IN THE MATTER OF

E. G. REINSCH, INC., ET AL.*

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

Docket 8751. Complaint, Nov. 30, 1967—Decision, Sept. 23, 1968

Order dismissing the complaint with respect to two corporate and two individual respondents and denying motion to dismiss complaint as to two other individuals.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that E. G. Reinsch, Inc., a corporation; Emerson G. Reinsch, individually and as owner of apartment developments known as Dorchester Apartments and Dorchester Towers and as part owner of apartment developments known as Arlington Boulevard Apartments and Oakland Apartments; Dolores G. Reinsch, individually and as part owner of apartment developments known as Arlington Boulevard Apartments and Oakland Apartments; Robert E. Latham and Henry S. Clay, Jr., individually and as trustees for an apartment complex known as Quebec Apartments and Lurein Corporation, a corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. E. G. Reinsch, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Virginia, with their principal office and place of business located at 129 South Irving Street, in the county of Arlington, State of Virginia.

Respondent Emerson G. Reinsch is now and for some time last past has been owner of apartment complexes known as Dorchester Apartments, 2040 Columbia Pike, Arlington, Virginia and Dorchester Towers, 2001 Columbia Pike, Arlington, Virginia and he and respondent Dolores G. Reinsch are now and for some time last past have been owners of apartment complexes known as Arlington Boulevard Apartments, 1500 North 16th Road, Arlington, Virginia and Oakland Apartments, 3710 Columbia Pike, Arling-

* The Commission's order of Jan. 30, 1969, 75 F.T.C. 210, dismissed the complaint with respect to all respondents.

ton, Virginia. Individual respondents Robert E. Latham and Henry S. Clay, Jr., are trustees for an apartment complex known as Quebec Apartments, 4010 Columbia Pike, Arlington, Virginia. Respondent Lurein Corporation, a corporation, is now and for some time last past has been owner of an apartment complex known as Westmont Garden Apartments, 3860 Columbia Pike, Arlington, Virginia. The business address of the aforesaid respondents is 2040 Columbia Pike, Arlington, Virginia.

PAR. 2. The individual respondents named herein as owners or trustees of the aforesaid apartment developments have ultimate responsibility for the management of the developments, including, but not limited to, the rental and advertising thereof. The management of the aforesaid property has been delegated by said owners to respondent E. G. Reinsch, Inc.

Respondent E. G. Reinsch, Inc., is now and for some time last past has been, engaged in the advertising, offering for rent, rental and general management of the aforesaid apartment complexes located in Arlington, Virginia.

PAR. 3. In the course and conduct of their business, respondents have caused rental advertisements for the aforesaid apartment complexes to be published in newspapers and other publications of interstate circulation including, but not limited to, The Washington Post and The Evening Star. Said respondents have performed various acts in commerce relating to the advertising of the aforesaid apartments, such as transmitting payments for published advertisements from their place of business in the State of Virginia to the District of Columbia, and maintain, and at all times mentioned herein have maintained, a substantial course of business in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their aforesaid business, and for the purpose of inducing persons to apply for rental of their apartments, respondents now cause and have caused to be published in newspapers of interstate circulation certain advertisements of which the following is typical and illustrative, but not all inclusive thereof:

ARL., DORCHESTER TOWER APTS.

600-unit high rise and garden. Effics., 1. 2. 3. bedrms., 4 high speed elev., doorman, indiv. control air cond. View of Wash. Balcony. Garage. Dorchester Towers. JA 4–3900 Dorchester Apts., JA 7–0306, 2040 Colombia Pike.

PAR. 5. By and through the use of the above quoted statements and representations, and others of similar import and meaning

but not expressed herein, respondents represent, and have represented, directly or by implication, that such apartments are available for rental to the general public without restrictions or limitations as to race, color or national origin.

PAR. 6. In truth and in fact, such apartments are not available for rental to the general public without restrictions or limitations as to race, color or national origin. Among such restrictions or limitations are that these apartments are not available for rental to applicants who are Negro.

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

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

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

OPINION OF THE COMMISSION

SEPTEMBER 23, 1968

By motion of July 25, 1968, respondents E. G. Reinsch, Inc., Emerson G. Reinsch, Dolores G. Reinsch, and Lurein Corporation, moved to dismiss this complaint with respect to them on the basis of the passage of the Civil Rights Act of 1968 (Public Law 90–284) and their contention that there is now "* * * no real possibility that the alleged restrictions as to race, color and national origin which respondents allegedly failed to reveal in advertising can be continued * * *." Counsel supporting the complaint has filed an answer to the motion expressing no opposition to it, and the hearing examiner has certified the motion to the Commission with his recommendation that it be granted.

This matter comes before us in an atmosphere quite different from that prevailing at the time the complaint issued in this case, November 30, 1967. Not only was the Civil Rights Act of 1968 signed into law on April 11, 1968, containing a Fair Housing Title (Title VIII), but the Attorney General of the United States has

already moved to begin prosecution under that law.[1] In June of this year the Supreme Court of the United States ruled that racial discrimination in the sale of housing violated an 1866 federal statute which declares that all citizens, of every race and color, shall have the same right to purchase and lease real and personal property as is enjoyed by white citizens.[2] Although that law does not provide for participation by the Attorney General or a federal agency, the Court held that it does enable a private citizen to maintain an action and a federal court to fashion an effective, equitable remedy. There is also a growing number of State and local communities who have passed some form of fair housing regulations, including Arlington, Virginia, where the apartments involved in this complaint are located.[3] And there are recent reports of attacks at the State level on discrimination in housing under antitrust and consumer protection laws in the absence of open housing legislation.[4]

In view of this increasing trend toward fair housing, many businessmen involved in selling or leasing houses or apartments have made public announcements of their adherence to a firm policy of open housing. Unfortunately, many others have been noticeably silent on the subject.

It appears that respondents making the subject motion have aligned themselves with those businessmen who have publicly expressed their intent to comply voluntarily with the fair housing legislation. The Commission so interpreted a motion to dismiss in a companion case;[5] and respondents herein, having had the benefit of the Commission's interpretation in that earlier ruling, have chosen to use the identical language for their motion. We conclude that by filing this motion in terms identical to the motion filed in the *Buckingham* case that these respondents are making an unqualified affirmation that they have discontinued and will not resume a policy of restricting the availability of their apartments on the basis of race, color, or national origin. Thus it appears that these respondents will not be pursuing the kind of rental policy which could have rendered the advertising misleading without the disclosure of material limitations, as alleged in

[1] *U.S.* v. *Knippers & Day Real Estate Inc., et al.*, filed July 22, 1968 in the Eastern District of Louisiana.

[2] *Jones* v. *Mayer Co.*, 392 U.S. 409, 20 L Ed. 2d 1189 (June 17, 1968), involving 42 U.S.C. § 1982.

[3] The Arlington County Ordinance took effect in July 1968, and provides for reporting to the federal government any acts which would violate the new federal fair housing law.

[4] See *Wall Street Journal*, May 6, 1968, p. 22.

[5] *First Buckingham Community, Inc., et al.*, Docket 8750, Order Vacating Initial Decision and Dismissing Complaint, May 20, 1968 [73 F.T.C. 938].

the complaint. Presumably, therefore, an order to cease and desist may not now be necessary. Accordingly, the Commission is granting the motion to dismiss filed by respondents E. G. Reinsch, Inc., Emerson G. Reinsch, Dolores G. Reinsch and Lurein Corporation. If it should appear in the future, however, that we are mistaken in this regard, the matter can always be reopened.

A second motion to dismiss was filed on August 16 by the two remaining respondents, Henry S. Clay, Jr., and Robert E. Latham. The basis for this motion is that said respondents "have not and do not now exercise any control over the management and policies of the Quebec Apartments, nor could any control be exercised independently of Emerson G. Reinsch and wife, co-owners of the other undivided one-half interest." The Commission cannot grant this motion to dismiss on the basis of the facts as alleged therein and in the accompanying affidavits. Although respondents Clay and Latham have perhaps chosen not to participate actively in the details of rental management, it nevertheless appears that they have ultimate authority over the rental management as completely as do respondents Emerson and Dolores Reinsch, owners of the other undivided one-half interest. Delegation of authority over the rental policies and participation in the benefits derived therefrom may not absolve these respondents from their responsibility for the acts and practices alleged and challenged in this complaint.

These two respondents previously requested an interlocutory appeal on the issue of the Commission's jurisdiction.[6] The request was based on the grounds that they had "such a remote nexus" and "such an inconsequential connection" with the matters complained of that an immediate resolution of the jurisdictional issue was warranted. The Commission denied that request as premature;[7] and respondents' present motion to dismiss, also based upon their allegedly remote connection with the matters challenged in the complaint, is also denied for substantially the same reason. Paragraph Two of the complaint alleges that the individual respondents "have ultimate responsibility for the management of the developments." A hearing and record evidence will resolve the question of whether these allegations are correct and whether an order is necessary against these parties. The Commission cannot make a formal determination of this issue on the basis of a motion to dismiss.

[6] Request by Respondents Clay and Latham for Permission for an Interlocutory Appeal, D. 8751, Feb. 26, 1968.

[7] Order Denying Request By Respondents Clay and Latham For Permission For An Interlocutory Appeal, D. 8751, May 24, 1968.

Accordingly, we deny this motion to dismiss since it is limited to the single ground of the individual responsibility of these respondents. If they elect to amend the instant motion so as to base it upon the same grounds as set forth in the motion to dismiss by the other respondents herein, then we will consider such amended motion and take whatever action appears appropriate under the circumstances.

The motion to dismiss by respondents Clay and Latham is hereby denied with leave to amend.

Commissioner McIntyre did not participate.

ORDER GRANTING MOTION TO DISMISS BY RESPONDENTS E. G. REINSCH, INC., EMERSON G. REINSCH, DOLORES G. REINSCH, LUREIN CORPORATION AND DENYING MOTION TO DISMISS BY RESPONDENTS HENRY S. CLAY, JR., AND ROBERT E. LATHAM WITH LEAVE TO AMEND

For the reasons stated in the accompanying opinion,

It is ordered, That the motion to dismiss of July 25, 1968, filed by and on behalf of respondents E. G. Reinsch, Inc., Emerson G. Reinsch, Dolores G. Reinsch, and Lurein Corporation be granted;

It is further ordered, That the motion to dismiss of August 16, 1968, filed by and on behalf of respondents Henry S. Clay, Jr., and Robert E. Latham be denied with leave to amend;

It is further ordered, That the complaint in this proceeding be, and it hereby is, dismissed with respect to respondents E. G. Reinsch, Inc., Emerson G. Reinsch, Dolores G. Reinsch, and Lurein Corporation.

By the Commission, with Commissioner MacIntyre not participating.

IN THE MATTER OF

CHARLES WOODWARD TRADING AS AMERICAN EDUCATION CENTER, ETC.

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

Docket C-1429. Complaint, Sept. 23, 1968—Decision, Sept. 23, 1968

Consent order requiring a Miami, Fla., distributor of correspondence courses to cease using trade names which imply his business is a nonprofit educational organization, misrepresenting that his business is accredited, that he provides scholarships, and that instructional material is free.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Charles Woodward, an individual trading and doing business as American Education Center and American Institute of Education, hereinafter referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Charles Woodward is an individual trading and doing business as American Education Center and American Institute of Education with his principal office and place of business located at 2722 North West 6th Street, in the city of Miami, State of Florida. He formulates, directs and controls the acts, practices and policies of said business.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the advertising, offering for sale, sale and distribution of courses of study and instruction in various subjects including journalism, English, photography, sewing and beauty culture. Said courses are pursued by correspondence through the mails.

PAR. 3. In the course and conduct of his business as aforesaid, respondent now causes and for some time last past has caused, his courses, when sold to be shipped from the place of business of the supplier thereof located in Argentina to purchasers thereof located in various other countries of Latin America. Respondent receives from purchasers located in various countries of Latin America, money orders and other instruments of a commercial nature and transmits similar instruments to the supplier of his courses in Argentina. Respondent maintains, and at all times herein has maintained, a substantial course of trade in said courses in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of his aforesaid business, and for the purpose of inducing the purchase of his courses, the respondent has made, and is now making, numerous statements and representations with respect to said courses in advertisements inserted in newspapers and magazines and in brochures and other printed material furnished to prospective purchasers of his courses.

By and through said statements and representations, respond-

ent represents, and has represented, directly or by implication:

1. Through the use of the name "American Education Center" and "American Institute of Education," that respondent's business is a non-profit educational enterprise.

2. That respondent American Education Center is an accredited institution and has been approved or is recognized by appropriate educational authorities in the United States.

3. That all students receive scholarships.

4. That instructional material and equipment are free, the student being required to pay only postage and handling charges.

PAR. 5. In truth and in fact:

1. Respondent's business is not that of a non–profit educational enterprise. Respondent is engaged in the sale of correspondence courses for profit.

2. Respondent American Education Center is not an accredited institution and has not been approved by and is not recognized by any educational authorities in the United States.

3. Students do not receive scholarships.

4. The instructional material and equipment are not free. The sum of money paid by the student includes the cost of the instructional material and equipment as well as the postage and handling.

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 his aforesaid business, and at all times mentioned herein, respondent has been, and is now, in substantial competition in commerce, with corporations, firms and individuals engaged in the sale of courses of study and instruction covering the same or similar subjects.

PAR. 7. The use by respondent of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead prospective purchasers thereof into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of respondent's courses by reason of said erroneous and mistaken belief.

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

DECISION AND ORDER

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

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

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

1. Respondent Charles Woodward is an individual trading and doing business as American Education Center and American Institute of Education, with his office and principal place of business located at 2722 North West 6th Street, in the city of Miami, Florida.

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 Charles Woodward, an individual, trading and doing business as American Education Center and American Institute of Education, or under any other name or names, and respondent's agents, representatives and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of

courses of study and instruction in journalism, English, photography, sewing, beauty culture or any other subject, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the name "American Education Center," American Institute of Education," or any other name or names of similar import or meaning; or representing, in any manner, that respondent's business is other than that of a private commercial venture engaged in the sale of correspondence courses for a profit.

2. Representing, directly or by implication, that respondent's school or his courses have been accredited, approved or recognized by any educational authority in the United States.

3. Misrepresenting in any manner, the status, accreditation or approval of respondent's business, his school or his courses.

4. Representing, directly or by implication, that respondent provides scholarships.

5. Representing, directly or by implication, that the instructional material and equipment provided as part of respondent's courses is free; or misrepresenting, in any manner, the cost or nature of respondent's courses.

It is further ordered, That the respondent shall forthwith distribute a copy of this order to each of his operating divisions and individuals concerned with his operations.

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

FARMER BROWN'S FURNITURE BARN, INC., ET AL.

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

Docket C-1430. Complaint, Sept. 27, 1968—Decision, Sept. 27, 1968

Consent order requiring a Beltsville, Md., furniture retailer to cease making deceptive pricing and savings claims in the sale of its merchandise.

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 Farmer Brown's Furniture Barn, Inc., a corporation, and Morton J. Brown, 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 Farmer Brown's Furniture Barn, 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 5016 Cook Road, in the city of Beltsville, State of Maryland.

Respondent Morton J. Brown is an individual and is an officer of the corporation. He formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His business address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of furniture and other merchandise at retail to members of the public.

PAR. 3. In the course and conduct of their business as aforesaid, respondents now cause, and for some time last past have caused, their said merchandise, when sold, to be shipped from their place of business in the State of Maryland to purchasers thereof located in various other States of the United States and in the District of Columbia, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said 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 for the purpose of inducing the purchase of their furniture, the respondents have made, and are now making, numerous statements and representations in commercial messages broadcast throughout the District of Columbia metropolitan area by radio stations WLND located in Laurel, Maryland and WDON located in Silver Spring, Maryland. Typical and illustrative of said statements and representations, but not all inclusive thereof, are the following:

King Size Recliners
Regularly $100.00
Country Price 59.95

Set of three living room tables. Maple or Walnut
Regular Price $50.00
Country Price 26.95

Mattresses or box springs (twin or double)
Regular Price $50.00–$60.00
Country Price 19.95 ea.

PAR. 5. By and through the use of the above-quoted statements and representations, and others of similar import and meaning but not expressly set out herein, the respondents have represented, and are now representing, directly or by implication, that the higher stated price amounts set forth in connection with the terms "Regularly" and "Regular Price" are the prices at which the advertised merchandise was sold or offered for sale by respondents in good faith for a reasonably substantial period of time in the recent, regular course of their business, and that purchasers save the difference between respondents' advertised selling prices and the corresponding higher prices.

PAR. 6. In truth and in fact, the higher stated price amounts set forth in connection with the terms "Regularly" and "Regular Price" are not the prices at which the advertised merchandise was sold or offered for sale by respondents in good faith for a reasonably substantial period of time in the recent, regular course of their business, and purchasers do not save the difference between respondents' advertised selling prices and the corresponding higher prices.

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

PAR. 7. In the course and conduct of their 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 furniture of the same general kind and nature as that sold by respondents.

PAR 8. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of respondents' merchandise 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 Deceptive Practices proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; and

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

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

1. Respondent Farmer Brown's Furniture Barn, 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 5016 Cook Road, Beltsville, Maryland.

Respondent Morton J. Brown is an officer of said corporation and his address is the same as that of said corporation.

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

ORDER

It is ordered, That respondents Farmer Brown's Furniture Barn, Inc., a corporation, and its officers, and Morton J. Brown, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of furniture or other articles of merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

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

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

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

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

(c) Unless a substantial number of the principal retail outlets in the trade area regularly offer the merchandise for sale at the compared price or some higher price; or

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

3. Falsely representing, in any manner, that savings are available to purchasers or prospective purchasers of respondents' merchandise; or misrepresenting, in any manner, the

amount of savings available to purchasers or prospective purchasers of respondents' merchandise at retail.

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

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

IN THE MATTER OF

METRO TRANSMISSION SERVICE, INC., ET AL.

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

Docket C-1431. Complaint, Sept. 27, 1968—Decision, Sept. 27, 1968

Consent order requiring a Washington, D.C., automobile transmission repair concern to cease making deceptive pricing and guarantee claims and misrepresenting down payment requirements.

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 Metro Transmission Service, Inc., a corporation, and Joseph M. Chiacchiera and Andrew A. Chiacchiera, 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 Metro Transmission Service, 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 626 Massachusetts Avenue, NW., Washington, D.C.

Respondents Joseph M. Chiacchiera and Andrew A. Chiacchiera are individuals and are officers of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their 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, repairing, overhauling, rebuilding, offering for sale, sale and distribution of automobile transmissions to the public.

PAR. 3. In the course and conduct of their business as aforesaid, respondents now cause, and for some time last past have caused, their said transmissions and services to be sold wholly within the geographical confines of the District of Columbia, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said transmissions and services 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 said transmissions and transmission repair services, respondents have made and are now making, numerous statements and representations in advertisements inserted in newspapers with respect to their products and services, of which the following is typical and illustrative, but not all inclusive thereof:

METRO AUTOMATIC TRANSMISSIONS
Serving D.C., Md., Va.
One Day Service

Adjusted $7.50
Resealed $24.50
Overhauled (As Low As) $60.00

Complete Stock of Rebuilt Automatic & Standard Transmissions
1 Year or 12,000 Miles, Written Warranty

638–3360

626 Mass., Ave., N.W.

Open 7 a.m. to 7 p.m.—Mon. thru Sat.

