and

policies of the said corporate respondent including those hereinafter set forth. His address is the same as that of the corporate respondent.

Respondents are engaged in the importation and sale of women's and misses' wearing apparel, including, but not limited to, ladies' scarves.

PAR. 2. Respondents are now and for some time last past have been engaged in the sale and offering for sale, in commerce, and 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, products, as the terms "commerce" and "product" are defined in the Flammable Fabrics Act, as amended, which products 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 products mentioned hereinabove were women's and misses' wearing apparel, including, but not limited thereto, ladies' scarves.

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 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 Consumer Protection 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 has 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 Jewel Case, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York. Its address is 385 Fifth Avenue, New York, New York.

Respondent Christian Bounaix is an officer of the corporate respondent. He formulates, directs and controls the acts, practices and policies of the said corporate respondent including those hereinafter set forth. His address is the same as that of the corporate respondent.

Respondents are engaged in the importation and sale of women's and misses' wearing apparel, including, but not limited to, ladies' scarves.

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

ORDER

It is ordered, That the respondents Jewel Case, Inc., a corporation, and its officers, and Christian Bounaix, 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 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 product, fabric, or related material; or selling or offering for sale, any product made of fabric or related material which has been shipped or received in commerce as "commerce," "product," "fabric" and "related material" are defined in the Flammable Fabrics Act, as amended, which product, fabric, or related material fails to conform to an applicable standard or regulation issued, amended or continued in effect, under the provisions of the aforesaid Act.

It is further ordered, That respondents notify all of their customers who have purchased or to whom have been delivered the

products, which gave rise to the complaint, of the flammable nature of said products and effect the recall of said products from such customers.

It is further ordered, That the respondents herein either process the products which gave rise to the complaint so as to bring them into conformance with the applicable standard of flammability under the Flammable Fabrics Act, as amended, or destroy said products.

It is further ordered, That the respondents herein shall, within ten (10) days after service upon them of this order, file with the Commission a special report in writing setting forth the respondents' intentions as to compliance with this order. This special report shall also advise the Commission fully and specifically concerning (1) the identity of the products, which gave rise to the complaint, (2) the number of said products in inventory, (3) any action taken and any further actions proposed to be taken to notify customers of the flammability of said products and effect the recall of said products from customers, and of the results thereof, (4) any disposition of said products since May 27, 1970, and (5) any action taken or proposed to be taken to bring said products into conformance with the applicable standard of flammability under the Flammable Fabrics Act, as amended, or destroy said products and the results of such action. Such report shall further inform the Commission as to whether or not respondents have in inventory any product, fabric, or related material having a plain surface and made of paper, silk, rayon and acetate, nylon and acetate, rayon, cotton or any other material or combinations thereof in a weight of two ounces or less per square yard, or any product, fabric or related material having a raised fiber surface. Respondents shall submit samples of not less than one square yard in size of any such product, fabric, or related material with this report.

It is further ordered, That respondents notify the Commission at least 30 days prior to any proposed change in the corporate respondent, such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of this order.

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.

Decision and Order

IN THE MATTER OF

COLUMBIA BROADCASTING SYSTEM, INC.

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

Docket 8512. Complaint, June 25, 1962—Decision, Mar. 22, 1971

Consent order entered into after remand of the case by the United States Court of Appeals, Seventh Circuit, 414 F.2d 974 (8 S. & D. 981), requiring a major distributor of phonograph records and audio tapes to cease entering into or continuing exclusive licensing agreements with other manufacturers of records and pre-recorded tapes which prevent other club operators from obtaining the same terms and conditions.

DECISION AND ORDER

The Commission having on April 3, 1970 [77 F.T.C. 1620], rendered its order reopening and remanding this matter to a hearing examiner after the United States Court of Appeals for the Seventh Circuit remanded the matter to the Federal Trade Commission for further proceedings in accordance with that Court's opinion, and the United States Supreme Court having on February 24, 1970, denied a petition filed by the Federal Trade Commission for a writ of certiorari to review the judgment of the court of appeals; and

The respondent having made a request, concurred in by complaint counsel, that this matter be withdrawn from adjudication under Section 2.34(b) of the Commission's Rules of Practice, and the respondent and complaint counsel having thereafter executed an agreement containing a consent order, an admission by respondent of all the jurisdictional facts set forth in the complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as set forth in such complaint, and waivers and provisions as required by the Commission's rules; and

The Commission having thereafter given careful consideration to the executed consent agreement and having determined that the relief provided by the order contained therein is adequate and appropriate in all respects to dispose of this matter, and having thereupon provisionally accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, and having received and duly considered a comment from an interested member of the public, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission

hereby makes the following jurisdictional findings and enters the following order:

1. Respondent Columbia Broadcasting Systems, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 51 West 52nd Street, in the city of New York, State of New York.

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

ORDER

It is ordered, That respondent Columbia Broadcasting System, Inc., its officers, representatives, agents and employees, and successors, assigns, directly or indirectly, or through any corporate or other device, in connection with the manufacture, promotion, offering for sale, sale and distribution of phonograph records and/or pre-recorded audio tapes in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Entering into, maintaining, or continuing any contract, licensing agreement, or understanding with any other manufacturer or producer of phonograph records and/or prerecorded audio tapes to prevent other club operators, including potential club operators, from acquiring the phonograph records and/or pre-recorded audio tapes of any other manufacturer or producer on the same terms and conditions as respondent acquires such records, and/or pre-recorded audio tapes including but not limited to agreements which have effect of:

(a) Giving respondent the sole or exclusive right, privilege, or license to manufacture, distribute, or sell through clubs phonograph records and/or pre-recorded audio tapes manufactured from master recordings or master tapes owned or controlled by any other manufacturer or producer of phonograph records and/or pre-recorded audio tapes;

(b) Restricting or preventing any other manufacturer or producer of phonograph records and/or pre-recorded audio tapes from licensing, authorizing, or consenting to the making of phonograph records and/or pre-recorded audio tapes from its master recordings or master tapes by any other person for the purpose of resale by the subscription or club method of direct mail selling;

(c) Restricting or preventing any other manufacturer or

producer of phonograph records and/or pre-recorded audio tapes from selling its own records and/or pre-recorded audio tapes by subscription or club method of direct mail selling;

(d) Restricting or preventing any other manufacturer or producer of phonograph records and/or pre-recorded audio tapes from selling its records and/or pre-recorded audio tapes directly to any person for resale by the subscription or club method of direct mail selling.

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 respondent notify the Commission at least 30 days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

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

By the Commission. Chairman Kirkpatrick did not participate in this matter.

