

IN THE MATTER OF  
ISRAELSON-LEVY, INC., ET AL.

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

*Docket 6996. Complaint, Dec. 17, 1957—Decision, May 20, 1958*

Consent order requiring manufacturers in New York City to cease violating both the Wool Products Labeling Act and the Fur Products Labeling Act by labeling as "100% wool," coats which contained substantial amounts of other fibers, and by failing to identify on labels the name of the animal producing the fur from which certain coat linings were made or to reveal that the fur was dyed.

*Mr. Thomas A. Ziebarth* supporting the complaint.

*Mr. David J. Almour*, of New York, N.Y., for respondents.

INITIAL DECISION OF JOHN LEWIS, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on December 17, 1957, charging them with having violated the Federal Trade Commission Act, the Wool Products Labeling Act of 1939, and the Fur Products Labeling Act, and the rules and regulations issued under the latter two acts, through the misbranding of certain wool and fur products. After being served with said complaint, respondents appeared by counsel and subsequently entered into an agreement, dated March 17, 1958, containing a consent order to cease and desist purporting to dispose of all this proceeding as to all parties. Said agreement, which has been signed by all respondents, by counsel for said respondents, and by counsel supporting the complaint, and approved by the director and assistant director of the Commission's Bureau of Litigation, has been submitted to the above-named hearing examiner for his consideration, in accordance with section 3.25 of the Commission's rules of practice for adjudicative proceedings.

Respondents, pursuant to the aforesaid agreement, have admitted all the jurisdictional allegations of the complaint and agreed that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations. Said agreement further provides that respondents waive any further procedural steps before the hearing examiner and the Commission, the making of findings of fact or conclusions of law and all of the rights they may have to challenge or contest the validity of the order to cease and

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desist entered in accordance with such agreement. It has been agreed that the order to cease and desist issued in accordance with said agreement shall have the same force and effect as if entered after a full hearing and that the complaint may be used in construing the terms of said order. It has also been agreed that the record herein shall consist solely of the complaint and said agreement, and that said agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

This proceeding having now come on for final consideration on the complaint and the aforesaid agreement containing consent order, and it appearing that the order provided for in said agreement covers all the allegations of the complaint and provides for an appropriate disposition of this proceeding as to all parties, said agreement is hereby accepted and is ordered filed upon this decision's becoming the decision of the Commission pursuant to sections 3.21 and 3.25 of the Commission's rules of practice, and the hearing examiner, accordingly, makes the following jurisdictional findings and order:

1. Respondent Israelson-Levy, 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 512 Seventh Avenue, New York, N.Y. Individual respondents Charles Israelson and Mildred Israelson are president-treasurer and secretary, respectively, of the corporate respondent with their office and principal place of business at the same location as the corporate respondent.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents hereinabove named. The complaint states a cause of action against said respondents under the Wool Products Labeling Act of 1939, the Fur Products Labeling Act and the Federal Trade Commission Act, and this proceeding is in the interest of the public.

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*It is ordered.* That respondents Israelson-Levy, Inc., a corporation, and its officers, and Charles Israelson and Mildred Israelson, individually and as officers of said corporation, and respondents' representatives, agents, and employees, directly or through any corporate or other device, in connection with the introduction or manufacture for introduction into commerce, or the offering for sale, sale, transportation or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, and the Wool Products La-

beling Act, of coats or other "wool products" as such products are defined in and subject to said Wool Products Labeling Act, do forthwith cease and desist from:

A. Misbranding such products by:

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

2. Failing to securely affix to or place on each such product a stamp, tag, label, or other means of identification showing in a clear and conspicuous manner:

(a) The percentage of the total fiber weight of such wool product, exclusive of ornamentation not exceeding 5 percent of said total fiber weight, of (1) wool, (2) reprocessed wool, (3) reused wool, (4) each fiber other than wool where said percentage by weight of such fiber is 5 percent or more, and (5) the aggregate of all other fibers:

(b) The maximum percentage of the total weight of such wool product of any nonfibrous, loading, filling or adulterating matter;

(c) The name or the registered identification number of the manufacturer of such wool product, or of one or more persons engaged in introducing such wool product into commerce, or in the offering for sale, sale, transportation, distribution or delivery for shipment thereof in commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939.