638–3360

No Money Down—Free Towing

PAR. 5. By and through the use of the above reproduced statements and representations, and others of similar import and meaning but not expressly set out herein, the respondents have represented, and are now representing, directly or by implication, that:

1. Respondents are making a bona fide offer to overhaul automobile transmissions for $60.

2. Respondents' total charge to adjust an automobile transmission is in all instances $7.50.

3. Respondents unconditionally warrant or guarantee any of the transmission repair services advertised for one year or 12,000 miles.

4. No down payment is required by respondents if the repair work is financed.

PAR. 6. In truth and in fact:

1. Respondents are not making a bona fide offer to overhaul automobile transmissions for $60. In most instances in the overhaul of automobile transmissions certain "hard" parts and repairs are necessary for which respondents charge an additional amount, and consequently the cost is considerably higher than $60.

2. Respondents' total charge to adjust an automobile transmission is not $7.50 in all instances, as that amount does not include new transmission fluid for which there is an additional charge. Many customers wish to have new transmission fluid placed in their transmission after an adjustment, and in such instances the charge will be $12.50 for the adjustment service.

3. Respondents do not provide an unconditional one year or 12,000 mile warranty or guarantee on any of the transmission repair services advertised. A prorated one year or 12,000 mile warranty is given only on rebuilt transmissions. Any other transmission repair services are warranted or guaranteed for not more than 90 days or 4,000 miles.

4. Respondents do require a down payment in a substantial number of instances when the repair work is financed.

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

PAR. 7. In the course and conduct of their 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 automotive parts and services of the same general kind and nature as those sold by respondents.

PAR. 8. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of respondents' products and services 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 Deceptive Practices proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; and

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

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

1. Respondent Metro Transmission Service, 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 626 Massachusetts Avenue, NW., Washington, D.C.

Respondents Joseph M. Chiacchiera and Andrew A. Chiacchiera are officers of said corporation and their address is the same as that of said corporation.

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

ORDER

It is ordered, That respondents Metro Transmission Service, Inc., a corporation, and its officers, and Joseph M. Chiacchiera and Andrew A. Chiacchiera, 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 any transmission, motor or other automotive component, or any other product or any service in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Advertising the price of particular services such as an overhaul, inspection, or reseal job, unless in conjunction therewith disclosure is made, in a prominent place and in a type size that is easily legible, that there are many possible defects in an automobile transmission, other automotive component, or other product, for which the advertised services are ineffective and which require additional parts and labor to repair and that such repairs will cost substantially more than the advertised price.

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

3. Using the term "overhaul," or any term or words of similar import, to refer to any transmission service which does not include the removal, disassembly and replacement of all worn parts, hard or soft, and the reassembly and reinstallation of the transmission in the vehicle, unless in conjunction with the use of the term "overhaul," in a prominent place and in type that is easily legible, disclosure is made of:

(a) The parts that will be replaced in connection with the "overhaul" and are included in the overhaul price, as well as their price if purchased separately, and

(b) The parts that will not be replaced as part of the overhaul and their price, and/or

(c) The fact that in many cases substantial additional costs will be incurred if parts other than those regularly included in the overhaul must be replaced in

order to repair the transmission.

4. Using the term "adjusted," or any term or words of similar import, to refer to any transmission service which does not include the replacement of the old transmission fluid with new fluid, unless there is a disclosure in a prominent place and in a type that is easily legible, that additional expense will be incurred by the customer if he wishes to have new transmission fluid placed in his transmission after the adjustment.

5. Representing, directly or by implication, that any article of merchandise or service is warranted or guaranteed, unless all of the terms and conditions of the warranty or guarantee, and the manner in which the warrantor or guarantor, will in good faith perform thereunder are clearly and conspicuously disclosed.

6. Using the term "NO MONEY DOWN," or any term or words of similar import, in connection with respondents' offer to sell any merchandise or service or misrepresenting, in any manner, the terms upon which respondents finance their merchandise or services.

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

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

IN THE MATTER OF

EXCEL CHEMICAL CORPORATION ET AL.

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

Docket C-1432. Complaint, Sept. 30, 1968—Decision, Sept. 30, 1968

Consent order requiring a Chicago, Ill., marketer of water repellent paints to cease misrepresenting that it is affiliated with Union Carbide Co., exaggerating the earnings or gross sales of its dealers and the waterproofing quality of its paints, making deceptive guarantee offers, and falsely stating that its products meet U.S. Government specifications.

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 Excel Chemical Corporation, a corporation, and Michael E. Mater, individually and as an officer of the aforesaid 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 Excel Chemical Corporation 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 4433 West Touhy Avenue, Chicago, Illinois 60645.

Respondent Michael E. Mater 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 offering for sale, sale and distribution of water repellent paints to dealers for resale to the public under the trade name of "Positive Protective Coating."

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 Illinois to purchasers thereof located in various other States of the United States, and maintain, and at all times hereinafter mentioned, 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 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 products of the same general kind and nature as that sold by the respondents.

PAR. 5. In the course and conduct of their business, respondents have operated, and continue to operate, a sales plan to market their products by establishing dealerships under "Exclusive Dealership Agreements." These exclusive dealership agreements assign to individual dealers a particular territory within which they may operate and resell the respondents' products to the purchasing public. Salesmen are employed and trained by the respondents to solicit and secure these dealers. The salesmen induce

the dealers to enter into the agreements with which they combine initial orders for respondents' products. The dealers have the option of paying for the merchandise in full at the time of purchase or of paying twenty-five percent down and of paying the remainder by executing three negotiable trade acceptances payable in thirty, sixty and ninety days.

PAR. 6. In the course and conduct of their business, as described above, and for the purpose of inducing sales of their products by and through oral statements and representations of respondents or their salesmen and representatives and by means of brochures and other written and printed material, respondents represent, and have represented, directly or by implication, to prospective purchasers, that:

1. The corporate respondent, Excel Chemical Corporation, is a subsidiary of, a division of, an exclusive licensee of, or is affiliated with the Union Carbide Company.

2. The respondents' product is manufactured, or has been developed, by the Union Carbide Company.

3. The respondents' product has been successfully tested by the Union Carbide Company, by the corporate respondent, or by an independent testing laboratory.

4. The respondents' product is unconditionally guaranteed for ten years.

5. The respondents' product, Positive Protective Coating, contains eight percent silicones.

6. The respondents' dealers will realize a substantial profit in excess of the amount usually earned by dealers in the normal course of business from the resale of the respondents' product.

7. The supply of the respondents' product purchased by the dealer will be sold out before the trade acceptances which the dealer has given in payment on his supply become due and payable.

8. The respondents' dealers may return to the respondents any unsold quantities of the respondents' product or the respondents will transfer the unsold quantities to another dealer and a refund will be made to the dealer.

9. The respondents' product is waterproof.

10. The respondents' product prevents rust.

11. The respondents' product is suitable for both the inside and the outside of a building.

12. One coat of the respondents' product will be sufficient to achieve and to produce all of the performance claims and results made for it.

13. The respondents' product meets the specifications of the United States Government.

PAR. 7. In truth and in fact:

1. Respondent Excel Chemical Corporation is not a subsidiary of, a division of, an exclusive licensee of, and is not affiliated with the Union Carbide Company.

2. The respondents' product is neither manufactured nor has it been developed by the Union Carbide Company, although one of the ingredients in their product may have been manufactured by the Union Carbide Company and is placed in combination by the respondents with other ingredients not manufactured by the said company.

3. The respondents' product has never been tested or evaluated by the Union Carbide Company, or by an independent laboratory or any other person or organization qualified to test or evaluate such products nor has such product been tested by respondents.

4. The product sold by the respondents is not unconditionally guaranteed for a period of ten years, but only guaranteed in a limited way and not unconditionally.

5. The respondents' product, Positive Protective Coating, does not contain eight percent silicones, but a substantially less amount.

6. Few, if any, dealers earn a substantial profit from the resale of respondents' product and in many cases no profit at all, but sustain a loss.

7. The supply of respondents' product purchased by the dealers is seldom, if ever, sold out before the trade acceptances which the dealer has given in payment on his supply become due and payable.

8. The respondents' dealers are not permitted to return to the respondents any unsold quantities of the respondents' product and the respondents will not transfer them to another dealer nor is any refund made to the dealer for unsold merchandise.

9. Respondents' product is not waterproof, but only water repellent to a limited extent.

10. Respondents' product does not prevent rust.

11. Respondents' product is not suitable for use on the inside of a structure.

12. One coat of respondents' product is not sufficient to achieve and to produce all of the performance claims and results made for it and certain of said claims and representations could not, in many instances, be achieved after numerous such coats.

13. The respondents' product does not meet the specifications

of the United States Government or any branch thereof.

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

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

PAR. 9. The aforesaid 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 and investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Deceptive Practices proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; and

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

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

the following jurisdictional findings, and enters the following order:

1. Respondent Excel Chemical Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at 4433 West Touhy Avenue, Chicago, Illinois 60645.

Respondent Michael E. Mater is an officer of said corporation and his address is the same as that of said corporation.

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

ORDER

It is ordered, That respondents, Excel Chemical Corporation, a corporation, and its officers, and Michael E. Mater, Individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of any paint or paint products or any other articles of merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Representing, directly or by implication, that:

1. Respondents are a subsidiary of, a division of, an exclusive licensee of, or are affiliated with the Union Carbide Company; or misrepresenting, in any manner, respondents' trade or business connections or affiliations.

2. Any of respondents' products were manufactured or developed by the Union Carbide Company; or misrepresenting, in any manner, the company or organization which manufactured or developed the products sold by respondents.

3 Respondents' products have been tested or evaluated by the Union Carbide Company, or an independent laboratory or any other person or organization qualified to test or evaluate such products or that respondents have tested such products: *Provided, however,* That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that they have in their files written reports from the organization or persons represented to have tested said products which clearly and accurately reflect such test results and

demonstrate that such tests were devised and conducted so as to constitute a suitable basis for evaluating respondents' products with respect to the properties therof and the claims made therefor.

4. Respondents' products are guaranteed unless the nature, conditions 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 in immediate conjunction with such representation.

5. Respondents' products contain any specific percentage or amount of silicones; or other ingredients: *Provided, however,* That it shall be a defense in any enforcement proceeding instituted hereunder for the respondents to establish that such percentage or amount is, in fact, true as represented; or misrepresenting, in any manner, the quantity or quality of the constituent elements comprising respondents' products.

6. Dealers will earn any stated or gross or net amount or representing, in any manner, the past earnings of dealers unless in fact the past earnings represented are those of substantial number of dealers and accurately reflect the average earnings of these dealers under circumstances similar to those of the dealer to whom the representation is made.

7. Respondents' products will be sold out by the purchaser within any stated period of time; or representing, in any manner, that dealers, in the past, have sold out their supplies within any stated period of time unless the past sales represented are those of a substantial number of dealers and accurately reflect the average sales of these dealers under circumstances similar to those of the dealer to whom the representation is made.

8. Respondents' dealers may return to the respondents any unsold quantities of the respondents' products; or that the respondents will transfer the unsold quantities to another dealer; or that a refund will be made to the dealers for unsold merchandise; or that the contract is other than an outright sale of the respondents' products to the dealer.

9. Respondents' products are waterproof or will cause any surface to which they are applied to become waterproof; or misrepresenting, in any manner, the perform-

ance characteristics of respondents' products.

10. Respondents' products prevent rust or will prevent or impede the rusting of any material to which they are applied.

11. Respondents' products are suitable for use on the inside of a structure; or misrepresenting, in any manner, the use characteristics of respondents' products.

12. One or more coats or applications of respondents' products is sufficient to achieve or to produce certain stated or implied results: *Provided, however,* That it shall be a defense in any enforcement proceeding instituted hereunder for the respondents to establish that the represented number of coats or applications of the particular product will, in fact, achieve or produce the results directly or impliedly claimed for it.

13. Respondents' products meet the specifications of the United States Government or any branch thereof.

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

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

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

IN THE MATTER OF

RICHARD J. RASPANTI TRADING AS STATEWIDE ALUMINUM COMPANY

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

Docket C-1433. Complaint, Oct. 4, 1968—Decision, Oct. 4, 1968

Consent order requiring a Pittsburgh, Pa., distributor of residential aluminum siding to cease using bait advertising, deceptive pricing, guarantee and quality claims, and failing to disclose that customers' notes may be assigned to a finance company.

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 Richard J. Raspanti, an individual trading as Statewide Aluminum Company, hereinafter referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Richard J. Raspanti, is an individual trading as Statewide Aluminum Company, with his office and principal place of business located at 4610 E. Willock Road, Pittsburgh, Pennsylvania.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the advertising, offering for sale, sale and distribution of residential aluminum siding products to the general public and in the installation thereof.

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

PAR. 4. In the course and conduct of his business, and for the purpose of inducing the purchase of his residential aluminum siding products, respondent has made numerous statements and representations, through oral statements made to prospective purchasers by his salesmen or representatives, in newspaper advertisements and in direct mail advertising circulars and other promotional material respecting the nature of his offer, price, his guarantee and the quality of his products.

Typical and illustrative of respondent's published advertising representations, but not all inclusive thereof, are the following:

ALL ALUMINUM SIDING SALE!
SEASON SPECIAL—QUALITY AT LOWEST PRICES
NOW ONLY
$199.00

* * * * * * *

Completely Installed—Includes labor and materials for any average size

home up to 1,000 sq. ft. Goes over any surface—wood, shingles, brick, stucco, block.

* * * * * * *

Enjoy Everlasting Beauty—now comfortable living and savings * * * your home can overcome age, and can be made into a truly and beautiful modern home.

PAR. 5. By and through the use of the aforesaid statements and representations and others of similar import and meaning not specifically set out herein and through oral statements made by his salesmen or representatives, respondent represents, and has represented, directly or by implication, that:

1. The offer set forth in said advertisements is a bona fide offer to sell the advertised products at the prices and on the terms and conditions stated.

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

3. Respondent's advertised offer is made for a limited time only.

4. Respondent's siding materials will never require repainting.

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

PAR. 6. In truth and in fact:

1. Respondent's said advertised offers are not genuine or bona fide offers but are made for the purpose of obtaining leads as to persons interested in the purchase of respondent's products. After obtaining such leads, respondent's salesmen or representatives call upon such persons at their homes and, according to their established mode of operation, they write a contract calling for the sale of the advertised product and the prospective purchaser is permitted to execute that contract. Immediately thereafter, respondent's salesmen or representatives disparage the advertised product and otherwise discourage the purchase thereof and attempt to sell and frequently do sell a different and more expensive product instead of the product for which the customer originally contracted.

2. Respondent's products are not being offered for sale at special or reduced prices, and savings are not thereby afforded purchasers because of reductions from respondent's regular selling prices. In fact, respondent does not have regular selling prices but the prices at which respondent's products are sold vary from customer to customer depending on the resistance of the

prospective purchaser.

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

4. Respondent's siding materials will require repainting.

5. Respondent's 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, respondent or his salesmen fail to furnish any written guarantee to the customer.

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

PAR. 7. In the further course and conduct of his business, and in furtherance of a sales program for inducing the purchase of his residential siding materials, respondent and his salesmen or representatives have engaged in the following additional unfair and false, misleading and deceptive acts and practices:

1. Respondent and his 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 respondent had negotiated or assigned the sales contract and promissory note.

2. Respondent and his salesmen or representatives have failed to disclose to the purchasers that a second mortgage would be placed on their home. In a substantial number of cases, the purchasers learned of said mortgage for the first time when contacted by the finance company to which respondent had negotiated or assigned the sales contract, promissory note and second mortgage.

3. In a substantial number of instances and in the usual course of his business, respondent sells and transfers his customers' obligations, procured by the aforesaid unfair, false, misleading and deceptive means, to various financial institutions. In any subsequent legal action to collect on such obligations, these

financial institutions or other third parties, as a general rule, have available and can interpose various defenses which may cut off certain valid claims customers may have against respondent for his failure to perform or for certain other unfair, false, misleading or deceptive acts and practices.

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

PAR. 8. In the course and conduct of his aforesaid business, and at all times mentioned herein, respondent has been, and now is, in substantial competition, in commerce, with corporations, firms and individuals engaged in the sale of products of the same general kind and nature as those sold by respondent.

PAR. 9. The use by respondent of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that such statements and representations were and are true, and into the purchase of substantial quantities of respondent's products by reason of said erroneous and mistaken belief.

PAR. 10. The aforesaid acts and practices of respondent as herein alleged were, and are, all to the prejudice and injury of the public and of respondent's competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

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

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

other provisions as required by the Commission's Rules; and

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

1. Respondent Richard J. Raspanti is an individual trading as Statewide Aluminum Company, with his office and principal place of business located at 4610 E. Willock Road, Pittsburgh, Pennsylvania.

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 Richard J. Raspanti, an individual trading as Statewide Aluminum Company, or under any other name or names, and respondent's representatives, agents and employees, directly, or through any corporate or other device, in connection with the advertising, offering for sale, sale, distribution or installation of residential aluminum siding or other home improvement products or services or any other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

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

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

3. Discouraging the purchase of or disparaging any merchandise or services which are advertised or offered for sale, either before or after a contract has been signed for the purchase of such merchandise or services.

4. Representing, directly or by implication, that any mer-

chandise or services are offered for sale when such offer is not a bona fide offer to sell such merchandise or services.

5. Representing, directly or by implication, that any price for respondent's products is a special or reduced price, unless such price constitutes a significant reduction from an established selling price at which such products have been sold in substantial quantities by respondent in the recent regular course of his business; or misrepresenting, in any manner, the savings available to purchasers.

6. Representing, directly or by implication, that any offer to sell products is limited as to time, or is limited in any other manner: *Provided, however,* That it shall be a defense in any enforcement proceeding instituted hereunder for respondent to establish that any represented limitation as to time or other represented restriction is actually imposed and adhered to by respondent.

7. Representing, directly or by implication, that respondent's products will never require repainting; or misrepresenting, in any manner, the serviceability or utility of respondent's products.

8. Representing, directly or by implication, that any of respondent's products are guaranteed, less 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 respondent's 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.

9. Failing to disclose at least 5 days prior to any performance on the contract, in writing on a "settlement sheet" with such conspicuousness and clarity as is likely to be observed and read by purchasers:

a. The cash purchase price;

b. The total amount of all interest charges;

d. The total amount for which the buyer will be indebted;

e. The number of installment payments and the amount of each.

10. Failing to disclose orally prior to the execution of the contract, and in writing with such conspicuousness and clarity as is likely to be observed and understood by pur-

chasers that a mortgage or other lien will be placed on their property.

11. Failing to clearly and conspicuously incorporate the following statement on the face of all negotiable instruments executed by respondent's 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 respondent's products or services, and failing to secure from each such salesmen or other person a signed statement acknowledging receipt of said order.

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

IN THE MATTER OF

BRUNSWICK EXCHANGE, INC., TRADING AS VANGUARD TRANSMISSION CENTERS ET AL.

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

Docket 8743. Complaint, Aug. 22, 1967—Decision, Oct. 8, 1968

Order requiring a Washington, D.C., automobile transmission repair shop to cease misrepresenting the nature and cost of its repair service, failing to disclose that the quoted price for repairng a transmission does not include reassembly, failing to furnish itemized statement of parts and labor, furnishing false guarantees, deceptively using the word "free," and using other unfair business practices.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Brunswick Exchange, Inc., a corporation, trading as Vanguard Transmission Centers, and Manuel Polisher, 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 Brunswick Exchange, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the District of Columbia, with its principal office and place of business located at 1600 Benning Road, NE., in the city of Washington, District of Columbia.

Respondent Manuel Polisher 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 business address is the same as that of the principal office of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, repair, overhauling, rebuilding, offering for sale, sale and distribution of automobile transmissions to the public within the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products and services in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 3. In the course and conduct of their business as aforesaid and for the purpose of inducing the purchase of their said transmissions and transmission repair service, respondents have made and are now making numerous statements and representations as to the nature of their products and services.