IN THE MATTER OF

BUY-RIGHT, INC., ET AL.

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

Docket C-1884. Complaint, Mar. 23, 1971—Decision, Mar. 23, 1971

Consent order requiring Newburg, West Virginia, sellers of food, hardware and other retail commodities to cease violating the Truth in Lending Act by failing to make all required disclosures to customers to whom open end credit is extended, failing to state in advertising any required items without also stating the time period within which credit may be extended without additional charge, the method of determining the balance on which a charge may be made, the method of fixing the amount of the finance charge, where one or more rates may be applicable the range of balances involved, the method by which any other charge is determined, and failing to make all other disclosures required by Regulation Z of said Act.

COMPLAINT

Pursuant to the provisions of the Truth In Lending Act and the implementing Regulation thereunder, and the Federal Trade Commission Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Buy-Right, Inc., a corporation, and William L. Baylor, individually and as an officer of said corporation, hereinafter referred to as Respondents, have violated the provisions of said Acts and implementing Regulation, 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, Buy-Right, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of West Virginia, with its principal office and place of business located at Newburg, West Virginia.

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

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, and sale of food, hardware, and other commodities to the public at retail.

PAR. 3. In the ordinary course and conduct of their business as aforesaid, respondents regularly extend, and for some time last past have regularly extended, consumer credit as the term "consumer credit" is defined in Regulation Z, the implementing Regulation of the Truth In Lending Act, duly promulgated by the Board of Governors of the Federal Reserve System.

PAR. 4. Subsequent to July 1, 1969, respondents, in the ordinary course and conduct of their business, and in connection with their credit sales, as the term "credit sale" is defined in Regulation Z, are now engaged, and for some time last past have been engaged, in the extension of open end credit, as the term "open end credit" is defined in Regulation Z.

Respondents do not make and have never made consumer credit cost disclosures to any of its open end credit customers. Respondents, through use of cash register receipts, and painted signs, located throughout the business premises of the corporate respondent, inform their customers that all accounts must be paid in full every thirty (30) days, and that a two percent (2%) charge will be added

to the unpaid monthly balance of any amount not paid within thirty (30) days of purchase.

Respondents permit customers to maintain unpaid balances for several months past the stated thirty-day (30-day) limit without any attempt by respondents to collect the amount of such balances promptly and in full when they become past due, and permit customers to continue to make purchases during the period when they have balances unpaid more than thirty (30) days after purchase. In doing so, respondents reserve the right to impose a two percent (2%) monthly charge on balances not paid within thirty (30) days of purchase, which charge would and does constitute a finance charge within the meaning of § 226.4(a) of Regulation Z.

PAR. 5. By and through the use of the practice set forth in Paragraph Four, respondents:

1. Fail to make the disclosures required by § 226.7(a) of Regulation Z to be made before the time of the first transaction on an open end account, and failed to make those disclosures by July 31, 1969, to each customer having an open end account on July 1, 1969, in which there was an unpaid balance which was deemed collectible and not subject to delinquency collection procedures, as required by § 226.7(f) of Regulation Z.

2. Fail to provide each customer who has an open end account with a periodic billing statement for each billing cycle, which statement contains the credit cost disclosures required to be made by § 226.7(b) of Regulation Z, as required by that section.

3. State in advertising the periodic rate which may be used to compute the finance charge and the time period within which the credit extended may be paid without incurring a finance charge, without also setting forth all of the following items in terminology prescribed under § 226.7(b) of Regulation Z, as required by § 226.10 (c) of Regulation Z:

a. The method of determining the balance upon which the finance charge may be imposed;

b. The method of determining the amount of the finance charge;

c. The term "periodic rate" to describe the two percent (2%) monthly charge imposed by respondents on amounts not paid within thirty (30) days of purchase, and the corresponding annual percentage rate determined by multiplying the periodic rate by the number of periods in a year;

d. The conditions under which other charges may be imposed and the method by which they will be determined; and

e. The minimum periodic payment required.

PAR. 6. By the aforesaid failure to make disclosures, respondents have failed to comply with the requirements of Regulation Z, the implementing Regulation of the Truth In Lending Act, duly promulgated by the Board of Governors of the Federal Reserve System. Pursuant to § 103(k) of the Truth In Lending Act, Respondents aforesaid failure to comply with Regulation Z constitutes violations of that Act and, pursuant to § 108 thereof, respondents have thereby violated 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 Commission's staff proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; and

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

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

1. Respondent Buy-Right, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of West Virginia, with its principal office and place of business located at Newburg, West Virginia. Respondent William L. Baylor is an officer of the corporate respondent. He formulates, directs, and controls the acts and practices hereinafter set forth. 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, Buy-Right, Inc., a corporation, and its officers, and William L. Baylor, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with any extension of consumer credit or any advertisement to aid, promote, or assist directly or indirectly any extension of consumer credit, as "consumer credit" and "advertisement" are defined in Regulation Z (12 CFR Part 226) of the Truth in Lending Act (Public Law 90–321, 15 U.S.C. 1601 *et seq.*), do forthwith cease and desist from:

1. Failing to make all disclosures required by § 226.7(a) of Regulation Z to each customer to whom respondents extend open end credit within the meaning of Regulation Z:

a. Within sixty (60) days of the date this order to cease and desist becomes final, if the customer has an account in which a balance remains unpaid on the date the order becomes final, which balance is deemed to be collectible and not subject to delinquency collection procedures; and

b. Before the first transaction in any account where the customer is not entitled to disclosures under provision "a" next above.

2. Failing to make all disclosures required by § 226.7(b) of Regulation Z, in the manner, form, and amount prescribed therein.

3. Stating in advertising any of the items described in § 226.7 (a) of Regulation Z, or any of the items set forth in § 226.10(c) (1) through § 226.10(c)(6) of Regulation Z, without also setting forth all the following items in terminology prescribed under § 226.7 of Regulation Z, as required by § 226.10(c) of Regulation Z:

(1) An explanation of the time period, if any, within which any credit extended may be paid without incurring a finance charge.

(2) The method of determining the balance upon which a finance charge may be imposed.

(3) The method of determining the amount of the finance charge, including the determination of any minimum,

fixed, check service, transaction, activity, or similar charge, which may be imposed as a finance charge.

(4) Where one or more periodic rates may be used to compute the finance charge, each such rate, the range of balances to which it is applicable, and the corresponding annual percentage rate determined by multiplying the periods in a year.

(5) The conditions under which any other charges may be imposed, and the method by which they will be determined.