*It is further ordered,* That Israelson-Levy, Inc., a corporation, and its officers, and Charles Israelson and Mildred Israelson, 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 introduction or manufacture for introduction, into commerce or the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce, of fur products, or in connection with the manufacture, sale, advertising, offering for sale, transportation or distribution of fur products which have been made in whole or in part of fur which has been shipped and received in commerce, as "commerce," "fur," and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

A. Misbranding fur products by:

1. Failing to affix labels to fur products showing:

(a) The name or names of the animal or animals producing the fur or furs contained in the fur product as set forth in the Fur Products Name Guide and as prescribed under the rules and regulations;

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(b) That the fur product contains or is composed of used fur, when such is the fact;

(c) That the fur product contains or is composed of bleached, dyed or otherwise artificially colored fur, when such is the fact;

(d) That the fur product is composed in whole or in substantial part of paws, tails, bellies, or waste fur, when such is the fact;

(e) The name or other identification issued and registered by the Commission of one or more persons who manufactured such product for introduction into commerce, introduced it into commerce, sold it in commerce, advertised or offered it for sale in commerce, or transported or distributed it in commerce;

(f) The name of the country of origin of any imported furs used in the fur product.

## DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to section 3.21 of the Commission's rules of practice, the initial decision of the hearing examiner shall, on the 20th day of May 1958, become the decision of the Commission; and, accordingly:

*It is 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 the order to cease and desist.

IN THE MATTER OF  
RIPLEY MANUFACTURING CORPORATION

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

*Docket 6870. Complaint, Aug. 20, 1957—Decision, May 21, 1958*

Consent order requiring a large retail clothing chain, with principal office in New York City and owning numerous subsidiary corporations operating retail clothing stores in various States, to cease representing falsely in advertising in newspapers and by radio that it manufactured all the merchandise sold in its stores and sold it at prices substantially below those charged by other retailers; that it was a wholesaler and sold to the public at wholesale prices; and that its clothing was rated the best buy in America by "America's top consumer group," purportedly based on a report by Consumers Union.

*Mr. Edward F. Downs, and Mr. Thomas A. Sterner, for the Commission.*

*Mr. Bernard Newman, for respondent.*

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

The Federal Trade Commission (sometimes also hereinafter referred to as the Commission) issued its complaint herein, charging the above-named respondent with having violated the provisions of the Federal Trade Commission Act in certain particulars.

On March 19, 1958, there was submitted to the undersigned hearing examiner of the Commission for his consideration and approval an agreement containing consent order to cease and desist which had been entered into by and between respondent, and counsel for both parties, under date of March 12, 1958, subject to the approval of the Bureau of Litigation of the Commission, which had subsequently duly approved the same.

On due consideration of such agreement, the hearing examiner finds that said agreement, both in form and in content, is in accord with section 3.25 of the Commission's rules of practice for adjudicative proceedings, and that by said agreement the parties have specifically agreed to the following matters:

1. Respondent Ripley Manufacturing Corp. is a corporation 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 80 West End Avenue, New York, N.Y.

2. Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on August 20, 1957, issued its complaint in this proceeding against respondent, and a true copy was thereafter duly served on respondent.

3. Respondent admits all the jurisdictional facts alleged in the complaint and agrees that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations.

4. This agreement disposes of all of this proceeding as to all parties.

5. Respondent waives:

(a) Any further procedural steps before the hearing examiner and the Commission;

(b) The making of findings of fact or conclusion of law; and

(c) All of the rights it may have to challenge or contest the validity of the order to cease and desist entered in accordance with this agreement.

6. The record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and this agreement.

7. This agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission.

8. This agreement is for settlement purposes only and does not constitute an admission by respondent that it has violated the law as alleged in the complaint.

9. That the proposed order set forth in the agreement may be entered by the Commission without further notice to the respondent, and when so entered it shall have the same force and effect as if entered after a full hearing; may be altered, modified, or set aside in the manner provided for other orders; and that the complaint may be used in construing the terms of the order.

The hearing examiner further finds from the complaint and said agreement that the Commission has jurisdiction of the subject matter of this proceeding and of the person of the respondent herein; that the complaint states a legal cause for complaint under the Federal Trade Commission Act, both generally and in each of the particular charges alleged therein; that this proceeding is in the interest of the public; and that the order proposed in the said agreement is appropriate for the full disposition of all the issues as to all of the parties to this proceeding.

The said agreement, including the order proposed therein, is therefore accepted by the hearing examiner and transmitted to the Commission herewith for filing if the Commission so decides; and said

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proposed order is adopted and hereinafter made and entered as the "Order" portion of this initial decision: *Provided*, That neither said agreement nor this initial decision shall become a part of the official record of this proceeding, nor shall this initial decision be published unless and until they respectively become parts of the official decision of the Commission.