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

VANGUARD TRANSMISSION CENTERS
Since 1941 Wash.—Md.—Va.
American & Foreign Transmissions
By Vanguard
We Do It Right The First Time
Installed While-U-Watch
Over 400 Rebuilt Transmissions In Stock—
Call For Exact Price Before Work Starts
Free Towing
Available New Cars
To Use While Yours
Is Being Repaired
Convenient Terms
Or
Diners Card—American

Express —Carte Blanche and Central Charge Service
Lifetime Written Warranty Available
For Your Nearest Vanguard Transmission Center Call
D.C.
396–4100
1600 Benning Rd., N.E.
(at H Street)
Bethesda
657–1900
4865 Bethesda Ave.
(at Arlington Rd.
Just off Beltway)
Daily 'Til 8:30 p.m. – Sunday 'Til 5 p.m. (D.C. Only)
Open Every Day Of The Year Except Christmas & New Year's (D.C. Only)

VANGUARD TRANSMISSION CENTERS
Automatic Transmissions!!
Completely Overhauled While-U-Watch
As low as $75—Parts and labor included
Over 400 Rebuilt Trans. in Stock—Free Towing
1 Yr. or 12,000 Mile Warranty
Central Charge Service, Carte Blanc, American Express & Diner Cards
Honored or Convenient Credit Terms Now Available

D.C.
1600 Benning Rd. N.E.
399-3004
Daily 8–8:30, Sun. 9–5

MD.
4865 Bethesda Ave.
at Arl. Rd.
OL. 4–0111

PAR. 4. By means of the statements and representations in their advertisements, as set forth in Paragraph Three hereof, and others similar thereto but not specifically referred to herein, respondents have represented, directly or by implication, that:

1. Respondents are making a bona fide offer to overhaul a transmission for $75.

2. Respondents will completely overhaul a customer's transmission in a short period of time while the customer watches or waits.

3. Respondents unconditionally provide free towing service.

4. Respondents unconditionally guarantee all work done by them for one year or 12,000 miles and have an unconditional lifetime guarantee available.

5. Respondents have over 400 transmissions in stock readily available for installation at their places of business.

PAR. 5. In truth and in fact:

1. Respondents' offer to overhaul a transmission for $75 is not a bona fide offer. In most instances in the overhaul of automotive transmissions certain "hard" parts and repairs are necessary for which respondents charge an additional amount, and consequently the cost is considerably higher than $75.

2. Respondents will not completely overhaul a customer's transmission in a short period of time while the customer watches or waits.

3. Respondents' offer of free towing service is not unconditional, but is limited in certain respects, which limitations are not disclosed in respondents' advertising or made known to the customer prior to the rendering of the service.

4. Respondents do not provide an unconditional one year or 12,000 mile guarantee on work performed by them, nor do they have available an unconditional lifetime guarantee. Such guarantees as they give are limited, which limitations are not disclosed in respondents' advertising or made known to the customer prior to the sale or the rendering of the service.

5. Respondents do not have over 400 transmissions in stock readily available for installation at their places of business.

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

PAR. 6. In the further course and conduct of their said business, respondents engage in the following unfair and deceptive acts and practices:

1. By use of the terms "replace transmission" and "rebuilt transmission," or by words or terms of similar import employed in oral representations or on work authorization forms, respondents represent, directly or by implication, and the customer understands, that his malfunctioning transmission will be or has been replaced with a different transmission which has been rebuilt. In fact, in many instances respondents do not replace the transmission with a different rebuilt unit as they have represented they would. In such instances, respondents reinstall the transmission removed from the customer's automobile after performing certain repairs thereto.

2. In the further course of their business respondents represent, directly or by implication, that they have overhauled a customer's transmission and that certain parts have been replaced with new parts. In fact respondents often do not install new parts in place of worn or unserviceable parts removed in the

repairing or overhauling of a customer's transmission. Frequently respondents replace parts they remove with worn used parts obtained from such sources as junked automobiles or unrepaired transmissions.

3. Frequently the customer is told that his disassembled transmission cannot be reassembled without doing some additional work. When the customer requests that only the original authorized repair work be performed, respondents refuse to perform the originally authorized work or refuse to restore the vehicle to its previous condition. Respondents thereby unfairly obtain further authorization to do additional repair work or to install a different rebuilt transmission.

4. Upon completion of a transmission repair job, respondents guarantee the job for a certain number of days under normal driving conditions and for an additional number of days or miles whichever occurs first on a pro-rata basis. In fact, respondents do not always perform in good faith under this guarantee. On occasions when the customer's transmission has problems or malfunctions during the period of the aforesaid guarantee, respondents misrepresent the problem as minor or misrepresent that it is self-adjusting and will disappear with continued driving. On other occasions respondents misrepresent that the problem is in a part or component not encompassed within the original service. In this manner, respondents seek to avoid honoring their guarantee or warranty.

PAR. 7. In the conduct of their business, at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of automotive parts and services of the same general kind and nature as those sold by respondents.

PAR. 8. The use by the respondents of the aforesaid false, misleading and deceptive statements and representations and unfair or deceptive acts 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 and services by reason of said erroneous and mistaken belief and by reason of said unfair and deceptive acts and practices.

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 or deceptive acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

Mr. Edward F. Downs, Mr. Robert E. Freer, Jr., Mr. James K. Rader, supporting the complaint.

Mr. Jacob Sheeskin, Sheeskin, Hillman and Berry, Washington, D.C., for respondents.

INITIAL DECISION BY RAYMOND J. LYNCH, HEARING EXAMINER

JULY 1, 1968

STATEMENT OF PROCEEDINGS

The Federal Trade Commission complaint in this proceeding issued August 22, 1967, charging the corporate and individual respondents with violation of Section 5 of the Federal Trade Commission Act through the alleged use of unfair or deceptive acts and practices and unfair methods of competition in commerce in the sale and repair of automotive transmissions and other automotive components and parts and installation and repair services within the District of Columbia and the State of Maryland.

On October 26, 1967, counsel supporting the complaint filed a motion to amend the complaint. Counsel for the respondents did not oppose the motion and at the December 11, 1967, prehearing conference the hearing examiner granted the motion to amend the complaint. It was the judgment of the examiner that the amendment to the complaint was within the area of the original complaint.

Respondents Brunswick Exchange, Inc., trading as Vanguard Transmission Centers, and Manuel Polisher filed an answer on August 30, 1967, generally denying the charges contained in the complaint.

Prehearing conferences were held in Washington, D.C., on October 9 and December 11, 1967. Prior to the commencement of the formal hearing, the depositions of two consumer-witnesses were taken.

Hearings were held the week of February 5 through 9, and on February 14, 1968. The record was closed for the reception of evidence on March 5, 1968. Pursuant to request by counsel for the respondents, the Commission extended the time for filing the proposed findings to May 17 and the time for filing the initial decision to July 1, 1968.

Respective counsel were afforded full opportunity to be heard,

to examine and cross-examine all witnesses and to introduce such evidence as is provided for under Section 3.43(b) of the Commission's Rules of Practice for Adjudicative Proceedings. Proposed findings of fact, conclusions and supporting briefs were filed by respective counsel.

Proposed findings of fact and conclusions submitted and not adopted in substance or form as herein found and concluded are hereby rejected. After carefully reviewing the entire record in this proceeding and based on such record and the observation of the witnesses testifying herein, the following findings of fact and conclusions therefrom are made, and the following Order issued:

FINDINGS OF FACT

1. Respondent, Brunswick Exchange, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the District of Columbia, with its principal office and place of business located at 1600 Benning Road, NE., in the city of Washington, District of Columbia. The respondent also maintains another place of business at Bethesda, Maryland.

2. Respondent, Manuel Polisher, is an officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent and his business address, 1600 Benning Road, NE., Washington, D.C., is the same as that of the principal office of the corporate respondent.

3. Respondent Brunswick Exchange, Inc., is now, and for some time past has been, engaged in the business of repairing, overhauling, rebuilding, offering for sale, sale and distribution of automobile transmissions and other automotive components to the public within the District of Columbia and within the State of Maryland. Respondent's volume of business approximates one hundred thousand dollars ($100,000) per year for both of its locations.

4. Respondents were and are now engaged in the advertising, repair, overhauling, rebuilding, offering for sale, sale and distribution of automobile transmissions and other automotive components and parts to the public within the District of Columbia and the State of Maryland. Respondents at all times mentioned herein have maintained a substantial course of trade in said products and services in commerce, as "commerce" is defined in the Federal Trade Commission Act. Respondents in the course and conduct of their aforesaid business have been and are in competition with corporations, firms and individuals similarly so engaged in such sales and services. (Admitted in answer as to

the corporate respondent.)

5. In the course and conduct of their business as aforesaid and for the purpose of inducing the purchase of their said transmissions and transmission repair services, respondents have made and are now making many statements and representations about their products and services such as the following, among others.

CX 3—Telephone Directory, Washington Yellow Pages (1965); CX 4—Telephone Directory, Washington Yellow Pages (1967); CX 5—Telephone Directory, Washington Yellow Pages (1966); RX 8—Telephone Directory, Washington Yellow Pages (1968);

Commission Exhibit No. 4

VANGUARD TRANSMISSION CENTERS
Since 1941 Wash.—Md.—Va.
American & Foreign Transmissions
By Vanguard

We Do It Right The First Time
Installed While-U-Watch
Over 400 Rebuilt Transmissions In Stock—
Call For Exact Price Before Work Starts

Free Towing
Available New Cars
To Use While Yours
Is Being Repaired

Convenient Terms
Or
Diners Card—American Express—Carte Blanche
And Central Charge Service

Lifetime Written Warranty Available

For Your Nearest Vanguard Transmission Center Call

D.C.
396-4100
1600 Benning Rd., N.E.
(at H Street)

Bethesda
657-1900
4865 Bethesda Ave.
(at Arlington Rd.
Just off Beltway)

Daily 'Til 8:30 p.m.—Sunday 'Til 5 p.m. (D.C. Only)

Open Every Day Of The Year Except Christmas & New Year's (D.C. Only)

CX 6—Washington Daily News (October 3, 1966); CX 7—Washington Daily News (September 29, 1966); CX 8—Washington Daily News (September 26, 1966); CX 9—Washington Daily News (September 22, 1966); CX 10—Washington Daily News (September 19, 1966); CX 11—Washington Daily News (September 15, 1966); CX 12—Washington Daily News (September 12, 1966); CX 13—Washington Daily News (September 3, 1966); CX 14—Washington Daily News (September 1, 1966); CX 15—Washington Daily News (August 29, 1966); CX 16—Washington Daily News (July 28, 1966).

Commission Exhibit No. 6

VANGUARD TRANSMISSION CENTERS
Automatic Transmissions!!
Completely Overhauled While-U-Watch
As low as $75—Parts and labor included
Over 400 Rebuilt Trans. in Stock—Free Towing

1 Yr. or 12,000 mile warranty

Central Charge Service, Carte Blanc, American Express & Diner Cards
Honored or Convenient Credit Terms New Available

D.C.
1600 Benning Rd. N.E.
399-3004
Daily 8–8:30, Sun. 9–5

MD.
4865 Bethesda Ave.
at Arl. Rd.
OL 4-0111

6. The examiner has examined the exhibits previously referred to setting forth respondents' advertisements and is of the opinion that they may be interpreted and understood by the reading public as representing that: (1) Respondents will give the prospective customer a free checkup and will remove, reseal or overhaul and reinstall the customer's transmission or a factory or other rebuilt transmission at the advertised price; (2) Respondents will furnish the prospective customer free towing and one-day service; (3) Respondents are transmission specialists and will furnish the prospective customer a lifetime guarantee, or a one year warranty or a written guarantee of their work; and (4) Respondents' charge to the prospective customer will be its advertised price.

An examination of the record, however, discloses a number of instances where the respondents' methods of doing business did not conform to what the customer or the general public were

led to believe would be followed from the advertisements and what the advertisements purported to offer the customer in the area of total cost and work to be performed.

The record discloses that respondents have more or less adopted a common pattern in dealing with customers. When a prospective customer first contacts respondents, the customer's automobile is given a short road test. Upon completion of this road test, the prospective customer is informed, in most instances, that a minor transmission repair or service is all that is necessary—at a nominal charge. (Tr. 34–5, 63–4, 99–100, 121, 137, 174–5, 262, 309, 359–60, 503–4, 550, 618–19.)

After authorizing the repair work and leaving the automobile with respondents for such repair work, the customer usually is advised by telephone, or upon returning for the automobile, that the transmission is broken down and before it can be reassembled additional repair work, which was not noticeable until after the transmission had been broken down, must be performed in order for the automobile to operate properly. The original cost estimate for the repair work would not, of course, include this additional work. (Tr. 34–5, 63–5, 101–2, 121–2, 140, 155, 164, 175–6, 188–90, 192, 202, 262–3, 330, 405, 532, 647, 681, 689; CX 48 p. 8.)

Having listened to the testimony not only of the consumer-witnesses but also that of the respondents, it must be found that the respondents established a method of doing business wherein they deliberately underestimated the cost of repairs and services and when they had the customer "hooked," with the automobile in the hands of respondents, either torn down, or so represented, respondents raised the price of the repair or service. The customer was in no position to ascertain whether the repairs or services were actually needed and thus authorized the work in order to obtain his automobile. The evidence is sufficiently clear that respondents never intended to provide the services they advertised at the advertised prices.

7. In truth and in fact, respondents in their advertising are not making a bona fide offer to perform in the manner and at the prices therein stated, but are engaged in the practice of "low-balling" wherein the prospective customer is enticed into respondents' business establishments by advertised low prices for automobile transmission sales and repairs, one-day service and other advertised inducements, and then is inveigled by respondents into the outlay of further substantial amounts of money when faced with respondents' business tactics. (Tr. 122, 139–43, 187–88, 309–10, 478–80, 681–83, 689; CX 47 pp. 13–17.)

The following chart, which is a summary of customer testimony concerning prices, discloses respondents' methods of doing business very clearly.

Summary of customer testimony as to prices quoted and charged

Customer and automobile make	Price initially quoted	Highest price quoted	Price paid	Subsequent additional price quoted
1. Stone	$70.00	$157.41	$152.16	$100.00.
1957 DeSoto	Tr. 64	Tr. 67	CX 30	Tr. 71.
2. Alfred	$90.00	$120.00		
1959 Morris Minor	Tr. 92	Tr. 92		Tr. 87, 91.
3. Smith	$70.00	$107.00	$107.08	$40.00.
1955 Pontiac	Tr. 100	Tr. 109	CX 35	Tr. 105-06.
4. Tossounian	$45.00	$150.00	$133.00	No return.
1963 Ford	Tr. 121	Tr. 122	CX 28	Tr. 126.
5. Butler	$87.00	$187.00	$191.46	No return.
1963 Peugeot	Tr. 137	Tr. 155	CX 32	Tr. 144.
6. Ray	$35-125	$175.00	Disposed of.	
1958 Chevrolet	Tr. 200	Tr. 202		
7. Blumberg	$300-400	$571.12	$400.00	
1962 Jaguar	Tr. 228	CX 34	Tr. 234	Tr. 237.
8. Teegarden	$175.00	None	$289.12	Adjusted charges.
1964 MG 1100	Tr. 270	Tr. 272	CX 38	Tr. 275, 279.
9. Layne	$150.00	$270.00	$283.25	$50.00.
1961 Pontiac	Tr. 309	Tr. 310	CX 41	Tr. 317; RX 3.
10. Young	$250.00	$250.00	$264.54	
1959 Ford	Tr. 335	Tr. 335	CX 21	
11. Wiseman	$95.00	$115.00	$115.00	$185.00 (see also.
1959 Pontiac	Tr. 360	Tr. 362	Tr. 363	Tr. 368 366, 369)
12. Ford	$24.00	None	$71.00	No return.
1960 Rambler	Tr. 381	Tr. 390	CX 42	Tr. 393.
13. Brandenburg	$60.00	None	$129.31	$165.
1961 Ford	Tr. 404	Tr. 405	Tr. 405	Tr. 407-8.
14. Anderson	$36.00	$225.00	$45.00	
1964 Volkswagen	CX 47 p. 8	CX 47 p. 12	CX 47 p. 16	
15. Taylor	$75.00	None	$159.65	No return.
1959 Chevrolet	CX 48 p. 5	CX 48 p. 27	RX 7c	CX 48 p. 27.

8. Respondents' arguments that they never engaged in the practices alleged in the complaint are without foundation. Respondents admit they used the advertising referred to in Commission exhibits 3 through 5 and 6 through 16, but argue that they now have stopped this type of advertising and therefore no order should issue against them. The Commission has said on

many occasions that discontinuance of a particular type of advertising is no defense when it takes place after the Commission has instituted an investigation.

9. The following excerpts of consumer-witness testimony taken from the transcript of the hearings, clearly disclose respondents' methods of doing business:

A. The day I called up I took it there and the man on the phone told me it may be an adjustment, to bring it over and let him take a look at it, and Mr. White took it around the block to check the car and after he went around the block he said it would cost $45 to fix.

Q. Did he tell you what was wrong with it?

A. He told me it was a synchronizer that was bad. Then I told him I would come back in a couple of days later, because the next day I had a job and I couldn't make it, see? So when I came back I reminded him that he was going to repair it for me for $45 and he said OK. And I was going to wait for it and he said, all right. They took it apart and when they took it all apart, they raised the price $150 and I reminded him.

HEARING EXAMINER LYNCH: Raised it to $150?

THE WITNESS: Raised the total to repair it to $150.

HEARING EXAMINER LYNCH: Go ahead.

THE WITNESS: So then I reminded him that they had quoted me $45 to repair it, then later on I told him to put it back, and he said they would charge $18.

Q. You meant you didn't want it done?

A. I didn't want the work done at that price. He said he would put it back for $18. So a few minutes later he said his mechanic couldn't put it back.

Q. Did he give any reason why he couldn't put it back?

A. He didn't give any reason. I assumed that he couldn't because he took all of the gears apart, I assumed he couldn't put it back together again. But I believe that he could put it back.

* * * * * * *

Q. What happened now? He couldn't put the transmission back together for $18, so he says?

A. That's right.

Q. He wouldn't do it for $45. What is the next step?

A. Then later, in order to make it a little—to make it better for me he lowered the price $20 to $130 and he said he would get a rebuilt transmission in there.

Q. When he lowered the price to $130, did he say anything about using rebuilt parts?

A. He didn't mention it.

Tr. 121–23, consumer-witness Tossounian.

Q. After you first left the car, when did you further contact Vanguard?

A. About ten days or two weeks after I left it there.

Q. What were you told on that occasion?

A. They would need longer to finish it.

Q. Do you remember being given any reason—an explanation of the delay?

A. Well, I was always being given a new reason, like a man was sick who was working on it, and he wasn't able to—he wasn't there to finish the job. He was the only man they had who was able to do it. He had taken it apart and he was the man necessary to put it back together again. Then there might have been a part they couldn't get, and at one point near the end of the job it was a converter they could not get. I discovered that I could get it—there was one available—they told me if I could get one they would put it in. I made a few phone calls and found Manhattan Motors had a converter, and they used some other converter and finished the job out shortly after that. But that was five months after the beginning of the job.

Q. Did you, during this five month period make any effort to regain possession of the car?

A. Yes, I did. I asked for the car back. I was told that I could get the car back for around $140.00.

Q. $140.00?

A. Yes. The car would not be fixed—the parts would be on the floor and I could pick it up and take it home.

Tr. 230–31, consumer-witness Blumberg.