(6) The minimum periodic payment required.

4. Failing, in any consumer credit transaction, or advertisement, to make all disclosures, determined in accordance with § 226.4 and § 226.5 of Regulation Z, in the manner, form, and amount required by § 226.6, § 226.7, § 226.8, § 226.9, and § 226.10 of Regulation Z.

It is further ordered, That respondents deliver a copy of this order to cease and desist to all present and future personnel of respondents engaged in the consummation of any extension of consumer credit or in any aspect of preparation, creation, or placing of advertising, and that respondents secure a signed statement acknowledging receipt of said order from each such person.

It is further ordered, That respondent corporation notify the Commission at least thirty (30) days prior to any proposed change in its corporate structure, such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations arising out of this order.

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 nature and form of their compliance with this order.

IN THE MATTER OF

J. H. GOLDBERG FURNITURE CO., INC., ET AL.

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

Docket C-1885. Complaint, Mar. 23, 1971—Decision, Mar. 23, 1971

Consent order requiring a Rochester, N.Y., retail furniture store to cease violating the Truth in Lending Act, by failing to disclose the annual

percentage rate of the finance charge, the due dates of scheduled repayments prior to consummation of the transaction, the unpaid balance of the cash price, the amount financed, the deferred payment price, and all consumer credit disclosures required by Regulation Z of said Act.

COMPLAINT

Pursuant to the provisions of the Truth in Lending Act and the implementing regulation promulgated thereunder, and the Federal Trade Commission Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that J. H. Goldberg Furniture Co., Inc., a corporation and Nathan Goldberg, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and regulation, 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 J. H. Goldberg Furniture Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 96 North Street, Rochester, New York.

The J. H. Goldberg Furniture Co., Inc., owns and operates a retail furniture store known as The Furniture Market located at the same address.

Respondent Nathan Goldberg is the secretary-treasurer of the corporate respondent. He formulates, directs and controls the policies, acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the sale of furniture and electrical appliances to the public.

PAR. 3. In the ordinary course and conduct of their business, as aforesaid, respondents regularly extend and arrange for the extension of consumer credit, as "consumer credit" is defined in Regulation Z, the implementing regulation of the Truth in Lending Act, duly promulgated by the Board of Governors of the Federal Reserve System.

PAR. 4. Subsequent to July 1, 1969, respondents, in the ordinary course of their business, as aforesaid, and in connection with their credit sales, as "credit sale" is defined in Regulation Z, have caused

and are causing customers to execute retail installment contracts, hereinafter referred to as "the contract."

By and through the use of the contract, respondents:

1. Failed in some instances to disclose the "annual percentage rate" accurately to the nearest quarter of one percent, in accordance with Section 226.5(b)(1) of Regulation Z.

2. Failed in some instances to disclose the "annual percentage rate" as required by Section 226.8(b)(2) of Regulation Z.

3. Failed in some instances to disclose the due date of the first payment, or otherwise failing to disclose the number, amount and due dates or periods of payments scheduled to repay the indebtedness, prior to the consummation of the transaction and the "total of payments" as required by Section 226.8(b)(3) of Regulation Z.

4. Failed in some instances to disclose the "unpaid balance of cash price" as required by Section 226.8(c)(3) of Regulation Z.

5. Failed in some instances to disclose the "amount financed" as required by Section 226.8(c)(7) of Regulation Z.

6. Failed to disclose the correct "deferred payment price" as required by Section 226.8(c)(8)(ii) of Regulation Z.

PAR. 5. Pursuant to Section 103(k) of the Truth in Lending Act, respondents' aforesaid failures to comply with the provisions of Regulation Z constitute violations of that Act and, pursuant to Section 108 thereof, respondents have thereby violated the Federal Trade Commission Act.

DECISION AND ORDER

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

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

The Commission having considered the agreement and having ac-

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

1. Respondent J. H. Goldberg Furniture Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 96 North Street, Rochester, New York.

Respondent Nathan Goldberg is the secretary-treasurer of said corporation. He formulates, directs and controls the policies, acts and practices of said corporation and his address is the same as that of said corporation.

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

ORDER

It is ordered, That respondents J. H. Goldberg Furniture Co., Inc., a corporation, and Nathan Goldberg individually and as an officer of said corporation, and respondents' agents, representatives, and employees, directly or through any corporate or other device, in connection with any extension or arrangement for the extension of consumer credit, or any advertisement to aid, promote or assist directly or indirectly any extension of consumer credit as "consumer credit" and "advertisement" are defined in Regulation Z (12 CFR Part 226) of the Truth in Lending Act (Public Law 90–321, 15 U.S.C. 1601 *et seq.*), do forthwith cease and desist from:

1. Failing to disclose the annual percentage rate accurately to the nearest quarter of one percent, in accordance with Section 226.5(b)(1) of Regulation Z.

2. Failing to disclose the annual percentage rate as required by Section 226.8(b)(2) of Regulation Z.

3. Failing to disclose the due date of the first payment, or otherwise failing to disclose the number, amount and due dates or periods of payments scheduled to repay the indebtedness, prior to the consummation of the transaction and the "total of payments" as required by Section 226.8(b)(3) of Regulation Z.

4. Failing to disclose the "unpaid balance of cash price" as required by Section 226.8(c)(3) of Regulation Z.

5. Failing to disclose the "amount financed" as required by Section 226.8(c)(7) of Regulation Z.

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6. Failing to disclose the correct "deferred payment price" as required by Section 226.8(c)(8)(ii) of Regulation Z.

7. Failing, in any consumer credit transaction or advertisement, to make all disclosures required by Sections 226.4, 226.5, 226.6, 226.7, 226.8, and 226.10 of Regulation Z, in the manner, form and amount prescribed therein.

It is further ordered, That respondent deliver a copy of this order to cease and desist to all present and future personnel of respondents engaged in the consummation of any extension of consumer credit or in any aspect of preparation, creation, or placing of advertising, and that respondent secure a signed statement acknowledging receipt of said order from each such person.

It is further ordered, That respondents notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent, such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

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

IN THE MATTER OF

CONNELL RICE & SUGAR CO., INC., ET AL.

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

Docket 8736. Complaint, May 8, 1967—Decision, Mar. 29, 1971

Order dismissing complaint as to respondent Standard Brands, Inc. Consent order as to respondent Connell Rice & Sugar Co., Inc., and Foremost-McKesson, Inc., published in 75 F.T.C. 305, 316.