## ORDER

*It is ordered*, That respondent, Ripley Manufacturing Corp., a corporation, and its officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of clothing, shoes and haberdashery, in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication:

1. That respondent manufactures all of the merchandise sold in its stores;
2. That respondent sells all merchandise at prices below the prices charged for the same or comparable merchandise by other retailers;
3. That the purchasing public will realize a saving on any article purchased from respondent unless respondent sell such article below the price charged for the same or comparable articles by other manufacturing-chain-retailers in the same trade territories;
4. That respondent is a wholesaler or conducts a wholesale business in addition to its retail business;
5. That Consumers Union, or any other organization, has determined certain facts or expressed particular opinions about respondent's merchandise unless, in fact, such is the case, and then only to the extent of such expression or determination.

## DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to section 3.21 of the Commission's rules of practice, the initial decision of the hearing examiner shall, on the 21st day of May 1958, become the decision of the Commission; and, accordingly:

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

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## IN THE MATTER OF

## THE ALUMINUM COOKING UTENSIL CO., INC.

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

*Docket 6972. Complaint, Dec. 5, 1957—Decision, May 21, 1958*

Consent order requiring the manufacturer in New Kensington, Pa., of "Wear-Ever" aluminum cooking utensils, designed to employ the so-called "waterless" method of cooking, selling its products chiefly by representatives who gave demonstrations before groups of purchasers, to cease misrepresenting the health benefits obtained by cooking with its utensils and their superiority over competitive products, and that potential customers were selected by its advertising department to receive a special gift, among other things.

*Mr. Morton Nesmith* and *Mr. John Mathias* for the Commission.  
*Mr. William K. Unverzagt*, of Pittsburgh, Pa., for respondent.

## INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

The Federal Trade Commission (sometimes also hereinafter referred to as the Commission) issued its complaint herein, charging the above-named respondents with having violated the provisions of the Federal Trade Commission Act in certain particulars.

On March 20, 1958, there was submitted to the undersigned hearing examiner of the Commission for his consideration and approval an agreement containing consent order to cease and desist, which had been entered into by and between respondent and attorneys for both parties, under date of March 17, 1958, subject to the approval of the Bureau of Litigation of the Commission, which had subsequently duly approved the same.

On due consideration of such agreement, the hearing examiner finds that said agreement, both in form and in content, is in accord with section 3.25 of the Commission's rules of practice for adjudicative proceedings, and that by said agreement the parties have specifically agreed to the following matters:

1. Respondent is a corporation organized, existing and doing business under the laws of the State of Delaware, with its offices and principal place of business located at Wear-Ever Building, in the city of New Kensington, State of Pennsylvania.
2. Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on December 5, 1957, issued

its complaint in this proceeding against respondent, and a true copy was thereafter duly served on respondent.

3. Respondent admits all the jurisdictional facts alleged in the complaint and agrees that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations.

4. This agreement disposes of all of this proceeding as to all parties.

5. Respondent waives:

(a) Any further procedural steps before the hearing examiner and the Commission;

(b) The making of findings of fact or conclusions of law; and

(c) All of the rights it may have to challenge or contest the validity of the order to cease and desist entered in accordance with this agreement.

6. The record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and this agreement.

7. This agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission.

8. This agreement is for settlement purposes only and does not constitute an admission by respondent that it has violated the law as alleged in the complaint.

9. That the proposed order set forth in the agreement may be entered by the Commission without further notice to the respondents, and when so entered it shall have the same force and effect as if entered after a full hearing; may be altered, modified, or set aside in the manner provided by statute for other orders; and that the complaint may be used in construing the terms of the order.

The hearing examiner further finds from the complaint and said agreement that the Commission has jurisdiction of the subject matter of this proceeding and of the person of the respondent; that the complaint states a legal cause for complaint under the Federal Trade Commission Act, both generally and in each of the particular charges alleged therein; that this proceeding is in the interest of the public; and that the order proposed in the said agreement is appropriate for the full disposition of all the issues as to all of the parties to this proceeding.

The said agreement, including the order proposed therein, is therefore accepted by the hearing examiner and transmitted to the Commission herewith for filing if the Commission so decides; and said proposed order makes adequate and proper disposition of the sub-

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stantial and material matters charged in the complaint, and it is therefore adopted and hereinafter made and entered as the "Order" portion of this initial decision: *Provided*, That neither said agreement nor this initial decision shall become a part of the official record of this proceeding, nor shall this initial decision be published unless and until they respectively become parts of the official decision of the Commission.