A. I left the car there for them to fix.

Q. At what price.

A. Well, the only cost I was told was the $60.

Q. All right, sir. When were you told the car would be ready?

A. I believe it was three—it was about three days later.

Q. All right. What happened when you went to retrieve the car?

A. I went to get the car and I was given a bill for $129.31. I think it was, I didn't keep the bill. I paid it and took the car out.

Tr. 405, consumer-witness Brandenburg.

10. The respondents' advertised warranties were false and deceptive in that they did not apprise the customer of the nature of the warranty. In the first place, the customer did not know what, if anything, was done to his car and therefor would be in no position to know what, if anything, he was entitled to under the advertised warranty. In the second place, the advertised warranty was a nebulous thing when consideration is given to the manner in which the respondents conducted their business. The entire operation, from the manager on down, was a slipshod approach that had as its end result a gouging of the customers.

If complaints were brought to Mr. Polisher by way of a lawsuit or otherwise, he endeavored to plug up the holes by settling the matter rather than correcting the bad business practices. (Tr. 234, 280, 317, 408–10; CX 47 pp. 20–23, 48 pp. 13–14.)

11. The examiner finds, based upon the record, that the advertising representations and accompanying acts and practices of the respondents are false, misleading and deceptive to the injury and prejudice of the consuming public and of respondents' competitors, and constitute unfair methods of competition and unfair

and deceptive acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act as charged in the complaint in this matter.

12. The examiner also finds that 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 automotive parts and services of the same general kind and nature as those sold by respondents.

CONCLUSIONS

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

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

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

4. The acts and practices of the respondents, as herein found, were and are all to the prejudice and injury of the public and of the 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.

5. 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 automotive parts and services of the same general kind and nature as those sold by respondents.

6. When the complaint in this proceeding was issued, the proposed order recommended by the Commission was similar to that proposed by the Commission in *General Transmissions Corporation,* Docket 8713 [73 F.T.C. 399], at the time the complaint was issued in that proceeding. However, having reviewed the Commission's decision in that case and having analyzed the policy set forth therein with respect to the Commission's judgment as to the type of order that should issue in a case of this nature, the examiner has concluded that the original order proposed in this proceeding is insufficient and, therefore,

following the policy and reasoning set forth in *General Transmissions*, the examiner is of the opinion that an order encompassing the general provisions set out in Docket 8713, *General Transmissions*, tailored to the facts of this proceeding, should be and is herein issued.

ORDER

It is ordered, That respondents Brunswick Exchange, Inc., a corporation trading as Vanguard Transmission Centers or under any other name or names, and its officers, and Manuel Polisher, individually and as an officer of said corporation, and their agents, representatives and employees, directly or through any corporate or other device, in connection with the advertising, repair, overhauling, rebuilding, offering for sale, sale or distribution of any transmission, motor, or other automotive component, 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. Misrepresenting, in any manner, the nature, extent or quality of any mechanical adjustment, replacement of parts or components, or any other repairs performed on any automobile transmission, other automotive component, or any other product;

2. Misrepresenting, in any manner, the nature, cost or extent of any services rendered or parts used in repairing any automobile transmission, other automotive component, or any other product, or charging for any services not in fact performed or parts not in fact used;

3. Representing, in any manner, that removal, dismantling, inspection, or any similar service will be performed on an automobile transmission, other automotive component, or any other product or component thereof, when the estimate quoted or price advertised for such service does not include reassembly and replacement of the component in the car, or other product, in its former condition;

4. Quoting or estimating a price for repairing an automobile transmission, other automotive component, or any other product, before determining by inspection, or by some other reasonable method, the nature and extent of the repairs needed so that the quoted or estimated price accurately reflects the actual price of the needed repairs;

5. Advertising the price of particular services such as an

overhaul, inspection, or reseal job, unless in conjunction therewith disclosure is made, in a prominent place and in a type size that is easily legible, that there are many possible defects in an automobile transmission, other automotive component, or other product, for which the advertised services are ineffective and which require additional parts and labor to repair and that such repairs will cost substantially more than the advertised price;

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

7. Representing, directly or by implication, that any merchandise or service is offered for sale when the purpose of the representation is to sell the offered merchandise or service only in connection with the sale of other merchandise or services;

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

9. Obtaining any agreement or authorization from any customer to repair or otherwise service any automobile or other product without:

(a) Specifically listing in such agreement or authorization the extent, nature and actual cost of the repairs to be performed;

(b) Promptly disclosing to the customer the precise extent, nature and cost of such repairs prior to performance thereof, if, despite respondents' best efforts accurately to estimate the cost of repairs in advance, the extent, nature or cost of the needed repairs differs in any degree from what was set out in such agreement or authorization;

(c) Performing according to such agreement or authorization or returning said vehicle in its original condition at a specific price agreed to in advance and fully set out in said authorization;

10. Failing to provide all customers, at the time they are billed, with an itemized list of parts and labor included in the repair, overhaul, reseal, rebuilding or other service performed on an automobile transmission, other automotive component, or other product, repaired or serviced by

respondents;

11. Falsely representing, in any manner, that transmissions rebuilt by the respondents are factory rebuilt; that transmissions rebuilt other than in a factory generally engaged in such rebuilding are factory rebuilt; that the respondents offer for sale factory rebuilt transmissions;

12. Using the term "overhaul" to refer to any transmission service which does not include the removal, dissassembly and replacement of all worn parts, hard or soft, and the reassembly and reinstallation of the transmission in the vehicle, unless in conjunction with the use of the term "overhaul," in a prominent place and in type that is easily legible, disclosure is made of:

(a) The parts that will be replaced in connection with the "overhaul" and are included in the overhaul price, as well as their price if purchased separately, and

(b) The parts that will not be replaced as part of the overhaul and their price, and/or

(c) The fact that in many cases substantial additional costs will be incurred if parts other than those regularly included in the overhaul must be replaced in order to repair the transmission;

13. Representing that any article of merchandise or service is guaranteed, unless all of the terms and conditions of the guarantee, the identity of the guarantor, and the manner in which the guarantor will in good faith perform thereunder are clearly and conspicuously disclosed, and, further, unless all such guarantees are in fact fully honored and all the terms thereof fulfilled;

14. Using the word "free" or any other word or words of similar import, as descriptive of an article of merchandise or service: *Provided, however,* That it shall be a defense in any enforcement proceeding hereunder for respondents to establish that in fact no charge of any kind, directly or indirectly, is made for such article of merchandise or service.

FINAL ORDER

No appeal from the initial decision of the hearing examiner having been filed, and the Commission having determined that the case should not be placed on its own docket for review and that pursuant to Section 3.51 of the Commission's Rules of Practice (effective July 1, 1967), the initial decision should be adopted and issued as the decision of the Commission:

It is ordered, That the initial decision of the hearing examiner shall, on the 8th day of October 1968 become the decision of the Commission.

It is further ordered, That respondents, Brunswick Exchange, Inc., a corporation trading as Vanguard Transmission Centers, and Manuel Polisher, individually and as an officer of said corporation shall, within sixty (60) days after service of this order upon them, file with the Commission a report in writing, signed by such respondents, setting forth in detail the manner and form of their compliance with the order to cease and desist.

IN THE MATTER OF

STANDARD FIBERS, INC., ET AL.

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

Docket C-1434. Complaint, Oct. 8, 1968—Decision, Oct. 8, 1968

Consent order requiring a Paterson, N.J., manufacturer of wool batting and other wool products to cease misbranding its merchandise.

COMPLAINT

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

PARAGRAPH 1. Respondent Standard Fibers, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York.

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

Respondents are engaged in the manufacture and sale of wool products, including batting, with their office and principal place of business located at 8 Morris Street, Paterson, New Jersey.

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

PAR. 3. Certain of said wool products were misbranded by the respondents within the intent and meaning of Section 4(a) (1) of the Wool Products Labeling Act of 1939 and 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 quilted fabrics stamped, tagged, labeled, or otherwise identified by respondents as 50 percent Acrylic, 50 percent Unknown Fibers, whereas in truth and in fact, said products contained woolen fibers together with substantially different fibers and amounts of fibers than represented.

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

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

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

DECISION AND ORDER

The Federal Trade Commission having initiated an investiga-

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

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

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

1. Respondent Standard Fibers, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 8 Morris Street, Paterson, New Jersey.

Respondent Sol Poller is an officer of said corporation and his address is the same as that of said corporation.

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

ORDER

It is ordered, That respondents Standard Fibers, Inc., a corporation, and its officers, and Sol Poller, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction or manufacture

for introduction, into commerce, or the offering for sale, sale, transportation, distribution, delivery for shipment or shipment, in commerce, of wool products, as "commerce" and "wool product" are defined in the Wool Products Labeling Act of 1939, do forthwith cease and desist from misbranding such products by:

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

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

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

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

IN THE MATTER OF

JERSEY MILLS ASSOCIATES ET AL.

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

Docket C-1435. Complaint, Oct. 8, 1968—Decision, Oct. 8, 1968

Consent order requiring a Newark, N.J., distributor of hosiery and other merchandise to cease misbranding its textile fiber products, misrepresenting imperfect hosiery as perfect, and misrepresenting its business status.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Textile Fiber Products Identification Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Jersey Mills Associates, a partnership, and Louis Franco and Samuel D. Cohen, individually and as copartners trading as Jersey Mills Associates,

hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Textile Fiber Products Identification Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Jersey Mills Associates is a partnership with its office and principal place of business located at 98 Market Street, Newark, New Jersey.

Respondents Louis Franco and Samuel D. Cohen are individuals and copartners trading as Jersey Mills Associates. They formulate, direct and control the acts, practices and policies of said respondent partnership. Their address is the same as that of the said partnership.

Respondents are distributors of hosiery and other merchandise.

PAR. 2. Respondents are now and for some time last past have been engaged in the introduction, delivery for introduction, sale, advertising, and offering for sale, in commerce, and in the transportation or causing to be transported in commerce, and in the importation into the United States, of textile fiber products; and have sold, offered for sale, advertised, delivered, transported 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 in that they were not stamped, tagged, labeled or otherwise identified as required under the provisions of Section 4(b) of the Textile Fiber Products Identification Act, and in the manner and form as prescribed by the Rules and Regulations under said Act.

Among such misbranded textile fiber products, but not limited thereto, were textile fiber products, namely women's hosiery, without labels and with labels which failed:

1. To disclose the constituent fibers or combination of fibers in the textile fiber product;

2. To disclose 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;

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

PAR. 4. 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. 5. In the course and conduct of their business, respondents purchase hosiery which is imperfect. They cause such hosiery to be sorted and to be packaged into selling units, and then sell such hosiery to retailers, who in turn sell it to the purchasing public. Such hosiery products are known in the trade as "irregulars," "seconds," or "thirds," depending upon the nature of the imperfection.

PAR. 6. In the course and conduct of their business, respondents now cause, and for some time last past have caused their said products, including hosiery, when sold to be shipped from their place of business in the State of New Jersey 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. 7. In the conduct of their business, at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of products of the same general kind as that sold by respondents.

PAR. 8. Respondents did not mark certain of their said hosiery products in a clear, conspicuous manner to disclose that they were "irregulars" or "seconds," so as to inform purchasers thereof of their imperfect quality. The purchasing public in the absence of markings showing that hosiery products are "irregulars" or "seconds," understands and believes that they are of perfect quality. Respondents' failure to mark or label their products in such a manner as will disclose that said products are imperfect, has had and now has the capacity and tendency to mislead dealers and members of the purchasing public into the erroneous and mistaken belief that said products are perfect quality products, and into the purchase of substantial quantities of respondents'

products.

Official notice is hereby taken of the fact that, in connection with the sale or offering for sale of imperfect hosiery, the failure to disclose on such hosiery products that they are "irregulars" or "seconds," as the case may be, is misleading, which official notice is based upon the Commission's accumulated knowledge and experience, as expressed in Rule 4 of the Commission's Amended Trade Practice Rules for the Hosiery Industry promulgated August 30, 1960 (amended June 10, 1964).

PAR. 9. In the course and conduct of their business, the aforesaid respondents, on their invoices, used the name "Jersey Mills Associates," thus stating or implying that respondents operate a mill or factory in which hosiery or other products sold by them are manufactured, and that such mill or factory is located at 98 Market Street, Newark, New Jersey.

PAR. 10. In truth and in fact, respondents do not own, operate, or control any mill or factory where the aforesaid hosiery or other products sold by them are manufactured, but are engaged solely in the business of distribution of said hosiery or other products. Thus the aforesaid representation is false, misleading and deceptive.

PAR. 11. There is a preference on the part of many members of the public to buy products directly from mills or factories, in the belief that by so doing, certain advantages accrue to them, including lower prices.

PAR. 12. The use by respondents of the aforsaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead purchasers into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of said respondents' products by reason of said erroneous and mistaken belief.

PAR. 13. The aforesaid acts and practices of respondents, as herein alleged in Paragraphs Eight through Twelve were, and are, all to the prejudice and injury of the public and of respondents' competitors, and constituted, and now constitute, unfair methods of competition and unfair and deceptive acts and practices in commerce in violation of Section 5(a)(1) of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the

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

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

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

1. Respondent Jersey Mills Associates is a partnership with its office and principal place of business located at 98 Market Street, Newark, New Jersey.

Respondents Louis Franco and Samuel D. Cohen are individuals and copartners trading as Jersey Mills Associates and their address is the same as that of said partnership.

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

ORDER

It is ordered, That respondents Jersey Mills Associates, a partnership, and Louis Franco and Samuel D. Cohen, individually and as copartners trading as Jersey Mills Associates, or under any other name or names, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, delivery for introduc-

tion, 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 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.

It is further ordered, That respondents Jersey Mills Associates, a partnership, and Louis Franco and Samuel D. Cohen, individually and as copartners trading as Jersey Mills Associates, or under any other name or names, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of hosiery, or other related "industry products" which are "irregulars," "seconds," or otherwise imperfect, as such terms are defined in Rule 4(c) of the Amended Trade Practice Rules for the Hosiery Industry (16 CFR 152.4(c)), in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Selling or distributing any such product without clearly and conspicuously marking thereon the words "irregular" or "second," as the case may be, in such degree of permanency as to remain on the product until the consummation of the consumer sale and of such conspicuousness as to be easily observed and read by the purchasing public.

2. Using any label, advertisement, or promotional material in connection with the offering for sale of any such product unless it is disclosed therein that such article is an "irregular" or "second" as the case may be.

It is further ordered, That respondents Jersey Mills Associates, a partnership, and Louis Franco and Samuel D. Cohen, individually and as copartners trading as Jersey Mills Associates, or

under any other name or names, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of hosiery or other products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Directly or indirectly using the word "Mills," or any other word or term of similar import or meaning in or as a part of respondents' corporate or trade name, or representing in any other manner that respondents perform the functions of a mill or otherwise manufacture or process the hosiery or other products sold by them unless and until respondents own and operate, or directly and absolutely control the mill, factory or manufacturing plant wherein said hosiery or other products are manufactured.

2. Misrepresenting in any manner that respondents have mills, factories or manufacturing plants where their products are manufactured or misrepresenting in any manner the location where respondents' products are manufactured.

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

SCHOOL SERVICES, INC., ET AL.

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

Docket 8729. Complaint, Feb. 13, 1967—Decision, Oct. 10, 1968

Order requiring the operator of a Washington, D.C., trade school, and the school's franchisees to cease misrepresenting that the school extends loans to students, that it is approved by a government agency, that its courses will qualify students to be airline stewardesses or buyers for retail stores, exaggerating the availability of jobs through the school's placement service, and using false inducements to obtain signatures on obligations to pay money.

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 School Services, Inc., a corporation, Cinderella Career and Finish-

ing Schools, Inc., a corporation, Stephen Corporation, a corporation trading as Cinderella Career College and Finishing School, and Vincent Melzac, individually and as an officer of School Services, Inc., and as controlling stockholder of Cinderella Career and Finishing Schools, Inc., and Stephen 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. Respondents, School Services, Inc., Cinderella Career and Finishing Schools, Inc., and Stephen Corporation are corporations organized, existing, and doing business under and by virtue of the laws of the District of Columbia with their principal office and place of business located at 1100 Vermont Avenue, NW., in the city of Washington, District of Columbia. In addition respondent Stephen Corporation operates the Cinderella Career College and Finishing School at 1221 G Street, NW., in the city of Washington, District of Columbia.

Vincent Melzac is the principal officer of respondent School Services, Inc., and controlling stockholder of respondent Cinderella Career and Finishing Schools, Inc., and Stephen Corporation with his principal office located at 1221 G Street, NW., in the city of Washington, District of Columbia. He formulates, directs, and controls the acts of the corporate respondents, including the acts and practices hereinafter set forth. All of respondents have cooperated and acted together in the performance of the acts hereinafter alleged.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the operation of schools, offering courses of instruction to those seeking jobs as professional models, fashion advisers, buyers, airline stewardesses, secretaries and receptionists; and careers in radio, the movies, television and in various other fields.

PAR. 3. In the course and conduct of their business as aforesaid, respondents have operated and are now operating a school in the District of Columbia at which they solicit students by means of advertisements in newspapers of general interstate circulation and by direct mailings to persons in the several States and in the District of Columbia who respond to the advertising so placed. In the further course of their business, respondents negotiate the installment contracts and negotiable notes received by said respondents in the District of Columbia to re-

spondent School Services, Inc., in the District of Columbia, and 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. In the course and conduct of the aforesaid business, and for the purpose of inducing persons to sign contracts for respondents' courses of instruction, the respondents have made many statements and representations about their services and courses of instruction.

Typical, but not all inclusive, of said statements and representations appearing in respondents' advertising are the following:

* * * * * * *

CAREERS!

The Cinderella Career and Finishing School offers * * * careers in EXECUTIVE SECRETARIAL, PROFESSIONAL MODELING, FASHION MERCHANDISING, RETAIL BUYING.

BE THAT SPECIAL GIRL!

Discover how you can always be the center of attention * * * the girl who always looks her best * * * the one, people turn to look at.

JOB PLACEMENT SERVICE!

* * * * * * *

CINDERELLA CAREER COLLEGE

1221 G Street, N.W. 628–1950

Comprehensive training in the many facets of fashion careers. Includes retailing, buying, sales promotion, advertising, display and practical field trips. FASHION IS A YOUNG PEOPLES FIELD. In no other area can a woman assume executive status at such an early age. Fashion is a stable field, the third largest in the U.S. High School Diploma or equivalent is required. SEND FOR BROCHURE. NO OBLIGATION.

WHAT IS THE CINDERELLA SECRET?

[Photograph of Miss Batts]

Dianna Batts
Miss U.S.A. of the
Miss World Contest
A Cinderella girl

[Photograph of Miss Ness]

Carol Ness
Miss Cinderella 1965,
winner of all-expense
trip to Paris, France

YOU TOO CAN BE A CINDERELLA GIRL!

Our unique world-famous finishing training can transform your dreams into reality, can make you charming, lovely, poised, confident, at ease wherever you go, whatever you do.

TRAINING FOR EXCITING CAREERS IN

Executive Secretarial
Fashion & Retailing
Professional Modeling
Airlines

BE THAT SPECIAL GIRL The girl looked at and admired by all * * * The girl who gets ahead in Business! Send for our FREE "Magic Door" brochure. Mail by tomorrow and we'll include Free our fascinating booklet "101 Ways To Be More Attractive."