ORDER DISMISSING COMPLAINT AS TO RESPONDENT STANDARD BRANDS INCORPORATED

On February 20, 1969, by way of consent settlement, the Commission issued its Decision and Order in Disposition of this Proceeding as to respondent Connell Rice & Sugar Co., Inc. [75 F.T.C. 305]. On the same date, also by way of consent settlement, the Com-

mission issued its Decision and Order in Disposition of this Proceeding as to respondent Foremost-McKesson, Inc. [75 F.T.C. 316].

The Commission being of the opinion that further proceedings herein would not be warranted.

It is ordered, That the complaint as to respondent, Standard Brands Incorporated, be, and it hereby is, dismissed.

By the Commision. Commissioner MacIntyre does not concur in this action by the Commission.

IN THE MATTER OF

AMSTAR CORPORATION*

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

Docket C-1886. Complaint, Mar. 30, 1971—Decision, Mar. 30, 1971

Consent order requiring a business engaged in the manufacture and sale of sugar for retail and commercial purposes with headquarters in New York City to cease violating Sec. 2(d) of the Clayton Act by paying advertising and promotional allowances to certain of its customers while not making such payments available to all its customers who compete with the favored customers in the sale of its products.

COMPLAINT

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

PARAGRAPH 1. Respondent Amstar Corporation is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware with its princpal office and place of business located at 120 Wall Street, New York, New York; that on October 28, 1970, American Sugar Company changed its name to Amstar Corporation by amendment of its Certificate of Incorporation.

PAR. 2. Respondent is now, and for many years has been, engaged

*Formerly named American Sugar Company.

in the business of manufacturing and selling sugar for retail and commercial purposes. Respondent corporation's net sales and operating revenues for the year ending June 30, 1970, amountd to $551,483,000. For the calendar year ending on December 31, 1968, the net sales and operating revenues amounted to $502,629,000.

PAR. 3. Respondent has refineries, warehouses, beet sugar factories, and plants located in various States of the United States from which points its sugar products are shipped to customers located in other States of the United States and the District of Columbia for resale and use within the United States. Respondent is now, and for some time past has been, engaged in commerce, as "commerce" is defined in the Clayton Act, as amended.

PAR. 4. Respondent, in the course and conduct of this business, has been, and is now, in competition with other corporations, individuals, partnershps, and firms engaged in manufacturing, selling, and distributing similar products in commerce between and among the various States of the United States and the District of Columbia. Many of the respondent's purchasers are competitively engaged in the resale of its products at wholesale and retail in various cities and areas where said purchasers respectively carry on their business.

PAR. 5. On April 1, 1970, and subsequent thereto, in the course and conduct of its business in commerce, respondent corporation inaugurated a plan whereby it paid or contracted for the payment of something of value to or for the benefit of some of its customers or purchasers as compensation or in consideration for services or facilities furnished by or through such customers or purchasers in connection with the handling, offering for sale, or sale of products sold to them by said respondent corporation, and such payments were not made available on proportionally equal terms to all other customers competing in the distribution of its products.

PAR. 6. On April 1, 1970, respondent inaugurated a so-called "Merchandising Performance Agreement Plan No. 364" for its customers located in Wisconsin and the Upper Peninsula of Michigan whereby it paid certain amounts of money per month to such customers upon receipt of proof-of-performance in connection with advertising and display of Domino Granulated Sugar packed in five-pound and/or ten-pound bags (12-5 lb., 6-10 lb. bundles). While the plan or agreement did not indicate the basis on which the amount payable to each customer was to be determined, respondent proportionalized the amount on the basis of the customer's generalized market share of dry grocery business for the year 1969 in the territory covered by the agreement. Because the dollar amount had no necessary relation-

ship to the customer's purchases of sugar from respondent during the performance period, such a plan was nonproportional.

PAR. 7. The plan described in Paragraph Six was offered to direct buyers of sugar and also to those wholesalers who supplied sugar to indirect-buying retailers The agreement did not direct or indicate to the wholesalers the precise method or basis on which they were to proportionlize, and such wholesalers were free to choose any method of proportionalization. With different wholesalers selecting a different basis for portionalizing, the plan (as between the customers of different wholesalers) was nonproportional. While the wholesaler was obligated to pass on the whole amount of its allowance to those of its customers who performed, the performing customers of the wholesaler received different amounts than those who were direct-buying customers of the respondent, as each wholesaler was permitted to use a different method of proportionalization.

PAR. 8. The acts and practices of the respondent corporation as alleged above, violate subsection (d) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act (U.S.C., Title 15, Section 13).

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of subsection (d) of Section 2 of the Clayton Act, as amended; and

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

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

1. Respondent Amstar Corporation is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 120 Wall Street, New York, New York; and

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

ORDER

It is ordered, That the respondent, Amstar Corporation, a corporation, and its officers, agents, representatives and employees, successors and assigns, directly or through any corporate or other device, in or in connection with the sale of sugar and other related products, in commerce, as "commerce" is defined in the Clayton Act, as amended, do forthwith cease and desist from:

> Paying or contracting for the payment of anything of value to, or for the benefit of, any customer of respondent as compensation for or in consideration of advertising or promotional services or any other service or facility furnished by or through such customer in connection with the handling, sale or offering for sale of said products, unless such payment or consideration is made available on proportionally equal terms to all other customers, including customers who do not purchase directly from respondent, who compete with such favored customers in the distribution or resale of such products.

It is further ordered, That respondent corporation deliver a copy of this order to cease and desist to each of its operating divisions and to all present personnel of respondent engaged in the sale of respondent's sugar and other related products within the United States.

It is further ordered, That respondent notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent which may affect compliance obligation arising out of the order, including such changes as dissolution, assignment, or sale resulting in the emergence of a successor corporation or the creation or dissolution of subsidiaries, except that if respondent has less than thirty (30) days prior knowledge of a proposed change, respondent shall notify the Commission as promptly as possible, and in no event more than thirty (30) days after respondent has such knowledge.

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

Complaint

IN THE MATTER OF

LONDON CREDIT AND DISCOUNT CORPORATION, ET AL.