## ORDER

*It is ordered*, That respondent Wear-Ever Aluminum, Inc., a corporation, formerly the Aluminum Cooking Utensil Company, Inc., and its officers, and respondent's representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of cooking utensils made of aluminum, or any other product of substantially similar composition, design, construction, or purpose, do forthwith cease and desist from:

1. Representing, directly or by implication:

(a) That the use of respondent's utensils and the "waterless" method of cooking will promote or is conducive to better health when compared to other modern cooking utensils, namely, other utensils employing the "waterless" method of cooking and those utensils known as pressure cookers and as steamers. However, nothing contained herein shall prevent respondent from representing that more vitamins and minerals are retained in food cooked in their utensils and using the "waterless" method of cooking than when cooked in other utensils requiring substantially larger quantities of water.

(b) That the use of respondent's utensils and the "waterless" method of cooking will promote or is conducive to better health except in the cases of persons who are deficient in the food elements which may be lost, damaged or destroyed in other cooking methods or might be on the borderline.

(c) That the "waterless" method of cooking is peculiar to the use of respondent's products.

(d) That the "waterless" method of cooking can only be accomplished in aluminum utensils.

(e) That less food is required to satisfy hunger when prepared in respondent's utensils using the "waterless" method of cooking than when otherwise prepared.

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(f) That the magnesium in food is "Nature's laxative" and if it is boiled out of food, laxatives must be purchased at the drug store.

(g) That potential customers have been selected by the advertising department of Wear-Ever cookware to receive a special gift, unless such is the fact.

2. Furnishing means or instrumentalities to others by and through which they may mislead and deceive the public respecting the matters set forth in paragraph 1 hereof.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

The Commission having considered the hearing examiner's initial decision, filed March 25, 1958, accepting an agreement containing a consent order to cease and desist theretofore executed by the respondent and counsel in support of the complaint, service of which was completed on April 18, 1958; and

It appearing from letters received from the respondent dated, respectively, April 24 and May 9, 1958, (1) that through inadvertence the words "by statute" were omitted from the last line of page 2 of said decision, resulting in an incomplete recitation of one of the provisions of the agreement of the parties, and (2) that by virtue of a certificate of amendment of the certificate of incorporation of the Aluminum Cooking Utensil Co., Inc., filed with the secretary of state of Delaware on April 1, 1958, the name of the respondent was changed, effective April 1, 1958, to Wear-Ever Aluminum, Inc.; and

The Commission being of the opinion (1) that the clerical error in the initial decision should be corrected, and (2) that the respondent should be identified in the order to cease and desist issued in disposition of this proceeding by the name "Wear-Ever Aluminum, Inc.":

*It is ordered*, That the initial decision be, and it hereby is, modified as follows:

(1) By inserting the words "by statute" after the word "provided" in the last line on page 2 of said decision;

(2) By revising the first paragraph of the order on page 3 of said decision to read

*It is ordered*, That respondent Wear-Ever Aluminum, Inc., a corporation, formerly the Aluminum Cooking Utensil Company, Inc., and its officers, and respondent's representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of cooking utensils made of aluminum, or any other product of substantially similar composition, design, construction, or purpose, do forthwith cease and desist from:

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*It is further ordered,* That the initial decision as so amended shall, on the 21st day of May, 1958, become the decision of the Commission.

*It is further ordered,* That respondent, Wear-Ever Aluminum, Inc., a corporation, formerly the Aluminum Cooking Utensil Co., Inc., shall, within sixty (60) days after service upon it of this decision, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with the order contained in the aforesaid initial decision as modified.

IN THE MATTER OF  
GREENHOUSE FURS, INC., ET AL.

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

*Docket 7013. Complaint, Dec. 30, 1957—Decision, May 21, 1958*

Consent order requiring furriers, with places of business at Perth Amboy and West New York, N.J., to cease violating the Fur Products Labeling Act by removing labels from fur products prior to sale to the ultimate consumer; by failing to comply with the labeling and invoicing requirements; and by advertising in newspapers which failed to disclose the names of animals producing certain furs, that certain products were composed of artificially colored or cheap or waste fur, or the country of origin of imported furs, and which represented fur products falsely as being bankrupt or auction stock or stock from a famous manufacturer.

*Mr. John T. Walker* for the Commission.

Respondents, for themselves.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

The complaint herein was issued on December 30, 1957, charging respondents with misbranding and falsely and deceptively invoicing and advertising certain of their fur products, in violation of the Federal Trade Commission Act and of the Fur Products Labeling Act and the rules and regulations promulgated thereunder.