Official Washington Headquarters for the Miss Universe Beauty Pageant
Job Placement Service Day and Evening Classes

New Classes Forming—Enroll Now!
CINDERELLA CAREER AND FINISHING SCHOOL
1221 G St., NW., Washington, D.C., Phone 628–1950

Please send me your Free brochures. I have checked my interest below.

[ ] Secretarial [ ] Pro. Modeling [ ] Fashion & Retail Buying [ ] Airlines Preparatory [ ] Finishing [ ] Self Improvement [ ] Miss Universe Entry Blank.

Name _____ Age _____

Address _____

City _____ State _____ Phone _____

Approved by School Services, Inc., Washington, D.C. to extend education loans.

PAR. 5. By means of the statements and representations in their advertisements, as set forth in Paragraph Four hereof, and others similar thereto but not specifically referred to herein, respondents have represented directly or by implication that:

1. Respondents make educational loans to students who register for the courses offered at Cinderella Career and Finishing School.

2. School Services, Inc., Washington, D.C., is a government agency or public non-profit organization that has officially approved Cinderella Career and Finishing School or the courses offered by such school.

3. Dianna Batts, "Miss U.S.A. 1965" and Carol Ness, "Miss Cinderella 1965" were graduates of Cinderella Career and Finishing School and owe their success to the courses taken there.

4. Respondents offer a course of instruction that qualifies

students to be airline stewardesses.

5. Respondents offer a course of instruction that qualifies students for jobs as "buyers" for retail stores.

6. Respondents find jobs for their students in almost all cases through their job placement service.

7. Graduates of various of respondents' courses of instruction are thereby qualified to assume executive positions in the fields for which they have been trained by respondents.

8. Cinderella Career and Finishing School is the official Washington, D.C., headquarters for the Miss Universe Beauty Pageant.

9. Cinderella Career College and Finishing School is a college.

PAR. 6. In truth and in fact:

1. Respondents do not make educational loans to students who register for the courses offered at Cinderella Career and Finishing School.

2. School Services, Inc., Washington, D.C., is a capital stock company not connected with a government agency or public non-profit organization and has not been granted the right by any such agency to approve the school or the courses offered by any such school.

3. Dianna Batts, "Miss U.S.A. 1965" and Carol Ness, "Miss Cinderella 1965" were not graduates of Cinderella Career and Finishing School nor do they owe their success to any courses taken there.

4. Respondents do not offer a course of instruction which qualifies their students to be airline stewardesses.

5. Respondents do not offer a course of instruction that qualifies their students for jobs as "buyers" for retail stores.

6. Respondents do not find jobs for their students in almost all cases through their job placement service.

7. Graduates of various of respondents' courses of instruction are not thereby qualified to assume executive positions in the fields for which they have been trained by respondents.

8. Cinderella Career and Finishing School is not the official Washington, D.C., headquarters for the Miss Universe Beauty Pageant.

9. Cinderella Career College and Finishing School is not a college, nor is it affiliated with or recognized by any educational authority.

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

PAR. 7. In the further course and conduct of their said business,

respondents engage in the following unfair or deceptive acts and practices:

1. When a potential student first visits respondents' school, she is frequently led to believe that she is qualified to compete in such beauty contests as the Miss District of Columbia pageant which leads to the title of Miss Universe, the Miss Junior D.C. Pageant, or in other contests not specifically set out herein if only she would sign up for courses given by respondents which will bring out the best in the applicant.

While holding out the strong possibility of attaining such titles as aforesaid, respondents will frequently add that completion of respondents' courses will enable the applicant in most cases to obtain a better job through respondents' many contacts in the business world.

The aforesaid statements and representations and others similar thereto are false, misleading and deceptive and are used by respondents, their agents, representatives and employees for the sole purpose of obtaining the potential student's signature to various documents committing said potential student to pay for expensive courses of study.

2. In the course of making the above representations and others similar thereto respondents' agents, representatives, and employees acting alone or in pairs subject the potential student to constant pressure to get the student started right away on various of respondents' courses of study and present various documents, including a negotiable enrollment agreement, for said potential student's signature without revealing the negotiable and noncancellable nature thereof or allowing sufficient opportunity to permit the reading or careful consideration thereof and in many instances respondents are thereby successful in securing the student's commitment to such courses.

PAR. 8. 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 courses of instruction to those seeking jobs as professional models, fashion advisers, buyers, airline stewardesses, secretaries and receptionists; and careers in radio, the movies, television and in various other fields. Said courses are of the same general kind and nature as those sold by respondents.

PAR. 9. The use by the respondents of the aforesaid false, misleading and deceptive statements and representations and unfair or deceptive acts 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 a substantial number of respondents' courses by reason of said erroneous and mistaken belief and by reason of said unfair or deceptive acts and practices.

PAR. 10. 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 or deceptive acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

Mr. Edward F. Downs, Mr. Anthony I. Januelwicz and *Mr. Robert E. Freer, Jr.*, Federal Trade Commission, Washington, D.C., supporting the complaint.

Cole and Groner, Washington, D.C., *Mr. Alan Y. Cole*, and *Mr. Harvey Rothberg*, for respondents.

INITIAL DECISION BY LEON R. GROSS, HEARING EXAMINER

JANUARY 26, 1968

This is a proceeding under Section 5 of the Federal Trade Commission Act [1] in which respondents are charged with engaging in deceptive acts and practices in the interstate sale of "education."

What is "education" within the context of this record?

What is "education" supposed to do for the individual? What is it supposed to do for the society of which the individual is a part?

No responsible person or group of persons in the United States appears to have answered these questions lucidly or convincingly. For example, see: *Up The Down Staircase* by Bel Kaufman; *Brown* v. *Board of Education*, 347 U.S. 483; *Hobson* v. *Hansen*, 269 F. Supp. 401; *Washington Daily News*, October 25, 1967, page 1, *"A School Is Where They Lock You Out"; Washington Post*, October 8, 1967, page 1, *"Advanced School Stirs Storm."* See also the following articles in *The New Republic: No More Nonsense About Ghetto Education* by Joseph Alsop, July 22, 1967, p. 18; *Skelly Wright's Sweeping Decision* by Alexander M. Bickel, July 8, 1967, p. 11; *Colonialism on the Black Campus* by Michael Miles, August 5, 1967, p. 15; *Schools for Children* by Joseph Featherstone, August 19, 1967, p. 17; *How Children*

[1] 15 U.S.C.A. 45 "(a)(1) Unfair methods of competition in commerce, and unfair or deceptive acts or practices in commerce, are hereby declared unlawful."

Learn, Joseph Featherstone, September 2, 1967, p. 17; *Teaching Children to Think* by Joseph Featherstone, September 9, 1967, p. 15; *Fake Panaceas for Ghetto Education* by Robert Schwartz, Thomas Pettigrew, Marshall Smith, September 23, 1967, p. 16; *Bilingual Education,* October 21, 1967, p. 9; *Notes on Community Schools* by Joseph Featherstone, Dec. 9, 1967. See also the following articles in the *Saturday Review of Literature: America's Dien Bien Phu?* by John Naisbitt, July 15, 1967, p. 53; *EDC: General Motors of Curriculum Reform* by James D. Koerner, August 19, 1967, p. 56; *It Didn't Start With Sputnik* by Frank G. Jennings, September 16, 1967, p. 77; *The Schools and the Pregnant Teen-Ager* by Susan Strom, September 16, 1967, p. 80; *The Split Level American Family* by Urie Bronfenbrenner, October 7, 1967, p. 60; *Who Says Its Proper English* by Joseph Wood Krutch, October 14, 1967, p. 19. See also *Changing the Pecking Order,* an address by Harold Howe II, U.S. Commissioner of Education, before the College Entrance Examination Board, Chicago, Illinois, October 24, 1967. In a speech in Austin, Texas, on October 24, 1967, Dr. Bernard E. Donovan, superintendent of schools for New York City, said teachers "now consider themselves similar to longshoremen, steelworkers, or truck drivers, rather than a skilled, highly educated professional group entrusted with a unique public responsibility." (New York *Times,* October 26, 1967, p. 40.) See *Time* magazine of December 29, 1967, p. 31. See the various speeches and writings of James Bryant Conant (including *The End of Orthodoxy (Saturday Review,* January 13, 1968, p. 50)), Robert Maynard Hutchins, John Dewey, and the Honorable John William Gardner, Secretary of the U.S. Department of Health, Education and Welfare, including Secretary Gardner's Book: *Excellence: Can We Be Equal And Excellent, Too,* and Secretary Gardner's appearance on the television program *Meet the Press* on December 24, 1967.

McCalls magazine (January 1968 p. 4) refers to Jonathan Kozol's *Death At An Early Age.* The *Time* article (December 29, 1967, p. 31) refers to educational critics Jonathan Kozol, John Holt, Robert Coles, Edgar Z. Friedenberg, and Herbert Kohl as part of "The inner circle of back scratchers * * *." See also *The Columbia University Forum* (Fall 1967) p. 23 *et seq.,* an article by Staughton Lynd. See the report to the Mayor of New York City by the Committee for Decentralized Education (whose chairman is McGeorge Bundy of the Carnegie Foundation) entitled *Reconnection For Learning: A Community School System For New York City.* Note also public statements of Clark

Kerr of the Carnegie Corporation's Commission on The Future of Higher Education. Note the remarks of District of Columbia Councilman Joseph D. Yeldell on January 2, 1968, charging the D.C. Board of Education with poor planning and leadership (*Washington Post,* January 3, 1968, p. B 1) "* * * *more money is not the answer at this time*" (italic supplied). When the President signed the "Elementary and Secondary Education Amendments of 1967" (P.L. 90–247) on January 2, 1968, *inter alia,* he said:

We can cite educational statistics. We can publish reports and columns of numbers. But there is only one way, really, to measure the full scope and meaning of this law, and that is in the lives of children.

What this law means, is that we are now giving every child in America a better chance to touch his outermost limits—to reach the fartherest edge of his talents and his dreams. We have begun a campaign to unlock the full potential of every boy and girl—regardless of his race or his religion or his father's income.

But see the *Washington News* (January 15, 1968, p. 19) *The Amish Problem: Is A Door Closed On These Kids?*

In Secretary Gardner's book (*op. cit.*), the Secretary says, *inter alia,*

1. We must make available to young people far more information than they now have on *post-high school opportunities other than college.* (Italic supplied.)

McCalls magazine for January 1968 states:

The bewildering jargon-and-statistic-filled flood of articles, editorials, and new programs stimulated by our new-found recognition of the urban school crisis threatens to make metropolitan Americans as indifferent to the educational emergency as did the earlier silence. Hardly a week passes without a newspaper article, and reports on the failures of ('cures') are nearly as frequent as descriptions of the problems and new programs.

Educators insist that if the public and Congress gave them more money, the schools could compensate for the ghetto children's educational deficiencies. Meanwhile, university researchers, who have found a promising new field in public-school reform, are so caught up with expensive research aimed at professional publication that they fail to communicate the nature of the problem to the public—or to reform the schools.

Few people seem to realize that what all those statistics and articles are talking about is really millions of human beings, most very young, who will grow up with their lives and life chances permanently crippled.

In the *Washington Post's* Book Section of January 14, 1968, Robert Coles, a research psychiatrist at the Harvard University Health Services, reviews John Holt's *How Children Learn.* In that review, Dr. Coles, *inter alia,* writes:

We laugh anxiously at such an idea, but watch our children suffer exactly that fate when they go to school, and even before. They eventually do

learn to read and write and spell and count, but in such a way that they hate what they have learned, or spit it all out in anger and despair—and in time they will take revenge by doing to others what has been done to them. *It is all very sad, very prevalent and, as Holt shows again and again, quite unnecessary.* In sections that describe children's games, their talk, their way of coming to read, or play sports, or paint, or count, he brings to life the God-given or natural (take your choice) curiosity that every boy and girl for a while possesses. *Slowly they die, though*; it becomes irrelevant merely to seek and experiment and comprehend. They are "growing up," and the world wants soldiers of one sort or another. They learn to fall in line—a kind of learning Holt clearly detests. *I wish that a lot of parents and teachers would heed his voice and learn from it, but I doubt very much that such will be the case.* (Italic supplied.)

In a speech before the National Association of Manufacturers in New York City on December 8, 1967, Congressman Quie of Minnesota, *inter alia*, said:

In the conflict that pits academic against vocational education, the major emphasis in our secondary schools is on the curriculum for the college-bound student. My daughter who is now a junior in high school would like to pursue something like the Peace Corps or perhaps a line that would enable her to work with less-fortunate individuals. *She wants to do this right after high school. She tells me that most of the guidance and counseling is in terms of what college she ought to go to. I have asked her what kind of training she is going to get in high school for what she would like to do and she says that nobody ever talks about that.*

As so our whole emphasis is on preparation for that 30 percent that are college-bound—or perhaps on that 20 percent that go far enough in college so that they can learn a skill from it. I have seen the statistics that show that of the young people who leave school and go out to work with less than a baccalaureate degree, only one in ten have a job skill to take with them. *And that's a pretty poor record* for our education system. (Italic supplied.)

See article in *Look* magazine (January 23, 1968) *Needed: A University for the C+ Student* by Harold A. Fitzgerald.

The Education Establishment of the United States is all powerful [2] and very rich [3].

[2] It engages in international relations and international power plays (including espionage) as an arm of the CIA, among other organizations. It spends uncounted millions of the people's money under classified contracts with the United States Government. It furnishes a high percentage of men who are at the top levels of our national government and, who, from such positions, make and execute national and international policy.

[3] "In higher education, 10 billion dollars lasts one year. Today, it takes only this length of time for the 2,140 colleges and universities in the United States to spend 10 billion dollars for their operations and for new construction." (U.S. Office of Education: *The Role of Endowment in Higher Education*). For the school year 1966–1967 the estimated expenditures for regular and "other" education institutions in the United States was $48,800,000,000 (see page 935 *infra*). A 1966 study of college and university endowments by the Boston Fund of Boston Massachusetts, reflects the following endowments for the named institutions of higher learning (stated in millions of dollars): Harvard 974.9; Yale 470.0; MIT 374.3; Princeton 311.4; U. of Chicago 275.8; U. of California 237.7; Northwestern 204.9; Cornell 194.5; Stanford 167.2; and U. of Pennsylvania 166.2.

How well does the Education Establishment discharge the heavy responsibilities which such power and wealth confer upon it?

* * * * * * *

One of the corporate respondents, Stephen Corporation, which operates for profit the Cinderella Career College and Finishing School in the District of Columbia-Virginia-Maryland area, referred to by some as a "trade school," is the institution whose advertisements are challenged in this proceeding.

Complaint counsel, resorting to what the Court of Appeals for the Ninth Circuit referred to in the *Flotill* case (358 F. 2d 224, 233) as a "rather cavalier use of the 'alter ego' doctrine," seeks an injunction not only against the Stephen Corporation, but also against Stephen's (a) sole stockholder—Melzac, (b) licensor—Cinderella Career and Finishing Schools, Inc., and (c) School Services, Inc., the corporation which buys the installment notes signed by Stephen's students to enable them to pay their tuition at the Cinderella school in the same manner that almost everything else is paid for these days—by installment credit.[4]

THE RESPONDENTS

STEPHEN CORPORATION (sometimes hereinafter "Stephen" and/or "the Cinderella school"), incorporated May 11, 1965, under the District of Columbia Code, operates the *Cinderella Career College and Finishing School* at 1219 G Street, NW., Washington, D.C., for profit. All of Stephen's stock is owned by Vincent Melzac, the individual respondent. The curricula offered by the Cinderella school and its challenged advertisements will be discussed later in this decision.

CINDERELLA CAREER AND FINISHING SCHOOLS, INC., 1219 G Street, NW., Washington, D.C. (sometimes hereinafter the "licensor"), incorporated December 3, 1963, under the District of Columbia Code, licenses businesses such as respondent Stephen Corporation to operate such schools (see Melzac testimony Tr. 122) for female high school graduates, under the "Cinderella" name, among others. All of its stock is owned by Vincent Melzac. The licensor licenses schools to operate under a given name upon payment of a royalty; provides a name to use, curricula, guidance on advertising, promotion, and similar activities (Tr. 43). This corporate respondent licensed Stephen on June 1,

[4] Consumer credit in force in the United States at the end of September 1967 was $95,886,000,000, of which $76,039,000,000 was installment credit (*Federal Reserve Bulletin, November 1967*).

1965 (CX 94) to operate in Washington, D.C., and has licensed schools in Chicago, Boston, Philadelphia, Oak Park, Illinois, and Hammond, Indiana (Tr. 45).

SCHOOL SERVICES, INC. (sometimes hereinafter "SS"), incorporated December 13, 1955, under the District of Columbia Code, 1100 Vermont Avenue, NW., Washington, D.C., buys commercial paper, and specializes in purchasing the installment notes signed by students and/or their parents or guardians to pay their tuition for the schools licensed by the licensor, including the Cinderella Career College and Finishing School operated by Stephen. All of SS Class A voting stock (10,000 shares) and one-third of its Class B non-voting stock (110,141 shares) are owned by Melzac. There are 31 other holders of the Class B non-voting stock (Tr. 126).

VINCENT MELZAC, in addition to being the sole stockholder of Stephen, the sole stockholder of the licensing corporation, and the owner of all the voting stock of SS, is and has been the president, principal operating officer and a member of the board of directors of SS for approximately ten years. Melzac testified to having other business interests, but his principal business efforts are directed toward the day-to-day operation of School Services, Inc. Melzac is not an officer in Stephen nor in the licensing corporation. He devotes part of his business efforts to the operation of Patricia Stephens College and Finishing School of Chicago, which is wholly owned by SS (Tr. 137—39).

THE CHARGES AGAINST RESPONDENTS

The complaint charges that by means of statements and representations in their advertisements, respondents have represented, directly or by implication, contrary to the fact, that:

1. *Respondents make educational loans* to students who register for the courses offered at Cinderella Career and Finishing School.

2. School Services, Inc., Washington, D.C., is a *government agency* or *public non-profit organization* that has officially approved Cinderella Career and Finishing School or the courses offered by such school.

3. Dianna Batts, "Miss U.S.A. 1965" and Carol Ness, "Miss Cinderella 1965" were *graduates* of Cinderella Career and Finishing School and owe their success to the courses taken there.

4. Respondents offer a course of instruction that *qualifies* students to be airline stewardesses.

5. Respondents offer a course of instruction that *qualifies* students for jobs as "buyers" for retail stores.

6. Respondents find jobs for their students in *almost all* cases through their job placement service.

7. Graduates of various of respondents' courses of instruction are *thereby qualified* to assume *executive* positions in the fields for which they have been trained by respondents.

8. Cinderella Career and Finishing School is the *official Washington, D.C., headquarters* for the Miss Universe Beauty Pageant.

9. Cinderella Career College and Finishing School is a *college.* (Italic supplied.) (See Complaint paragraph five.)

The usual prehearing procedures were engaged in, and after various interlocutory matters were decided by the Federal Trade Commission a full and complete hearing was afforded the parties. The matter is now before the hearing examiner for decision upon the entire hearing record, including four stipulations of fact, 1810 pages of transcribed testimony of 53 witnesses, 157 Commission exhibits, 90 exhibits for the respondents, proposed findings, conclusions and briefs, and oral arguments thereon.

The Administrative Procedure Act provides (Public Law 89–554 approved September 6, 1966 § 556 (d)) :

> Except as otherwise provided by statute, the proponent of a rule or order has the burden of proof.

The Rules of Practice for Adjudicative Proceedings for the Federal Trade Commission adopted July 1, 1967, provide:

> § 3.43 Evidence.—(a) *Burden of proof.*—Counsel representing the Commission, or any person who has filed objections sufficient to warrant the holding of an adjudicative hearing pursuant to § 3.13, shall have the burden of proof, but the proponent of any factual proposition shall be required to sustain the burden of proof with respect thereto.