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

Docket 8812. Complaint, Mar. 30, 1970—Decision, Apr. 1, 1971*

Consent order requiring three affiliated Mentor, Ohio, debt collection agencies to cease making various false representations in recruiting employees, making various false representations to clients/creditors as to how their accounts are handled, misrepresenting that respondents have a "Medical Service Division," using threats of legal action and simulated legal documents was originated by an independent auditing agency, using deceptive questionnaires, and implying that failure to pay respondents will injure debtor's reputation.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that London Credit and Discount Corporation, Fidelity Credit Acceptance Corporation, Security Credit Acceptance Corporation and American Management and Business Service Corporation, corporations, and the individuals Richard B. Rosenkeimer, the founder and principal shareholder of London Credit and Discount Corporation, Fidelity Credit Acceptance Corporation, and Security Credit Acceptance Corporation; George M. Hyde, president and treasurer of American Management and Business Service Corporation and Security Credit Acceptance Corporation; Edward L. Weisbarth, president and treasurer of Fidelity Credit Acceptance Corporation; Kathryn R. Tibbetts, vice president and secretary of Fidelity Credit Acceptance Corporation and London Credit and Discount Corporation and a shareholder of Security Credit Acceptance Corporation and London Credit and Discount Corporation; H. Frank Gill, president, treasurer and shareholder of London Credit and Discount Corporation and sales manager of Fidelity Credit Acceptance Corporation; William C. Childs, vice president, secretary and sales manager of Security Credit Acceptance Corporation, and shareholder of London Credit and Discount Corporation; Robert F. Hitzel, president and treasurer and shareholder of Security

*Reported as amended by Hearing Examiner's order of June 22, 1970, by amending Paragraphs Ten and Eleven.

Credit Acceptance Corporation; and Sheldon H. Cyphers, sales manager of London Credit and Discount Corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. London Credit and Discount Corporation (London) is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its principal office and place of business located at 10 West South Street, in the city of Painesville, State of Ohio. It was initially incorporated under the name London Credit Associates.

Respondents Richard B. Rosenkeimer, George M. Hyde, Kathryn R. Tibbetts, H. Frank Gill, Sheldon H. Cyphers, and William C. Childs are individuals and are either the founder, officers, managers, principal shareholders or directors of the corporation respondent. They formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. The address of Richard B. Rosenkeimer is 190 Liberty Street, Painesville, Ohio. The address of George M. Hyde is 8413 Mentor Avenue, Mentor, Ohio. The addresses of Kathryn R. Tibbetts, H. Frank Gill, and Sheldon H. Cyphers are 10 West South Street, Painesville, Ohio. The address of William C. Childs is 8430 Mentor Avenue, Mentor, Ohio.

Fidelity Credit Acceptance Corporation (Fidelity) is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio. This corporation was initially incorporated under the name United States Fidelity Acceptance Corporation. It has its principal office and place of business at 8407–8411 Mentor Avenue, Mentor, Ohio.

Respondents Richard B. Rosenkeimer, George M. Hyde, Edward L. Weisbarth, Kathryn R. Tibbetts, and H. Frank Gill are individuals and are either the founder, officers, managers, principal shareholders or directors of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. The address of Edward L. Weisbarth is 8407–8411 Mentor Avenue, Mentor, Ohio.

Security Credit Acceptance Corporation (Security) is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with the principal office and place of business located at 8430 Mentor Avenue, in the city of Mentor, State of Ohio.

Respondents Richard B. Rosenkeimer, George M. Hyde, Kathryn R. Tibbetts, William C. Childs, and Robert F. Hitzel are individuals and are either the founder, officers, managers, principal shareholders or directors of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. The address of Robert F. Hitzel is 8430 Mentor Avenue, Mentor, Ohio.

American Management and Business Service Corporation (American Management) is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its principal office and place of business located at 8413 Mentor Avenue in the city of Mentor, State of Ohio.

Respondent George M. Hyde is an individual and officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth, and by and through and in connection with this corporate respondent he is responsible for the executive and management decisions of the corporate respondents, London Credit and Discount Corporation, Fidelity Credit Acceptance Corporation, and Security Credit Acceptance Corporation.

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

PAR. 2. Respondents are now, and for some time last past have been, engaged in the business of operating collection agencies under the names London Credit and Discount Corporation, Fidelity Credit Acceptance Corporation, and Security Credit Acceptance Corporation. Respondents solicit and receive alleged delinquent accounts for collection from retail businesses, professional people and others located in various States.

American Management and Business Service Corporation assists in executive and personnel recruiting, wage and salary administration, business equipment leasing, public relations counseling, sales development and promotion, and advertising programming and servicing for Fidelity Credit Acceptance Corporation and Security Credit Acceptance Corporation and formerly to London Credit and Discount Corporation, who in turn, pay or have paid substantial fees to American Management Business Corporation for the aforesaid services. In connection with the furnishing of the aforesaid services, American Management recruits brokers/salesmen by publishing or causing to be published advertisements in various newspapers throughout the United States and mails or causes to be mailed promotional material to prospective clients/creditors to provide leads to brokers/salesmen of Fidelity and Security.

PAR. 3. In the course and conduct of their aforesaid businesses, respondents have been engaged, and are now engaged, in extensive commercial intercourse in commerce among and between the various States of the United States. From their aforesaid places of business in the State of Ohio, respondents transmit to and receive from their clients/creditors in various other States of the United States, money, money orders, checks, letters, contracts, forms and other written instruments through the United States mails. Respondents also transmit through the United States mails across State lines, letters, forms, and various commercial documents to alleged debtors of their clients/creditors, and receive letters, money, money orders, checks and other written instruments from said alleged debtors located in the various States. Thus, respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Respondents, in the course and conduct of their businesses, have formulated, developed and carried out a plan for the purpose of attracting and acquiring salesmen, referred to by them as "brokers," for the purpose of soliciting alleged delinquent accounts from various sources.

In furtherance of said plan, respondents have disseminated, and now disseminate or cause to be disseminated, classified advertisements in newspapers of general and interstate circulation and in newspapers throughout the United States and have made statements and representations respecting pay and allowances, designed and intended to induce individuals to apply as brokers/salesmen in respondents' organizations in reliance thereon.

If an interested individual responds to one of respondents' advertisements, he receives from respondents correspondence, brochures and promotional materials containing additional statements and representations respecting pay and allowances.

In the aforesaid manner, the respondents have represented, and are now representing, directly or by implication, that:

1. Persons employed by respondents are guaranteed $150 weekly to help them get started as brokers/salesmen.

2. Brokers/salesmen will receive a drawing account of at least $200 weekly after they get into production.

3. The $150 weekly guarantee is paid to all persons employed by respondents as brokers/salesmen without condition or limitation.

PAR. 5. In truth and in fact:

1. Only approximately 20 percent of the total active brokers/salesmen of all three corporate respondents' debt collection agencies ever

received the $150 weekly earnings guarantee and in most instances they received said earnings guarantee only once.

2. Brokers/salesmen in only a few instances receive a drawing account of at least $200 weekly after they get into production.

3. The $150 weekly guarantee is not paid to all persons employed by respondents as brokers/salesmen without condition or limitation, but is paid only to those who furnish respondents 200 accounts per week for collection.

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

PAR. 6. In the course and conduct of their businesses, and for the purpose of soliciting alleged delinquent accounts, respondents have made and are now making numerous statements and representations in promotional material, brochures and application and agreement forms and in the oral sales presentations by their representatives to prospective clients/creditors respecting fees, charges, discounting of accounts, remission of money collected and accounting and services.

By and through the use of the aforesaid statements and representations contained in said promotional material, brochures and forms, separately and in connection with the oral statements and representations of their salesmen and representatives, the respondents have represented, and are now representing, directly or by implication that:

1. Respondents' 30 percent, or any other stated percentage, collection fee is based on the actual amount collected on the alleged delinquent account.

2. Respondents' $3 minimum charge applies only on accounts that are collected either fully or partially by respondents and then only when the stated percentage charge would actually be less than the $3 minimum charge.

3. Alleged delinquent accounts will be purchased and discounted by respondents for 85¢ on the dollar for value or for some specified percentage of the face amount of said accounts without recourse and with no further obligation, financial or otherwise, on the part of the creditor.

4. Monies collected by respondents from alleged delinquent accounts of clients/creditors will be remitted by respondents to clients/creditors immediately upon receipt.

5. Periodic progress reports will be rendered by respondents to their clients/creditors concerning the status of alleged delinquent accounts assigned to respondents for their collection.

6. Respondents have a "Medical Service Division" which is spe-

cially staffed, established and operated to service delinquent accounts assigned by members of the medical profession.

PAR. 7. In truth and in fact:

1. Respondents 30 percent, or any other stated percentage collection fee, is not based on the actual amount collected on alleged delinquent accounts, but, on the contrary, respondents' 30 percent, or any other stated percentage collection fee is based on the face amount of the alleged delinquent account.

2. Respondents' $3 minimum charge applies as soon as respondents make a collection on at least one individual account of a client/creditor, and said charge applies both to that account, regardless of the amount collected, and to each and every other individual account of that client/creditor; and payment of such minimum charge as to each and every such account is thereupon due to respondents, regardless of whether respondents have collected or thereafter collect any amount on any of the remaining individual accounts.

3. Few alleged delinquent accounts are ever purchased and discounted by respondents for 85 cents on the dollar face value or for some specified percentage of the face amount of said accounts without recourse and with no further obligation, financial or otherwise, on the part of the creditor. Through subterfuge and misrepresentation respondents are able to acquire said accounts on a collection fee basis.

4. Monies collected by respondents from alleged delinquent accounts of clients/creditors are not remitted by respondents to clients/creditors immediately upon receipt. Respondents have refused to remit such money for the reason that clients/creditors have failed to make a written request for it at the end of a 180 day period. This condition is not clearly revealed and is asserted by respondents only through a devious interpretation of the so-called "Application and Agreement" entered into by the parties.

5. Periodic progress reports are seldom rendered by respondents to their clients/creditors.

6. Respondents, or any of them, do not have a "Medical Service Division," specially staffed, established and operated to service delinquent accounts of members of the medical profession.

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

PAR. 8. Respondents, in the course and conduct of their aforesaid businesses, and for the purpose of inducing the payment of alleged delinquent accounts, transmit and mail, and cause to be transmitted and mailed, to alleged delinquent debtors, various form let-

ters and other printed material containing statements and representations respecting respondents' business organization, the institution of legal action, and the origin, source and purpose of demands and credit status.

In the aforesaid manner, respondents have represented and now represent, directly or by implication, that:

1. Respondents' organizations include bona fide functional and operational divisions, departments and offices with certain named employees serving in certain stated capacities in those divisions, departments and offices.

2. Respondents' will institute legal action to effect judgment, garnishment and/or attachment against an alleged debtor to collect an alleged delinquent account.

3. Certain forms such as, for example, one headed "Final Notice To" and used by respondents to attempt to collect alleged delinquent accounts from alleged debtors are bona fide and official legal process forms issued or approved by a court of law or other authority.

4. A certain form letter from "A. M. Abbott, Examiner," used by respondents to obtain information from an alleged debtor, is from an independent auditing agency, or an independent bona fide office or official who is requesting credit information from the alleged debtor.

5. Respondents are requesting credit information from third parties or from the alleged debtor prior to the extension of credit to an alleged debtor.

6. Failure by the alleged debtor to make payments to the corporate respondents' collection agencies will result in harm to the alleged debtor's reputation, impairment of his credit standing and cause embarassment, fear and concern from inquiries that will be made about him.

PAR. 9. In truth and in fact:

1. Respondents' organizations do not include bona fide functional and operational divisions, departments and offices with named employees serving in stated capacities in those divisions, departments and offices. Departments, divisions and offices designated, for example, as "Liquidation Division," "Legal Disposition Official," "Collection Supervisor," are not bona fide functional and operational departments, divisions, offices and titles; certain names on form letters, such as "K.L. Morgan," "R.B. Powell," and "N.R. Evans," are fictitious.

2. Respondents do not institute legal action to accomplish the collection of alleged debts but, on the contrary, the only action taken to

collect alleged delinquent accounts is to mail form letters which threaten legal action.

3. Certain forms used by respondents in attempting to collect alleged delinquent accounts are not bona fide and official legal process forms issued or approved by a court of law or other authority. But, on the contrary, such forms are simulated legal process forms and are wholly private in their origin.

4. An independent auditing agency, or an independent and bona fide office or official is not requesting credit information from the alleged debtor. The certain form letter from "Office of Examiner, A.M. Abbott, Examiner," sent to alleged debtors is not from an independent auditing agency, nor from a bona fide office or official but, on the contrary, said form letter is prepared and mailed by respondents.

5. Form letters sent by respondents to third parties and/or alleged debtors are not for the purpose of obtaining credit information prior to the extension of credit to alleged debtors but, on the contrary, are forms designed and intended to obtain information about the alleged debtor without disclosing the real purpose of the inquiry.

6. Respondents perform no credit reporting services and consequently make no reports, favorable or unfavorable, that would either enhance or impair an alleged debtor's credit standing and harm his reputation nor do respondents make any inquiries that would cause the alleged debtor embarrassment, fear or concern. But, on the contrary, respondents' form letters which are sent through the mails to alleged debtors are designed and calculated to threaten alleged debtors into making payments to respondents on their alleged delinquent accounts by intimidation and coercion.