Decisions of the Federal Trade Commission and of the courts establishing criteria for determining whether a course of conduct violates Section 5 of the Federal Trade Commission Act are too numerous to list. An article in the *Columbia Law Review* for March 1964 by Ira M. Millstein has a full discussion of the false advertising decisions under Section 5 of the Act, up to the time the article was written. It is not necessary to an adjudication of the issues in this proceeding to review all of the precedents discussed in Mr. Millstein's article. One of the principles which that article stresses is that although the courts have mandated the Federal Trade Commission to protect "the public—that vast multitude which includes the ignorant, the unthinking, and the credulous, * * *." *P. Lorillard Co.* v. *F.T.C.,* 186 F. 2d 52, 58; *Aronberg* v. *F.T.C.,* 132 F. 2d 165, 167, nevertheless, "the Federal Trade Commission must select the level of consumer intelligence against which it will consider the promise." (*Columbia Law Review op. cit.* 458.) In *Kirchner,* Docket 8538, opinion of Novem-

ber 7, 1963, at page 3, Commissioner Elman wrote for the Federal Trade Commission [63 F.T.C. 1282, 1290]:

> * * * True, as has been reiterated many times, the Commission's responsibility is to prevent deception of the gullible and credulous, as well as the cautious and knowledgeable (see *e.g., Charles of the Ritz Dist. Corp.* v. *F.T.C.*, 143 F. 2d 676 (2d Cir. 1944)). This principle loses its validity, however, if it is applied uncritically or pushed to an absurd extreme. An advertiser cannot be charged with liability in respect of every conceivable misconception, however outlandish, to which his representations might be subject among the foolish or feeble-minded. Some people, because of ignorance or incomprehension, may be misled by even a scrupulously honest claim. Perhaps a few misguided souls believe, for example, that all "Danish pastry" is made in Denmark. Is it, therefore, an actionable deception to advertise "Danish pastry" when it is made in this country? Of course not. A representation does not become "false and deceptive" merely because it will be unreasonably misunderstood by an insignificant and unrepresentative segment of the class of persons to whom the representation is addressed. If, however, advertising is aimed at a specially susceptible group of people (*e.g.*, children), its truthfulness must be measured by the impact it will make on them, not others to whom it is not primarily directed. * * * (*Kirchner* was affirmed at 337 F. 2d 751.)

A substantial portion of the advertising of Cinderella Career College and Finishing School is directed to female high school seniors or those who have recently graduated from high school, roughly girls about 18 years old or older. Some of the Cinderella advertising does attract females younger than 18 and older than recent high school graduates. These are persons chiefly interested in professional modeling as a career. Some of those attracted by the Cinderella advertisements are interested in its self-improvement courses.

Few of the females who respond to the Cinderella ads, if any, appear to have had any formalized, institutionalized education beyond the high school level. They do not plan to take nor are they interested in any "higher education." They are either already in the work force or want to enter the work force as soon as possible—either from necessity or design. This is the group whose understanding of the Cinderella ads must be evaluated under the *Kirchner* rule.

And what about females in the work force in the United States?

There were 27.8 million women workers in the United States in 1966 [5].

In March 1964 the average schooling of women in the work

[5] See United States Department of Labor, Women's Bureau *Background Facts on Women Workers in the United States,* May 1967, page 1.

force 18 years of age and over was 12.3 years. Ten percent of the women in the work force had completed four years or more of college. Forty-one percent of the women in the work force had completed their education with high school graduation. Women with less than five years of schooling were twice as prevalent in the population as in the labor force. (*1965 Handbook on Women Workers,* U.S. Department of Labor—Women's Bureau Bulletin 290.)

Slightly more than 1.3 million females and about 1.3 million males graduated from high schools in 1965.[6] By 1965 the percentage of female high school graduates enrolling in college for the first time was 46 percent.[7] It is the other 54 percent of the female high school graduates to which the Cinderella advertisements are for the most part directed.

There may be any number of reasons why a female high school graduate does not go on to "higher education." Some simply do not have the intellectual capacity to compete in conventional higher education institutions. The cost of higher education is so great that a percentage of those with the intellectual ability cannot afford higher education. Moreover, not every female high school graduate *should* go to college. It would not be either desirable nor in the best interests of the individual nor of society for every high school graduate—male or female, to get a "higher education" (see Melzac testimony p. 64) even though they have both the intellectual capacity and the money. (See Gardner: *op. cit. supra.*) Persons with impressive credentials assert that there simply are not sufficient higher education facilities available today; that the college selection process is bogged down in clerical-managerial chaos; that discrimination in favor of the student with high grades is rampant; and that many of the students selected pre-empt, unjustifiably, resources that should be used for other, more deserving, but less fortunate "rejects."

The deceptiveness, if any, of the Cinderella school advertisements must be judged, therefore, not by the impression they convey to "the ignorant, the unthinking, and the credulous," but rather by the impression they create on female high school seniors and young post-high school females for the most part, in the District of Columbia and the adjacent Maryland and Virginia counties, or, as it is sometimes called, "the Greater Washington Area."

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[6] United States Department of Labor Women's Bureau *Trends in Educational Attainment of Women* June 1967, page 2.

[7] Women's Bureau *op. cit.* page 4.

Moreover, since the Cinderella school contracts are unenforceable against minors, the school endeavors to have the under age females who "buy" their "product" discuss their "purchases" with parents, guardians and other legally responsible adults, *before* they sign up for a course at the Cinderella school. The Enrollment Contract of Elizabeth Lee Mann (CX 132) has written upon its face "Contingent on father's approval." Complaint counsel's witnesses proved that it is not extraordinary for a parent or guardian of a prospective Cinderella student to withhold approval. There is no proof in this record that the Cinderella school at any time ever enrolled a student contrary to the guardian or parent's objection, or encouraged a student to act contrary to her parent or guardian's wishes. At least one of complaint counsel's witnesses withdrew from the school because her husband objected (see testimony of Berma Bowles, Tr. 537, *et seq.*). On the other hand, there is uncontradicted evidence, proffered by complaint counsel, of situations in which the Cinderella school refunded tuition payments, forgave financial obligations to pay and cancelled the student's Enrollment Contract because the student became disenchanted with the school for some inarticulated reason. In some instances, it was apparent that this disenchantment was whimsical—a student who, in her own mind, had recast her "image" as a Cinderella girl, discovered, in the crucible of reality, that her dreams exceeded her potential.

For the school year 1966–1967 the estimated expenditures by regular and "other" educational institutions in the United States was $48,800,000,000. Of this sum $32,000,000,000 was spent by elementary and secondary schools (see *Projections of Educational Statistics to 1975–76* 1966 edition, page 58 published by the United States Office of Education). The enrollment for the Fall of 1967, as projected in the same study, for kindergarten through grade 12 was 50,700,000. The projected total degree-credit fall enrollment in the same year in institutions of higher learning was 6,541,000.

If these figures reasonably reflect the true situation, it would appear that for the year 1966–1967 the national average per-student expenditure for pupils in grades kindergarten through 12 was approximately $630, and the national average per-student expenditure for those in higher education was $2,540, or *four times as much.*

The forgotten female in this disparate division of the nation's education dollar is the female to whom the Cinderella school ads are, for the most part, pitched—the female who has been the

beneficiary of the $630 "largesse," but who cannot, or will not, be eligible for the $2,540 "investment."

Funds appropriated by the Congress for the United States Office of Education for the last five fiscal years ending as indicated were:

June 30, 1964	*$ 701,561,000
June 30, 1965	*1,507,578,000
June 30, 1966	*3,342,097,000
June 30, 1967	*3,924,770,000
June 30, 1968	*3,903,226,000

For the fiscal year ending June 30, 1967, the congress appropriated for tuition and/or scholarships for higher education $479,000,000.*

The U.S. Office of Education estimates that of the 1,026,087 students who entered college for the first time in the Fall of 1961, only 492,984, 48 percent, received their degrees in 1964–1965. (*Earned Degrees Conferred* 1964–1965 published by the United States Office of Education, p. 3.) What happened to the other 52 percent? Would they, and society, have been better served had they enrolled in a "trade school" such as the Cinderella Career College and Finishing School?

In the national dialogue about high school "drop outs," how much is said about college "drop outs"? The Cinderella school enrolls both types of "drop outs"—for a profit, of course. But has profit become an undesirable connotation in our dialogues about education? The highest authorities in the nation frequently emphasize how much more "profitable" it is to be a college graduate rather than a mere high school graduate.

Respondents defend the complaint charges by asserting, among other things: (1) that the complaint should not have been issued because the Federal Trade Commission did not have "reason to believe" that the law was being violated; (2) if it issued, the complaint should have named only Stephen Corporation which operates the Cinderella school because the Cinderella school is the only respondent that promulgates the advertising herein being challenged; and (3) the representative advertisements are not false, misleading or deceptive within the purview of Section 5 of the Federal Trade Commission Act.

With reference to the defense that the Federal Trade Commission had no "reason to believe" that the law was being violated at the time it issued the complaint in this proceeding, the hearing examiner repeatedly told counsel that this defense is of such a

* Figures supplied by the U.S. Office of Education.

nature that it can be adjudicated by the Federal Trade Commission only. The hearing examiner did, as a result of an order issued by the Federal Trade Commission on September 12, 1967, receive the testimony of the Chief of the Bureau of Deceptive Practices of the Federal Trade Commission, Mr. Charles A. Sweeny (Tr. 1611–26); and a trial attorney on the staff of the Bureau of Deceptive Practices, Sheldon Feldman (Tr. 1511–1610). Nancy Wynstra, a news reporter for WTOP Television testified in rebuttal in response to a subpoena served her by both sides.

If the Federal Trade Commission desires to make some adjudication with reference to respondents' defense that the Federal Trade Commission had no "reason to believe" that the law was being violated at the time the complaint was authorized in this proceeding, the testimony of Sheldon Feldman (Tr. 1511–1610); Charles A. Sweeny (Tr. 1611–26) and Nancy Wynstra (Tr. 1732–1809) may be relevant and pertinent.

In the U.S. District Court for the District of Columbia, Civil Action 503–67, respondents have attacked the Federal Trade Commission's practice of issuing press releases at the time it issues its complaints in formal cases. Such press release issued in this case. Thereafter, Judge McGarraghy issued a temporary restraining order enjoining the Federal Trade Commission from issuing any further publicity about this case. The matter is now on appeal in the U.S. Court of Appeals for the District of Columbia Circuit, No. 21118, has been argued orally, and as of the time of the preparation of this initial decision, had not been decided.

Twenty-nine witnesses testified in support of the complaint and 24 witnesses testified on behalf of respondents. One hundred fifty-seven Commission exhibits have been received in evidence, and include copies of the advertisements herein being challenged as well as specimens of all the contractual arrangements between the Cinderella school and its students—the Enrollment Contract and the installment notes. The 90 exhibits of respondents include recent photographs of the school premises, the Cinderella Career College and Finishing School at 1219 G Street, N.W., Washington, D.C. (RX 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80 and 81).

Witnesses in support of the complaint were:

Employees of respondents:

Vincent Melzac, respondent (Tr. 42–225).
Barbara Solid (Tr. 227–278).
Kathy Naylor (Tr. 279–297).

Judith Campbell (Tr. 309–325).
Yolanda Costelloe (Tr. 914–994).
Sandra Holder (Tr. 996–1022).

Former students of the Cinderella school in Washington or their parents:

Sandra D. Roth (Tr. 610–643).
Vera White (Tr. 644–680).
Shelley Burns (Tr. 731–734).
Susan Bennett (Tr. 736–739).
Shirley Burns [mother of Shelley; foster mother, of Susan Bennett] (Tr. 700–730).
Robin North (Tr. 740–746).
Berma Bowles (Tr. 539–594).
Peggy Caldwell (Tr. 519–536).
Gloria Lancaster (Tr. 750–763).
Anne Donelson [aunt of Gloria Lancaster] (Tr. 765–774).
Andrew M. Egnot [father of Michelle] (Tr. 775–780).
Penny Alexander (Tr. 785–825).
Ruth Kahkonen (Tr. 830-853).
Opal Boyd (Tr. 855–863).
Charissa Craig (Tr. 868–888).
Diana Batts [Mrs. Robert E. Parkinson] (Tr. 890–908).

And, in addition, the following:

James G. Busick—Superintendent of Schools, Dorchester County, Maryland (Tr. 684–699).
Lester Jack Wilson—Guidance Counselor at the Washington and Lee High School, Arlington, Virginia (Tr. 326–413).
Carroll Speck—Supervisor for Accreditation, Maryland State Department of Education (Tr. 416–436).
Julia Fickling—Acting Supervisor and Director, Division of Guidance Services, D.C. Public Schools (Tr. 439–455).
William H. Brown—Guidance Counselor, McKinley Senior High School, Washington, D.C. (Tr. 456–464).
Sidney Sussman—Franchisee of Miss Universe Beauty Pageant for Maryland, Virginia and the District of Columbia (Tr. 478–518).
Frank G. Dickey—Executive Director, National Association of Accrediting, Washington, D.C. (Tr. 598–607).
Nancy Wynstra—Reporter, WTOP Television News, Washington, D.C. [rebuttal witness] (Tr. 1732–1809).

Witnesses on behalf of respondents were:

Directors of School Services, Inc.:
Marian Bardes (Tr. 1139–1158).
Wendell Maroshek (Tr. 1158–1174).
Stephen Hartwell (Tr. 1175–1182).
Former students of the Cinderella school in Washington or their parents:
Margaret Mothershead [mother of Diane] (Tr. 1234–1241).
Edwina Howard Adams (Tr. 1241–1254).
Carol Ness [Mrs. Bagranoff] (Tr. 1321–1344) (Tr. 1362–1363 [Miss Cinderella USA 1965].

Mary Victoria Kimbrough (Tr. 1345–1354).
Diane Mothershead (Tr. 1354–1360).
Linda Helton (Tr. 1403–1414).
Betty Helton (Tr. 1414–1415).
Joanne Hamilton (Tr. 1417–1428).
Patricia Falconett (Tr. 1480–1486).
Beth Buell (Tr. 1487–1496).
High school Guidance Counsellors:
Addah Jane Hurst—Washington-Lee High School, Arlington, Virginia (Tr. 1254–1319).
Peter W. Gough—Montgomery County Public Schools (Tr. 1363–1403).
Federal Trade Commission personnel:
Charles Sweeny—Director, Bureau of Deceptive Practices (Tr. 1611–1626).
Sheldon Feldman—Attorney, Bureau of Deceptive Practices (Tr. 1511–1610).
And, in addition the following:
Leonard Doctors—owner and operator of Florida Technical College (Tr. 1184–1195).
Suzette B. Kettle—owner and operator of Bauder Fashion Career College & Finishing School, Atlanta, Georgia (Tr. 1195–1232).
Clarence J. Herrick—C. J. Herrick Associates [advertising agency] (Tr. 1436–1463).
Betty Blatt—Cinderella School Aviation Department Instructor [former stewardess] (Tr. 1463–1478).
Vincent Melzac—Individual respondent (Tr. 1636–1704).
Nancy Wynstra—Reporter, WTOP TV News [also rebuttal witness for counsel supporting the complaint] (Tr. 1732–1809).

The hearing examiner heard and observed the witnesses in the hearing room and on the witness stand. He observed their demeanor and their manner of answering questions. He was able to, and did, form an opinion as to their reliability and credibility. He was also able to, and did, form a judgment as to the weight and probative value of the testimony of each of the witnesses. He has considered the reliability, credibility and probative value of each witness' testimony, as well as their respective interests in the outcome of this proceeding, in determining the weight to be given to the witness' testimony.

Findings of fact not made herein in the form submitted by counsel, or in substantially that form, are hereby rejected for the reasons, among others, that they may not be material to an adjudication of the issues, or they may be otherwise incorporated herein in substance, or the adoption of such proposed findings in the form submitted may not convey semantically the meaning which the hearing examiner desires to convey. Some facts based upon the record may be stated at several different places in this initial decision. This does not mean that any such facts are more important than the others. The repetition is indulged in for

greater ease in organization of this initial decision and only to facilitate reading it.

All motions made and not heretofore ruled upon are hereby overruled and denied.

FINDINGS OF FACT

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

2. Corporate respondent, School Services, Inc. (SS), incorporated on December 13, 1955, under the District of Columbia Business Corporation Act (see stipulation dated[8] June 21, 1967; CX 1; CX 3), has been engaged continuously since its incorporation in 1955 in the purchase and discount of installment notes and other commercial paper including installment notes given in payment of tuition by students who enroll in various schools licensed by Cinderella Career and Finishing Schools, Inc. SS is engaged in "commerce" as that term is defined under the Federal Trade Commission Act.

3. Individual respondent, Vincent Melzac, owns and controls all of the Class A voting stock issued by corporate respondent, School Services, Inc. Melzac and 31 other persons own the Class B non-voting stock of SS (Tr. 126).

4. Corporate respondent, Stephen Corporation, was incorporated on May 11, 1965, under the District of Columbia Business Corporation Act (see stipulation dated June 21, 1967; CX 2; CX 4). It conducts the Cinderella Career College and Finishing School at 1219 G Street, NW., Washington, D.C., and seeks to enroll students from states outside the District of Columbia. Stephen is engaged in "commerce" as that term is defined under the Federal Trade Commission Act.

5. Corporate respondent, Cinderella Career and Finishing Schools, Inc., 1219 G Street, NW., Washington, D.C. (the licensing corporation), incorporated on December 3, 1963, in the District of Columbia under the District of Columbia Business Corporation Act (see stipulation dated June 21, 1967; CX 4A), has, since the date of its incorporation, been engaged in "commerce" as that term is defined in the Federal Trade Commission Act. It has also done business and used the address 1221 G Street, NW., Washington, D.C. (see June 21, 1967, stipulation).

6. Students completing courses of instruction at the Cinderella Career College and Finishing School operated by Stephen Corporation are not awarded any academic degrees.

[8] Stipulation dated June 21, 1967, was filed October 2, 1967.

7. None of the corporate respondents has the power or authority to confer degrees or admit persons to degrees (see June 21, 1967, stipulation).

8. No statues or regulations in the District of Columbia prohibit schools, which are not accredited by recognized accrediting organizations and/or which are not licensed to confer degrees, or admit persons to degrees, or issue to persons a certificate pertaining to degrees, from using the word "college" in the name or in the advertising of such school (June 21, 1967, stipulation par. 2).

9. The following schools located in Washington, D.C., and not accredited by any recognized accrediting organization, and not licensed by the District of Columbia to confer degrees, or admit persons to degrees, or issue to persons a certificate pertaining to degrees, use the word "college" in their name or in their advertising, or both:

Patricia Stevens Career College and
Finishing School
Juliet Gibson Career College &
Finishing School
Warflynn Beauty College, Inc.
American Beauty College
Gonzaga College High School
Holy Name College
St. John's College
Blackwell College
Washington Hall Junior College
World College
Cortez W. Peters Business College
(stipulation dated June 21, 1967)

The record does not indicate that the Federal Trade Commission has sought to have any of these schools cease using the word "college" in their names.

10. Various commercial airline companies maintain their own schools in which they train applicants for employment as airline stewardesses and said companies require that such applicants attend the school operated by or under the control of such airline in order to qualify for a job as an airline stewardess. (Stipulation dated June 29, 1967).

11. None of the students of Cinderella Career College and Finish ing School would, merely because they had completed a course of instruction at, or had been enrolled in a course of instruction

in Cinderella Career College and Finishing School, qualify for a job as an airline stewardess. (Stipulation dated June 29, 1967.)