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

PAR. 10. By and through the use of the terms "Credit Acceptance" and "Credit and Discount" as part of the corporate names of London Credit and Discount Corporation, Fidelity Credit Acceptance Corporation, and Security Credit Acceptance Corporation, respondents have represented and now represent, directly or by implication that said corporate respondents are engaged in the business of operating finance companies which involves, for example, the purchasing, accepting or otherwise acquiring retail installment contracts, obligations, or credit agreements made by and between other parties, or any interest therein; and operating small loan companies which involves, for example, the making of loans or extending credit to individuals and charging, contracting for or receiving on such loans a rate of interest, discount or consideration.

PAR. 11. In truth and in fact, London Credit and Discount Corporation, Fidelity Credit Acceptance Corporation, and Security Credit Acceptance Corporation are not engaged in the businesses of operating finance companies and small loan companies as described in Paragraph Ten above. To the contrary, respondents' London, Fidelity and Security are essentially in the business of soliciting alleged delinquent accounts for collection on a percentage or minimum fee basis.

Therefore, the use of the terms "Credit Acceptance" and "Credit and Discount" in respondents trade names as set forth in Paragraph Ten hereof were and are false, misleading and deceptive.

PAR. 12. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the public, including prospective brokers/salesmen and brokers/salesmen, alleged debtors, prospective clients/creditors and clients/creditors, into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of respondents' services by creditors and the payment of accounts by alleged debtors to respondents, by reason of erroneous and mistaken belief.

The use by respondents of the aforesaid statements and representations in connection with the recruitment of brokers/salesmen to sell respondents' services, has had, and now has, the capacity and tendency to mislead prospective brokers/salesmen into the erroneous and mistaken belief that such statements and representations were, and are, true and to induce them to respond to such advertisements and to enter into respondents' employment in reliance thereon.

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

DECISION AND ORDER

The Commission having issued its complaint on March 30, 1970, charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act, and the respondents having been served with a copy of that complaint; and

The Commission having duly determined upon motion certified to the Commission that, in the circumstances presented, the public interest would be served by waiver here of the provision of Section

2.34(d) of its Rules that the consent order procedure shall not be available after issuance of complaint; and

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

The Commission having considered the aforesaid agreement and having determined that it provides an adequate basis for appropriate disposition of this proceeding, the agreement is hereby accepted, the following jurisdictional findings are made, and the following order is entered:

1. Respondent London Credit and Discount Corporation 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 in Mentor, Ohio.

Respondents Kathryn R. Tibbetts and William C. Childs are officers, directors or shareholders of said corporation and formulate, direct and control the policies, acts and practices of said corporation, and their address is the same as that of said corporation.

Respondent Fidelity Credit Acceptance Corporation 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 in Mentor, Ohio.

Respondents Edward L. Weisbarth, Kathryn R. Tibbetts, Robert F. Hitzel, and George M. Hyde are officers, directors or shareholders of said corporation and formulate, direct and control the policies, acts and practices of said corporation, and their address is the same as that of said corporation.

Respondent Security Credit Acceptance Corporation 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 in Mentor, Ohio.

Respondents Robert F. Hitzel, William C. Childs, George M. Hyde and Kathryn R. Tibbetts are officers, directors or shareholders of said corporation and formulate, direct and control the policies, acts and practices of said corporation, and their address is the same as that of said corporation.

2. The Federal Trade Commission has jurisdiction of the subject

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

ORDER

It is ordered, That respondents London Credit and Discount Corporation, Fidelity Credit Acceptance Corporation, and Security Credit Acceptance Corporation, corporations, and their officers, and George M. Hyde, Edward L. Weisbarth, Kathryn R. Tibbetts, H. Frank Gill, William C. Childs, Robert F. Hitzel and Sheldon H. Cyphers, individually and as either officers, managers, principal shareholders, directors, or founder of said corporations, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of any service or printed matter for use in the collection of claims or accounts, the solicitation of accounts or contracts therefor, or the collection of accounts, or any other product or service, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that respondents guarantee $150 weekly earnings or any other amount to brokers/salesmen employed to solicit accounts for collection by respondents without clearly and conspicuously revealing in immediate connection therewith (a) all of the terms, conditions and limitations necessary for the receipt of the guaranteed weekly earnings and (b) the actual number and percentage of those brokers/salesmen employed by each corporate respondent during the preceding calendar year who qualified and received the guaranteed weekly earnings and the average period of time these brokers/salesmen continued to receive the guaranteed weekly earnings, in relation to the total number of brokers/salesmen employed by each corporate respondent during the preceding calendar year.

2. Representing, directly or by implication, that brokers/salesmen employed to solicit accounts for collection by respondents will receive earnings in any specified amount without clearly and conspicuously revealing in immediate connection therewith the actual number and percentage of those brokers/salesmen employed by each corporate respondent during the preceding calendar year who qualified and received the represented earnings and the average period of time these brokers/salesmen continued to receive such earnings, in relation to the total num-

ber of brokers/salesmen employed by each corporate respondent during the preceding calendar year.

3. Representing, directly or by implication, that brokers/salesmen employed to solicit accounts for collection by respondents will receive a drawing account of at least $200 weekly or any other amount after the brokers/salesmen get into production without clearly and conspicuously disclosing, orally and in writing in immediate connection therewith (a) all of the terms, conditions and limitations applicable thereto, and (b) the actual number and percentage of those brokers/salesmen employed by each corporate respondent during the preceding calendar year who qualified and received a weekly drawing account and the average period of time these brokers/salesmen continued to receive the weekly drawing account, in relation to the total number of all brokers/salesmen employed by each corporate respondent during the preceding calendar year.

4. Misrepresenting, in any manner, the earnings, compensation or profits of their brokers/salesmen employed to solicit accounts for collection by respondents.

5. Representing, directly or by implication, that brokers/salesmen employed to solicit accounts for collection by respondents will realize earnings, compensation, profits or income of any stated amounts or percentage of amounts without clearly and conspicuously revealing in immediate connection therewith all of the terms, conditions and limitations necessary for the receipt and retention of earnings, compensation, profits or income of any stated amounts or percentage of amounts.

6. Representing, directly or by implication, that the percentage fee to be charged or retained by respondents is based on the actual amount collected from an account or accounts, unless in every instance the percentage fee to be charged or retained by respondents is based on the actual amount collected.

7. Failing to clearly and conspicuously disclose, orally and in writing, to a client/creditor or prospective client/creditor (a) that the percentage fee to be charged or retained by respondents is based on the full face amount of an account to be collected by respondents and that funds are not remitted to the client/creditor until respondents have received their entire stated fee; (b) or any other basis upon which fees are charged, retained or remitted.

8. Representing, directly or by implication, that respondents' $3 minimum charge or any other minimum charge applies only

when some type of collection is made on alleged delinquent accounts assigned to respondents by a client/creditor, unless in every instance respondents' $3 minimum charge or any other minimum charge does apply only when some type of collection is made on alleged delinquent accounts assigned to respondents by a client/creditor.

9. Failing to clearly and conspicuously disclose, orally and in writing, to a client/creditor or prospective client/creditor that as soon as respondents make a collection on at least one individual account of a client/creditor, the basic $3 minimum charge, or any other stated minimum charge, thereupon applies both to that account, regardless of the amount collected, and to each and every other individual account of that client/creditor; and payment of such minimum charge as to each and every such account is thereupon due to respondents, regardless of whether respondents have then collected or thereafter collect any amount on any of the remaining individual accounts.

10. Misrepresenting, in any manner, the terms, conditions or basis upon which a stated charge or percentage fee is applicable to an account or accounts.

11. Representing, directly or by implication, that respondents discount alleged delinquent accounts of prospective clients/creditors or clients/creditors on an immediate cash basis, without clearly and conspicuously disclosing in immediate connection therewith, orally and in writing, the number, percentage and dollar amounts of all accounts discounted on an immediate cash basis during the preceding calendar year in relation to the total number of accounts processed for collection by respondents over the same period of time, as to which the clients/creditors requested said discounting.

12. Failing to clearly and conspicuously disclose to a client/creditor, in every instance when a client/creditor signs an authorization waiving the preliminary audit of his accounts, (a) that he loses whatever opportunity he may have to discount his accounts, or any of them, on an immediate cash basis; (b) all accounts thereby will be processed on a percentage fee or minimum charge; and (c) all other terms, conditions and limitations in connection therewith.

13. Representing, directly or by implication, that remittances of monies collected by respondents will be made to the creditor immediately upon their receipt by respondents or within a specified period of time, unless in every instance respondents do

remit monies collected by them to the creditor immediately upon their receipt by respondents or within the period of time so specified.

14. Failing to remit all monies due clients/creditors or any other person or persons lawfully entitled to receive said monies within 180 days of the date of execution of the Application-Agreement.

15. Failing to remit to all clients/creditors on whose behalf collections have been made in whole or in part and to whom full remittance has not been made as of the effective date of this order, such sums as would be due upon timely written application by the clients/creditors.

16. Representing, directly or by implication, that reports as to the status of or the progress made in the collection of accounts will be made to respondents' clients/creditors, unless in every instance said reports as to status of or the progress made in the collection of accounts are made to respondents' clients/creditors.

17. Representing, directly or by implication, that respondents, or any of them, have a "Medical Service Division" which is specially staffed, established and operated to service delinquent accounts assigned by members of the medical profession or any other division, branch or organizational unit specially staffed and operated to service a particular category of accounts or perform any other functions in connection therewith, unless in every instance respondents do have such divisions, branches or organizational units which are specially staffed, established and operated to service such accounts and perform other functions in connection therewith.

18. Using any names, organizational designations or descriptions in connection with their businesses which are fictitious or misrepresenting, directly or by implication, the nature or size of their businesses.

19. Using threats of legal proceedings in an attempt to gain payment of accounts, when in fact legal proceedings are not to be employed as a collection device.

20. Using any unofficial or unauthorized document which simulates or is represented to be a document authorized, issued or approved by a court of law or any other official or legally constituted or authorized authority, or misrepresenting, in any manner, the course, authorization or approval of any document.

21. Representing, directly or by implication, that any letter,

demand, inquiry or other communication originated by respondents was originated by an independent auditing agency or any other person, firm or corporation.

22. Using any form, questionnaire or other material, printed or written, for the purpose of obtaining credit information, which does not clearly and conspicuously reveal that the purpose for which the information is requested is that of obtaining credit information concerning alleged delinquent debtors or in the collection of, or attempting to collect alleged delinquent accounts.

23. Representing, directly or by implication, that failure of an alleged debtor to make payments to respondents will result in harm to said debtor's reputation, impairment of his credit standing or cause embarrassment, fear or concern from inquiries that will be made about him.

24. Including in any of respondents' contracts any clause which is directly or indirectly in conflict with any provision of this order.

It is further ordered, That respondents shall institute a program of compliance for brokers/salesmen or other persons employed to solicit accounts for collection by respondents to insure that said brokers/salesmen or other persons employed to solicit accounts for collection by respondents observe the terms of this order. Said program of compliance shall be carried out in the following manner, to wit:

(a) Respondents shall require each present and future broker/salesman or other person employed to solicit accounts for collection by respondents, as a condition of undertaking and continuing employment, to sign and return to respondents a form clearly stating his intention to refrain from deceptive representations or deceptive means to solicit accounts for collection by respondents, including but not limited to charging of percentage fees, application of minimum charges, discounting of accounts or waiver thereof, remittances of monies collected, status or progress reports or divisional or organizational structure of respondents' business.

(b) Respondents shall maintain and make available records relative to complaints received by respondents involving the acts and practices prohibited by this order and which describe steps taken by respondents to investigate and dispose of said complaints. Said records shall be maintained for at least 24 months.

It is further ordered, That the respondent corporations shall forth-

with distribute a copy of this order to each of their operating divisions.

It is further ordered, That the complaint served on American Management and Business Service Corporation and Richard B. Rosenkeimer, hereinbefore named as respondents in the caption to this proceeding, said complaint having been withdrawn from adjudication by the Commission by order dated November 10, 1970, be and the same is hereby dismissed, without prejudice to the Commission to institute such future proceedings against said named parties as the Commission in its discretion may deem warranted.

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

BULOVA WATCH COMPANY, INC.

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

Docket C-1887. Complaint, Apr. 1, 1971—Decision, Apr. 1, 1971

Consent order requiring a New York City manufacturer and distributor of watch and clock products to cease fixing the resale prices of its products, refusing to extend guarantees to certain purchasers, refusing to sell to retailers who discount, refusing to sell Bulova brand watches to retailers who refuse to handle other respondent products, and requesting its customers in nonfair trade States to report discounting dealers.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act (Title 15 U.S.C. Section 41 *et seq.*) and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the party identified in the caption hereof and more particularly described and referred to hereinafter as respondent, has violated the provisions of Section 5 of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the interest of the public, hereby issues its complaint stating its charges as follows:

PARAGRAPH 1. Respondent Bulova Watch Company, Inc. (hereafter sometimes referred to as "Bulova"), is a corporation organized