12. Students of Cinderella Career College and Finishing School, merely because they had completed a course of instruction at, or had been enrolled as a student in, Cinderella Career College and Finishing School would not qualify for a position as a buyer for various large department stores. (Stipulation dated June 29, 1967.)

13. Respondent, SS, a corporation organized under the laws of the District of Columbia, with its principal office located at 1100 Vermont Avenue, NW., Washington, D.C., contracts with schools (such as the Cinderella School) to purchase their student-tuition notes (Tr. 68). SS conducts its own credit and financial probe of the companies before entering into a business relationship with such companies (Tr. 99, 103). If SS determines that a school, such as the Cinderella school, is financially sound, an agreement is entered into (Tr. 69, 99, 137), which provides that SS will purchase all of the company's installment paper which exceeds $100 per unit when not less than 10 percent of the total price of the course for which the note is taken has been received by the school (CX 75; Tr. 96). When the first payment is received from a student, SS transmits 50 percent of the face value of the note to the school (Tr. 97). As SS collects the monthly payments, it applies the proceeds toward the advances it has made to the school. When the final payment is received, SS remits the remaining 40 percent that has, up to that time, been retained by it in a contingent account (Tr. 98). As the collections are made, SS deducts a 10 percent service charge as its fee (Tr. 98). Financial management consultation is the only other service available to a school for SS. This additional service is rendered for an additional fee (Tr. 165; CX 75).

14. SS, incorporated on December 13, 1955, as a capital stock company, is not connected with any government agency or public non-profit organization. SS' board of directors which initially consisted of Frank K. Smith, president, Wendell B. Maroshek, vice president, Alan Y. Cole and Marion Bardes, who was elected in March 1956, met on the average of five to six times per year to establish the policies for and participate in the operations of the corporation (Tr. 1144, 1147, 1168; CX 1E). As SS expanded, it needed more money, and full-time management (Tr. 139, 1166–1167). Respondent Melzac provided both the additional capital and full-time management and became associated with SS in May or June of 1958 (Tr. 224–225). At that time Melzac received all

of the Class A voting stock of SS (Tr. 139, 197), became chairman of the board of directors, and replaced Frank K. Smith as president (Tr. 137–138). The other shareholders of SS received Class B non-voting stock. These other stockholders did not disassociate themselves from SS' activities after Melzac became the chief operating officer (Tr. 137).

15. Since 1958 the volume of business of SS has increased by approximately 300 percent (Tr. 141). SS' current purchases of commercial paper is over $3,000,000 per annum (Tr. 141–142). SS' net worth is between $500,000 and $600,000 (Tr. 1693). SS' present board of directors consists of Vincent Melzac—one of the respondents, Marion Bardes, Wendell B. Maroshek, Stephen Hartwell, elected in June 1958, Alan Y. Cole and Emory S. Klineman (Tr. 197–198, 1177). There is one vacancy (Tr. 197). SS has in excess of 30 shareholders (Tr. 126) who own approximately 70 percent of the Class B non-voting stock outstanding (110,141 shares) (Tr. 196–197). Melzac owns all of the 10,500 Class A common shares outstanding (CX 3B) and about one-third of the 110,141 Class B shares (Tr. 195–196).

16. Other than the replacement of Frank K. Smith with Vincent Melzac as president, and the addition of Stephen Hartwell and Emory Klineman—who became stockholders in SS after Melzac took over the presidency—to the board of directors, there has been no change in the continuity of management or composition of the board of directors of SS for the past six to eight years (Tr. 137–38, 197, 1168). The policies of SS were always established by its board of directors. This practice did not change after Melzac became president (Tr. 1147, 1168).

17. SS does not become involved in the procedures or operating practices of the schools whose installment paper it purchases (Tr. 163–64, 1147, 1150, 1168, 1180, 1193–94, 1230–31). SS does not involve intself with any of the schools' management or credit policies, internal curricula or their advertising (Tr. 163–64, 1147, 1168, 1180, 1193–94, 1230–31). SS does not pay any of the cost of a school's advertising and never participates in any school's advertising campaign. SS never advertises on its own account (Tr. 190). No members of the board of directors of SS, with the exception of Melzac, operates a school (Tr. 197).

18. Prior to April 1962 Patricia Stevens Career College and Finishing School, Chicago, Illinois, had been a substantial account of SS (Tr. 143). About that time, Patricia Stevens of Chicago was in financial straits (Tr. 144). In an effort to save a financial investment of approximately $350,000 in Patricia

Stevens' student-tuition notes and to avoid its own financial demise, SS attempted to find a buyer who would keep Patricia Stevens as a going concern. After unsuccessful attempts to do so, SS purchased all the Patricia Stevens stock in April 1962 (Tr. 85, 141–46) and Patricia Stevens then became a wholly-owned subsidiary of SS (Tr. 146, 1150). Patricia Stevens is the only school ever owned or operated by SS (Tr. 1169).

19. On June 1, 1965, SS entered into a contract with the Stephen Corporation (CX 75), which is identical to that which SS has with the other schools throughout the United States from which it purchases installment paper (Tr. 69, 165–166). SS' total volume of business with the Stephen Corporation in 1967 is estimated between $200,000 and $300,000 (Tr. 1693). SS' estimated volume for 1967 with all its schools is between three and three and one-half million dollars in notes receivable (Tr. 141–42, 1695–96).

20. No contractual relationship exists between SS and respondent, Cinderella Career and Finishing Schools, Inc., the licensing corporation (Tr. 166).

21. There is no evidence in this record that Patricia Stevens or SS disseminates advertising for or on behalf of respondent Stephen Corporation or respondent Cinderella Career and Finish Schools, Inc. Barbara Solid, the Sales Manager for the Cinderella Career College and Finishing School of Washington, D.C., operated by the Stephen Corporation, is responsible for selecting and placing the Cinderella school's advertising (Tr. 229, 262–64).

22. Such acts or practices, if any, as are found to be false, misleading or deceptive under Section 5 of the Federal Trade Commission Act should be enjoined only as to the respondent, the Stephen Corporation.

23. Complaint counsel has failed to prove by substantial, reliable and probative evidence that SS engaged in any deceptive act or practice as defined under Section 5 of the Federal Trade Commission Act. Under the law, the fact that a wholly owned subsidiary of SS, Patricia Stevens, supplied the Cinderella school with advertising material which the school disseminated does not make SS subject to any cease and desist order, if any, as may be entered.

24. The complaint should be and it hereby is dismissed as to respondent School Services, Inc.

25. Respondent Cinderella Career and Finishing Schools, Inc., a corporation doing business under the laws of the District of Columbia, at 1100 Vermont Avenue, NW., Washington, D.C., fran-

chises, for a fee, a system of operating and developing self-improvement, finishing, modeling and business career schools (Tr. 157–58). It supplies its franchisees with advertising material, curricula, manuals, instructional devices and related materials necessary to operate such a school (Tr. 43; CX 74). The franchising corporation may authorize a licensed school to use the name "Cinderella" in the name under which it does business. The franchising corporation may furnish consulting and other services to its franchisees (Tr. 43; CX 74). Some of the allegedly deceptive advertisements in evidence in this proceeding were made available by the franchising corporation to the Cinderella school operated by the Stephen Corporation.

26. The franchising corporation presently franchises schools located in Chicago, Boston, Philadelphia, Washington, D.C., Oak Park, Illinois, and Hammond, Indiana (Tr. 45).

27. Vincent Melzac owns all of the stock of the franchising corporation but he is neither an officer nor a director of the franchising corporation. Melzac has assisted in formulating the policies of and overseeing the operations of the franchising corporation since its incorporation on December 3, 1963. (Tr. 43; Answer of respondent Cinderella p. 8.)

28. Respondent Stephen Corporation, doing business under the laws of the District of Columbia, at 1100 Vermont Avenue, NW., Washington, D.C., operates the Cinderella Career College and Finishing School at 1219 G Street, NW., Washington, D.C. The Cinderella school was franchised by the franchising corporation on June 1, 1965 (Tr. 44, 1694; CX 74). This school had previously been owned and operated by Strom-Wash., Inc., but the franchising corporation terminated the Strom-Wash, Inc., franchise on March 22, 1965 (Tr. 81–82, 85).

29. In an effort to save its substantial investment in the notes receivables of Strom-Wash, Inc., SS, in cooperation with the franchising corporation, endeavored, without success, to find a buyer to operate the Strom-Wash school. The Stephen Corporation was organized for the purpose of and did assume operation of the Strom-Wash school (Tr. 85–86). George Strombus, who had up to that time owned all of the stock of Strom-Wash, Inc., managed the school for the Stephen Corporation until January 1966 when he resigned (Tr. 81).

30. In the course and conduct of its school, the Cinderella school operated by Stephen disseminated advertisements concerning the education which it offers. The advertisements appear and have appeared in newspapers of general interstate circulation. They, and

mailers and brochures, have also been sent by direct mail to persons in the several States and in the District of Columbia. Specimens of such advertising, flyers and brochures as are being challenged in this proceeding are in evidence as CX 5–CX 48 inclusive, CX 53 and CX 73.

31. Respondent Melzac has owned all of the Stephen Corporation stock since it was incorporated in May 1965. However, he does not participate actively in the day-to-day operations of the school.

32. The Cinderella school offers courses of instruction in finishing, fashion merchandising, secretarial, professional modeling, IBM and air career. Fashion merchandising, secretarial, professional modeling, IBM and air career are career courses designed to teach a student (in almost all cases a high school graduate) a particular skill or trade that is in great demand by industry, in a relatively short period of time and to teach such student how to improve her looks, speech, bearing, manner, poise and appearance as part of her overall qualifications for a job. They are designed to meet the demands of the economy for skilled and attractive labor (Tr. 53–54, 65, 71, 244).

33. "Finishing" is not a "career" course. Essentially it endeavors to train the pupil in self-improvement and may be studied by enrollees not interested in jobs (Tr. 240). In the finishing courses the Cinderella school teaches visual poise, makeup, hair care and design, voice and drama, personality, social graces, ballroom dancing, wardrobe, figure coordination and fashion show (CX 79). Finishing courses are structured for students of all ages regardless of their career interests, vocation, educational or social status (Tr. 73). The "finishing" curriculum is such that a student, with proper counseling, may enroll for as many or as few hours of schooling as her personal desires or needs dictate (Tr. 175–76). The "finishing" courses which are part of the "career" courses are designed to meet the specific demands of the industry involved, *i.e.*, persons interested in airline or merchandising careers need personal attractiveness as one of their qualifications. Cinderella school has from time to time structured a particular finishing curriculum to meet the needs of a particular organization such as the Women's Army Corps (Tr. 174; RX 24, 34), the Public National Bank (Tr. 175; RX 25) or the Hecht Co. (RX 23).

34. Cinderella's course in fashion merchandising costs $1,790. It is a full day-time program, taught Mondays through Fridays, from 9:30 a.m. to 4:30 p.m. for nine months. There is, in addi-

tion, a cooperative fashion merchandising course which contemplates that the student will attend school for three days per week and work three days a week as a sales girl in a department store. This course requires 18 months to complete. In addition, there is such a course which is taught in the evenings only—for two years. A Cinderella student may for $975 register for a six months course which consists of seven subjects instead of the full curriculum (Tr. 261, 272, 941). As of July 2, 1967, Cinderella had six full-time day students, thirteen cooperative students, and nine night students (Tr. 944–45).

35. Yolanda Costelloe, director of Fashion Merchandising at the Cinderella school since November 1966 (Tr. 921), teaches almost the entire curriculum (Tr. 914–15) consisting of: History of Fashion I and II; Fashion Vocabulary; Retail Buying; Mathematics of Merchandising; Business Administration; Retail Advertising; Sales Promotion; Salesmanship; Fabrics, including a fabrics lab; Fashion Accessories; Home Accessories; Fashion Show Procedure; Creative Grooming; English; Color and Design and Executive Leadership (Tr. 916–17; CX 44). Mr. Fennell, the director of the IBM program, teaches Retail Advertising and Salesmanship (Tr. 915).

Miss Costelloe studied Business Administration and Economics at Trinity University in Dublin, Ireland, for four years. She worked for the Saxone Shoe Company in Dublin for nine years and thereafter for three and one-half years she was a buyer for Switzer Shoe Company in Dublin. She left Dublin and worked for the Pinet Shoe Company in London, England, as their merchandising manager for 14 stores and remained with them seven years. During this time she studied for two years at Oxford University where she received a degree in Personnel Management. Miss Costelloe came to the United States in 1964 and was employed as a cosmetic buyer for Sears & Roebuck for nine months. Thereafter, for ten months she was a fashion training director with the Hecht Company in Arlington, Virginia. She then became the director of Fashion Merchandising at the Cinderella school (Tr. 966–68).

36. The Cinderella school offers a student a choice between a regular or an executive secretarial program (Tr. 1001–02). The regular secretarial program costs $990 and is taught five days per week from 9:30 a.m. to 4:30 p.m. for six months (Tr. 1018). The executive secretarial program costs $1,490 and requires nine months full-time schooling (Tr. 1019).

37. The director of Cinderella's Secretarial Department, Miss

Sandra Holder, teaches the entire curriculum except the finishing instruction (Tr. 1020). The regular secretarial program offers courses in: Typing, Shorthand, Transcription, English and Grammar I and II, Business Math, Business Principles, Spelling, Secretarial Procedures and 75 hours of finishing (Tr. 1018–19). The executive secretarial program includes nine months of typing, shorthand, transcription, spelling, secretarial procedures, three English courses, a course in business principles, a course in accounting and a course in business law (Tr. 1019).

Miss Holder received her B.A. degree in 1963 from Wake Forest College in North Carolina. She taught English and Civics for one year at Montgomery Hills Junior High School in Silver Spring, Maryland, and then worked for the National Tire Dealers and Retreaders Association as a receptionist and secretary. In 1966 she was the secretary for two merchandising managers at Lansburgh's Department Store in Washington, D.C. She became associated with the Cinderella school in 1966 (Tr. 996, 1015–16).

38. Cinderella's professional modeling course offers in-depth teaching in the finishing curriculum outlined on the back side of CX 79 (Tr. 112–13). A professional modeling student must be able to perfect what the finishing student learns on an elementary basis. In addition to concentrating on "makeup," "posture," "wardrobe" and "figure control," the professional modeling student may select advanced courses in specific areas such as TV modeling, photographic modeling and advanced fashion modeling (Tr. 274–75; CX 41, 79). A student interested in professional modeling may enroll for such courses ranging from 75 to 325 hours (Tr. 258).

39. Miss Kay Ryan, the director of the school, oversees the professional modeling course and teachers some of the subjects in the modeling curriculum.

40. Mr. Fennell is the director of Cinderella's IBM program (Tr. 915). Complaint counsel did not proffer any evidence relating to the contents of this curriculum.

41. The "air-preparatory" curriculum consists of the finishing subjects heretofore enumerated, and is structured by the Cinderella school for students interested in careers in the airline industry (Tr. 59–60, 178–79). In June 1967 the air-preparatory program was enlarged into what is now the "air career" program (Tr. 59). The curriculum of the air career program provides training in many facets of the airline industry. Among other things it is designed to increase a student's chance to be selected for a position with the airline of her choice (Tr. 1475, 1698–99).

In addition to the "finishing training" students in the air career program are taught the theory of flight, airline terminology, basic theory, Federal Aviation Regulations, the functions of the Civil Aeronautics Board and stewardess and reservationist procedures (Tr. 1474–75, 1698).

42. The air career curriculum is taught by Betty Blatt. Miss Blatt has had nineteen years experience in the airline industry—six and one-half years as a stewardess working for American Airlines, a stewardess instructor at the American Airlines Stewardess College for six months, and supervisor of stewardesses for American Airlines for twelve years (Tr. 1464–66). Applicants for positions with the airlines are judged, in their preliminary interviews, on the basis of poise, personality and appearance (Tr. 1473, 1702). RX 86 (page 41 of *Time* Magazine dated September 29, 1967) an Eastern Airline advertisement, points out that " * * * Sure, we want her to be pretty * * * don't you? That's why we look at her face, her makeup, her complexion, her figure, her weight, her legs, her grooming, her nails, and her hair. But we don't stop there * * *."

43. An applicant for enrollment in a career curriculum at the Cinderella school is usually required to be a high school graduate or have a high school equivalency certificate (Tr. 71, 244). Students successfully completing "career courses" receive Cinderella's certificate or diploma at graduation (Tr. 918).

44. The Cinderella school's courses are sold by field representatives who solicit prospective students in their homes (Tr. 49), and by Cinderella counsellors who visit high schools (Tr. 231). Cinderella obtains its leads through the direct mailings and the newspaper advertising heretofore referred to. It also uses television and radio to a limited extent (Tr. 50–51). Cinderella representatives lecture to high school students at their schools. Interested students are encouraged to mail cards in to the school (Cinderella) indicating their vocational and other interests (Tr. 49, 231).

45. Barbara Solid, the sales manager for Cinderella, is responsible for hiring, training and firing sales personnel; for advertising in newspapers and other media; and for obtaining students for the Cinderella school, screening them, seeing that they are properly counselled as to the curriculum best suited to their needs and for actually enrolling them (Tr. 229, 255, 262–64). Nine women, one man, and one high school lecturer are on Cinderella's sales staff (Tr. 231). The sales personnel have backgrounds in sales plus some experience in one of the career fields (Tr. 230).

The New York advertising agency of C. J. Herrick Advertising Associates, prepares the newspaper advertisements which Miss Solid uses (Tr. 262–64).

46. Obtaining jobs for Cinderella students and graduates is the joint responsibility of Eugene Byron, a Cinderella employee who runs the Modeling Agency, and the directors of the various career programs heretofore named. (Tr. 88, 921, 998.)

47. Between 1,000 and 1,200 students have enrolled since Stephen took over the operation of the Cinderella school (Tr. 1663). Presently there are 300 active students (Tr. 53). At the time of the hearing, Summer and Fall of 1967, most of the students then enrolled were taking "finishing" curriculum (Tr. 148–49).

48. The Cinderella school competes in the Washington area with schools such as Patricia Stevens Career College & Finishing School, Juliet Gibson Career College & Finishing School, Cortez Peters Business College, Temple School and any other private school offering courses of instruction in careers and self-improvement (Tr. 192, 193, 1664).

49. Respondent, Vincent Melzac, received his A.B. and Masters degrees from Delbert College of Western Reserve University. He was accepted for matriculation at Columbia University for his Ph. D. degree but was forced to terminate his studies because of the death of his father. Starting as a truck driver for the Cook Coffee Company of Jersey City, New Jersey, he was promoted to manager of the Company's B Plant in Milwaukee, Wisconsin, and for six to seven years was assistant to the president of the company in Cleveland, Ohio. During the war years Melzac was with the Office of Emergency Management. In 1945 or 1946 he went to work for Wolf and Dessauer, a department store in Fort Wayne, Indiana, where he stayed for six years, becoming director of merchandise planning and control. Thereafter he was with the Atomic Energy Commission in Washington for approximately a year. Melzac then became associated with a company, Television Programs of America, and became president of its Canadian subsidiary. Television Programs of America, originally capitalized for $300,000, was sold eight years later for $8,500,000. Thereupon Melzac decided to go into business for himself. He returned to Washington, D.C., and bought the interest in SS in May or June 1958 (Tr. 207–11; see *supra* fd. 14). Melzac's first experience with operating a school such as Cinderella came in April 1962 when SS purchased Patricia Stevens of Chicago and Melzac became president of Patricia Stevens (Tr. 150).

Shortly after Melzac became president of Patricia Stevens

(April 1962) the Federal Trade Commission proposed to issue a complaint against Patricia Stevens for alleged unfair acts and practices committed by the prior management, before SS bought the stock of the company. Melzac participated in discussions with Federal Trade Commission personnel to obtain a nonadjudicative disposition of the charges against Patricia Stevens. (See F.T.C. Docket C–840 [66 F.T.C. 908].) (Tr. 1642–47.) The Federal Trade Commission charges against Patricia Stevens of Chicago were not attributable to any act or omission by Melzac. They resulted from actions by the owners prior to the time SS acquired the company. The consent cease and desist order in C–840 naming Melzac, specifically names him only as president of Patricia Stevens. After the Federal Trade Commission consent order had been negotiated Melzac impressed upon all the Patricia Stevens personnel in Chicago the importance of complying with the Federal Trade Commission order in C–840 (Tr. 1654). Each key staff member in Chicago was required to sign a letter addressed to them Melzac which explained the consent decree (Tr. 1654–55). Melzac was in continuous contact with the Federal Trade Commission in order to comply with both the letter and spirit of the consent order. He submitted the Patricia Stevens advertising for Federal Trade Commission approval (Tr. 1655). Insofar as the evidence in this record indicates, Melzac has spared no effort in order to comply with the consent order against Patricia Stevens. There is not one scintilla of evidence to the contrary.

50. On December 13, 1965, January 24, 1966, and March 28, 1966, Melzac met with Jean F. Greene, an investigator for the Federal Trade Commission, in his attorneys' office to discuss the advertising and business practices of the Cinderella school in Washington, D.C., operated by Stephen (Tr. 1656). Mrs. Greene suggested, in writing, that the advertising format "Approved by School Services, Inc., Washington, D.C., to extend education loans" be changed to "Approved by School Services, Inc., Washington, D.C., to extend budget plans" (Tr. 182, 657). Malzac took immediate steps to, and did in fact, comply with this suggestion (Tr. 1446–47, 1458, 1459, 1460, 1659–62; RX 83, 84), even though at the time Melzac thought and still thinks that there is no distinguishable semantic connotation between the two phrases (Tr. 66, 182).

51. Respondent Vincent Melzac has not personally or individually engaged in any of the allegedly deceptive acts or practices asserted in Paragraphs Five and Six of the complaint. Melzac is not likely to engage knowingly in such acts and practices or in

any other deceptions in the future. If any of the Cinderella advertisements were found to be false, misleading or deceptive as defined in Section 5 of the Federal Trade Commission Act, such deception could be effectively stopped by a cease and desist order directed solely against the Stephen Corporation.

ALLEGED DECEPTIONS

The Alleged "Loan" Deception

52. The complaint alleges that "respondents' " advertisements represent, contrary to fact, that "*Respondents* make educational loans to students who register for the courses offered at Cinderella Career and Finishing School." (Italic supplied.)

Such representation, if made, is not made by "respondents" but solely by the Stephen Corporation in the advertising of the Cinderella Career College and Finishing School (see CX 5–CX 14, CX 27, CX 30, CX 31, CX 35, CX 37, CX 42, CX 55, CX 56, CX 58, CX 69). The undisputed fact is that the Cinderella school does make it possible for its students to pay their tuition by signing installment notes for a specified sum of money payable in a designated number of specified monthly installments. That is the only reasonable meaning the Cinderella school intends to convey, and it is the meaning that is conveyed to the prospective Cinderella school students who read the advertisements. There is no evidence of *public understanding* that the Cinderella school advertisements convey the impression that any respondents other than the Cinderella school makes loans. SS is not involved with the students until after initial financial arrangements with the Cinderella school (Tr. 657). The agreement between Cinderella and SS does not obligate Cinderella to sell all its notes to SS. Cinderella could, if it chose, keep the notes itself. However, Cinderella's agreement with SS makes it feasible, from a business point of view, for the Cinderella school to extend credit to a prospective student, and afford her an opportunity to become further educated, without the substantial cash outlay required by the conventionalized higher education advertised by the institutionalized universities and colleges of the country. The Congress of the United States and the private financial community now make it possible for students in our higher education colleges and universities to use consumer credit to pay their tuition to such colleges and universities.

53. Complaint counsel's assertion that to constitute an "education loan" SS must advance the money *to the student* and not

to the Cinderella school is a distinction without a difference. In this case, the funds are provided by SS to the school. The student repays SS over a period of time. Installment financing is so well-known in the commerce of this country and so widely used that a consumer purchasing goods or services has no interest in, or concern with, whether monies are advanced directly to him or whether monies are advanced on his behalf. (See Federal Trade Commission decision in *House of Marbet*, Docket 8578, p. 42–43 [66 F.T.C. 787, 822–823]. (See p. 930 *supra.*)

Complaint counsel has failed to prove by substantial, probative and reliable evidence that the Cinderella advertisements concerning the making of loans with which a student pays her tuition are false, misleading or deceptive as defined under Section 5 of the Federal Trade Commission Act. Such charge in the complaint should be, and it hereby is, dismissed.

54. In addition, it is found that the language currently used in Cinderella advertisements concerning the making of loans to students was suggested by Jean F. Greene of the Federal Trade Commission staff. The Cinderella school has done everything it could possibly do to comply with Mrs. Greene's suggestion (Tr. 1446–47, 1659–62; RX 83, 84). Counsel have stipulated that a substantial portion of the Cinderella advertising during the period of time in question (April 1966 to present) contained the language proposed by the Federal Trade Commission—"budget plans" as opposed to the language "education" or "educational loans" (Tr. 1459, 1460).

The Alleged "Government Agency" Deception

55. The complaint alleges that "by means of the statements and representations in their advertisements * * * respondents have represented contrary to the fact, directly or by implication that * * * School Services, Inc., Washington, D.C., is a government agency or public non-profit organization that has officially approved Cinderella Career and Finishing School or the courses offered by such school."

Such representation, if made at all, can be made only by inference from that portion of the Cinderella school advertisements which states "Approved by School Services, Inc., Washington, D.C., to extend education loans" or "Approved by School Services, Inc., Washington, D.C., to extend budget plans." This language does not connote, even with the most forced interpretation, that School Services, Inc., is a public non-profit corporation. If it did so represent, the proper procedure to correct such representation

would be for the Federal Trade Commission to institute proceedings to compel School Services, Inc., to change its corporate name on the grounds that the name carries the deceptive connotation that School Services, Inc., is a public non-profit corporation. Of course, there is not a scintilla of evidence that the corporate name "School Services, Inc.," deceptively implies a public non-profit corporation. As previously found, SS has been doing business under this name since 1955 without challenge.

56. Three consumer witnesses of complaint counsel testified as to their understanding of this portion of the Cinderella advertisements. Elvira White (also referred to in the transcript as Vera White), the mother of four girls, enrolled herself and her daughters for Cinderella's finishing and modeling courses on May 7, 1966 (CX 88, 89, 90). Mrs. White testified that she thought SS "was part of their organization" (meaning the Cinderella school) (Tr. 657). Mrs. White did not testify that the Cinderella advertisements caused her to believe that SS is or was a public non-profit organization. Anne Donelson, on October 27, 1965, enrolled her niece, Gloria Lancaster, for 325 hours of the Cinderella school's professional modeling courses (CX 95). Mrs. Donelson thought SS "was, an organization that more or less made loans or arranged for the loans for school students" (Tr. 769).

Berma Bowles, a 22 year old fifth grade school teacher at Drew Elementary School in the District of Columbia, with a B.S. degree from Winston-Salem State College in North Carolina (Tr. 583) signed a registration and enrollment contract and two promissory notes with the Cinderella school on April 30, 1966 (CX 83, RX 26A–B; Tr. 539), for 325 hours of professional modeling at a cost of $1,590 to be paid in monthly installments of $53.60. When Mrs. Bowles' husband (also a teacher, but then attending American University under a United States (Government grant) found out about the contract, he was angry with his wife and more or less compelled Mrs. Bowles to cancel her contract with the Cinderella school after she had attended only three classes (Tr. 563–65). Although Mrs. Bowles testified vaguely that it was her impression that the Cinderella advertisements represented that SS financing was "approved by the Board of Education to extend any type loans concerning the school" (Tr. 546), such testimony is neither persuasive nor probative because Mrs. Bowles was obviously angry at the Cinderella school—not for anything it had done or failed to do, but because her husband had berated her for aspiring to be a professional model.

57. *Lester Jack Wilson,* a counselor for the past eight years at

the Washington and Lee High School in Arlington, Virginia (Tr. 326), received a B.S. degree from Wake Forest College in 1950 and a Masters in Education from North Carolina State University in 1965. He is currently enrolled for his doctoral degree at George Washington University. In 1952 he was the supervisor of personnel at the North Carolina Farmer's Exchange in Durham, North Carolina. In 1956 he became the diversified occupations coordinator at Durham High School (Tr. 344–46). In 1958 or 1959 he became the director of the Durham Technical Institute and remained with them for approximately two years before becoming a counselor at Washington and Lee High School (Tr. 339–43, 355). His main duties are to program and plan courses of study for students and assist them in their vocational aspirations (Tr. 327). When asked what "Approved by School Services, Inc., Washington, D.C., to extend education loans" means to students, Mr. Wilson testified that students "attach federal loans to this" (Tr. 332–33). This testimony was based upon a ten minute discussion Mr. Wilson had in the school's lunchroom with two girls (Tr. 390) who asked him, among other things, if they "could get a scholarship" (Tr. 411–12). The best evidence of a high school senior's understanding of any Cinderella advertisement would be the testimony of such high school senior—none was adduced nor offered.

58. *James G. Busick,* the superintendent of schools in Dorchester County, Cambridge, Maryland, for fourteen and one-half years, was, prior to becoming superintendent, a teacher in Cambridge High School for eighteen years, and its principal for two years (Tr. 684). He testified:

> * * * It sounds very much like it comes under the Higher Education Act of 1965 that is the way *I would interpret it.* (Italic supplied) (Tr. 687).
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> * * * * * * *
>
> Well, I would assume that the first places I would see something like this written *I would think* that it would come under the Federal program of trying to add money for guaranteed loans under the Higher Education Act. (Italic supplied) (Tr. 687).

His testimony, if it proves anything, merely proves what the advertisement meant to him—not to his high school seniors. As a superintendent of a public school system, one would expect Mr. Busick to be more knowledgeable concerning the manner in which the Higher Education Act of 1965 works in practice.

59. *William Henry Brown,* a guidance counselor at McKinley High School in the District of Columbia for the past three years, was previously an instructor in health and physical education

at McKinley High School. Mr. Brown is responsible for the program schedules of approximately 450 students in the 10th through the 12th grades (Tr. 456–57), and deals mainly with students who are not planning higher education but expect to go to work upon graduation from high school. Mr. Brown refers those students who are interested in college to college counselors (Tr. 463).

Mr. Brown's testimony (Tr. 460–64) does not ascribe any "public non-profit" connotation to the Cinderella advertisements concerning the financing of its students' tuition by SS. Mr. Brown testified that he had never discussed the Cinderella school with any of his students nor did any of them show him Cinderella's advertisements (Tr. 464).

60. *Julia Fickling,* acting supervising director, Division of Guidance Services for the District of Columbia public schools, taught in the District of Columbia public schools in 1937, became a guidance counselor in 1953 or 1954, and remained in that position until she became the acting supervising director five years prior to her testimony (Tr. 438–39). Mrs. Fickling testified that "* * * most students would assume, when they see the School Services * * * that this meant the public school, and that they would be able to borrow money in order to take this training." (Tr. 442.) Although Mrs. Fickling's experience in the field of education and her credentials were readily admitted by respondents' counsel, Mrs. Fickling's testimony will not support any finding that any of the Cinderella school advertisements would deceive any female high school senior reading them.

The Cinderella school advertisements which include the language "Approved by School Services, Inc., Washington, D.C.," are not false, misleading and deceptive within the purview of Section 5 of the Federal Trade Commission Act.

The Alleged "Dianna Batts and Carol Ness" Deceptions

61. The complaint alleges that respondents have represented directly or by implication, contrary to the fact, that "Dianna Batts, 'Miss U.S.A. 1965' and Carol Ness, 'Miss Cinderella 1965' were *graduates* of Cinderella Career and Finishing School and owe their success to the courses taken there." (Italic supplied.)

62. Dianna Batts (now Mrs. Parkinson) enrolled in the Cinderella school on January 12, 1965 (Tr. 891; CX 106), for a basic course of instruction in finishing (Tr. 891–92). At that time she was working for the Air Force at the Pentagon as a secretary (Tr. 895; CX 106) and had never taken modeling training nor had instruction in the subjects for which she enrolled (Tr. 896).

At the time of her enrollment Miss Batts entered and lost the 1965 District of Columbia Cherry Blossom Princess contest (Tr. 493–94, 892, 897). She attended the Cinderella school for approximately five months (Tr. 896). She entered the "Miss D.C. Pageant" and won the title of "Miss D.C." on May 16, 1965 (Tr. 494, 893). Thereafter, on August 21, 1965, she won the title of "Miss U.S.A.–World" in Asbury Park, New Jersey (Tr. 495, 897).

63. Carol Ness (now Mrs. Bagranoff) enrolled in Cinderella's 52 hour Ten Program on May 9, 1964 (Tr. 1324; RX 36), which was a finishing course in visual poise, makeup, social graces, personality, voice and drama, figure and basic modeling (Tr. 1326). After completing 25 hours Miss Ness extended her curriculum, on July 24, 1964, to 219 hours (Tr. 1327; RX 36). About this time Miss Ness entered and lost the "Junior Miss America" beauty contest (Tr. 1328). Miss Ness' mother re-enrolled Carol on April 25, 1965, for a career course in fashion merchandising (Tr. 1329; RX 37). Each year the Cinderella schools sponsor a national "Cinderella" contest (Tr. 1330). Miss Ness entered the Washington, D.C., "Cinderella" competition in April 1965 and won the title of "Miss Cinderella of Washington, D.C." Her prizes as winner consisted, among other things, of a free course in fashion merchandising at the Cinderella school and a free trip to New York City to compete for the national title of "Miss Cinderella U.S.A." (Tr. 1331). In June 1965 Miss Ness won this title. As a result, she was awarded a free trip to Paris and Europe for ten days (Tr. 1332). At the time she won the U.S.A. title, Miss Ness had been attending the Cinderella school for one year, had taken 100 hours of instruction, had completed the 52 hour Teen Program, and almost one-half of the extended course for which she had re-enrolled (Tr. 1341). After graduating from Cinderella fashion merchandising course in April 1966, Miss Ness accepted an offer from the Cinderella school to become an instructor. At the time she chose to become an instructor at Cinderella, Miss Ness turned down job offers as an assistant buyer and assistant coordinator from the Hecht Company (Tr. 1335). She was promoted by the Cinderella school in June 1967 and is presently director of the Finishing and Modeling program at the school (Tr. 1332).

64. Cinderella's newspaper advertisements, flyers and direct mailers offered to prove the alleged "Dianna Batts and Carol Ness" deceptions are: CX 11–CX 14 which contain pictures of Miss Batts and Miss Ness with captions: "Dianna Batts, Miss U.S.A. of the Miss World Contest, a Cinderella Girl" and "Carol

Ness, Miss Cinderella 1965, winner of all-expense trip to Paris, France"; CX 15 and CX 16A which contain a picture of Carol Ness with the caption: "Carol Ness, Miss Cinderella 1965"; CX 45 and CX 53 under a picture of Miss Batts state: "Miss U.S.A.–World 1965–1966. This Cinderella Girl Entered The Miss Universe Pageant after being selected Miss District of Columbia. She placed fifth in this 1965 national competition. Just selected Miss U.S.A. in Miss World Pageant, 1965"; under a picture of Miss Ness the statement is made: "As the Cinderella representative of the District of Columbia, Miss Ness was honored by being selected Miss Cinderella in the national competition for 1965"; CX 54 contains a picture of Dianna Batts with the caption: "Another Cinderella Girl, Dianna Batts, Miss Wash., D.C., 1965."

65. Cinderella school's ads do not use the word "graduate." They refer to Miss Batts and Miss Ness only as "Cinderella" girls—and carry the connotation only that "these two young ladies actually received their training from Cinderella modeling school" (Tr. 459) or that they "took this course at the Cinderella school" (Tr. 440, 441). Miss Batts and Miss Ness, who specifically approved the use of their pictures and names in the Cinderella advertisements, testified that a "Cinderella" girl is one who has taken courses at the school (Tr. 908, 1333).

66. The Cinderella school advertisements convey the impression that Miss Ness and Miss Batts owe their success in winning their respective titles, in part, to the courses of instruction they had taken at the Cinderella school (Tr. 331, 441, 459). Miss Ness and Miss Batts, in fact, owe their success in attaining their titles to the courses taken at the school (Tr. 517, 893–94, 1334; RX 11).

67. During the hearing the Cinderella advertisements carrying their names and pictures were examined by Miss Batts and Miss Ness. Each testified that the statements in the advertisements, insofar as they referred to Misses Batts and Ness, were true and correct in all respects. Miss Batts, called as a witness by complaint counsel during the case-in-chief, has no present affiliation with any of the respondents. The statements concerning Miss Batts and Miss Ness in the Cinderella advertising are true and correct representations of fact (Tr. 502–06, 905–06, 1332–34, 1338). The complaint charges of alleged misrepresentation concerning Miss Batts and Miss Ness hereby are dismissed.

The Alleged Airline Stewardess Deception

68. The complaint alleges that respondents have represented directly or by implication, contrary to the fact, that: *"Respond-*

ents offer a course of instruction that qualifies students to be airline stewardesses." (Italic supplied.)

69. Only Stephen Corporation, which conducts the Cinderella Career College and Finishing School, makes such representations, so this charge in the complaint hereby is dismissed at this point in the initial decision as to all respondents except Stephen Corporation.

The parties have stipulated that the "airlines maintain their own schools in which they train applicants for employment as airline stewardesses and said companies require that such applicants attend the school operated by or under the control of such airline in order to qualify for a job as an airline stewardess; that none of the students of Cinderella Career College & Finishing School would, merely because they had completed a course of instruction in, Cinderella Career College & Finishing School, qualify for a job as an airline stewardess" (see stipulation dated June 29, 1967).

70. The Cinderella school's airline preparatory course did not, nor does it now, qualify its graduates to become airline stewardesses upon graduation. It is made unmistakably clear to Cinderella students in the air career course that each airline has its own training school or college and that a course of instruction at the Cinderella school does not qualify a student to be employed directly as an airline stewardess (Tr. 1471–72, 1478). Cinderella's air career course, as previously found (*supra*), assists the Cinderella students to be selected by an airline for a job in the airline field.

Betty Blatt, director of Cinderella's air career program, with 19 years of experience in the airline industry, including 12 years as supervisor of American Airlines stewardesses, testified as to the requirements and the procedures of the various airlines—using American Airlines as an example—with respect to the hiring and training of stewardesses (Tr. 1466–71). She testified that a stewardess or a reservationist with substantial experience with one airline, is, nevertheless, required to undergo the same training as a new applicant, if she applies for a position with another airline (Tr. 1471–72, 1477). The airlines deem it necessary that all new employees, whatever their experience, be trained in that particular airline's company procedures, flight procedures, servicing procedures and equipment (Tr. 1472).

71. Cinderella's allegedly deceptive advertising relating to the airline careers are in evidence as CX 11, CX 12, CX 13, CX 14, CX 5, CX 7, CX 8, CX 9, CX 10, C X27, CX 28, CX 35, CX 53, CX