Thereafter, on March 27, 1958, respondents and counsel supporting the complaint herein entered into an agreement containing consent order to cease and desist, which was approved by the Director and an Assistant Director of the Commission's Bureau of Litigation, and thereafter submitted to the hearing examiner for consideration.

The agreement identifies respondent Greenhouse Furs, Inc., as a New Jersey corporation, with its office and principal place of business located at 195 Smith Street, Perth Amboy, N.J., and individual respondent Abraham Cherkoss as president thereof and having the same address; respondent Maxwell Furs, Inc., as a New Jersey corporation with its office and principal place of business located at 4921 Bergenline Avenue, West New York, N.J., and individual respondent Max A. Perry as president thereof and having the same address.

Respondents admit all the jurisdictional facts alleged in the complaint, and agree that the record may be taken as if findings of

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jurisdictional facts had been duly made in accordance with such allegations.

Respondents waive any further procedure before the hearing examiner and the Commission; the making of findings of fact and conclusions of law; and all of the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement. All parties agree that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and the agreement; that the order to cease and desist, as contained in the agreement, when it shall have become a part of the decision of the Commission, shall have the same force and effect as if entered after a full hearing, and may be altered, modified or set aside in the manner provided for other orders; that the complaint herein may be used in construing the terms of said order; and that the agreement is for settlement purposes only and does not constitute an admission by the respondents that they have violated the law as alleged in the complaint.

After consideration of the allegations of the complaint and the provisions of the agreement and the proposed order, the hearing examiner is of the opinion that such order constitutes a satisfactory disposition of this proceeding. Accordingly, in consonance with the terms of the aforesaid agreement, the hearing examiner accepts the agreement containing consent order to cease and desist; finds that the Commission has jurisdiction over the respondents and over their acts and practices as alleged in the complaint; and finds that this proceeding is in the public interest. Therefore,

*It is ordered*, That Greenhouse Furs, Inc., a corporation, and its officers, and Abraham Cherkoss, individually and as president of said corporation, and Maxwell Furs, Inc., and its officers, and Max A. Perry, individually and as president of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the sale, advertising, offering for sale, transportation, or distribution of fur products in commerce, or in connection with the sale, advertising, offering for sale, transportation, or distribution of fur products which have been made in whole or in part of fur which has been shipped and received in commerce, as "commerce," "fur," and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

A. Removing or causing the removal or participating in the removal of labels required to be affixed to fur products, prior to the

time fur products are sold and delivered to the ultimate purchaser of such products;

B. Misbranding fur products by:

1. Failing to affix labels to fur products showing:

(a) The name or names of the animal or animals producing the fur or furs contained in the fur product, as set forth in the Fur Products Name Guide and as prescribed under the rules and regulations;

(b) That the fur product contains or is composed of used fur, when such is the fact;

(c) That the product contains or is composed of bleached, dyed or otherwise artificially colored fur, when such is the fact;

(d) That the fur product is composed, in whole or in substantial part, of paws, tails, bellies, or waste fur, when such is the fact;

(e) The name or other identification issued and registered by the Commission of one or more persons who manufactured such fur product for introduction into commerce, introduced it into commerce, advertised or offered it for sale in commerce, or transported or distributed it in commerce;

(f) The name of the country of origin of any imported furs used in the fur product;

(g) The item number or mark assigned to a fur product;

2. Setting forth on labels affixed to fur products:

(a) Information required under section 4(2) of the Fur Products Labeling Act and the rules and regulations promulgated thereunder in abbreviated form;

(b) Information required under section 4(2) of the Fur Products Labeling Act and the rules and regulations promulgated thereunder mingled with nonrequired information;

(c) Information required under section 4(2) of the Fur Products Labeling Act and the rules and regulations promulgated thereunder in handwriting;

C. Falsely or deceptively invoicing fur products by:

1. Failing to furnish invoices to purchasers of fur products showing:

(a) The name or names of the animal or animals producing the fur or furs contained in the fur product as set forth in the Fur Products Name Guide and as prescribed by the rules and regulations;

(b) That the fur product contains or is composed of used fur, when such is the fact;

(c) That the fur product contains or is composed of bleached, dyed or otherwise artificially colored fur, when such is the fact;

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(d) That the fur product is composed, in whole or in substantial part, of paws, tails, bellies, or waste fur, when such is the fact;

(e) The name and address of the person issuing such invoice;

(f) The name of the country of origin of any imported furs used in a fur product;

(g) The item number or mark assigned to a fur product;

2. Setting forth on invoices information required under section 5(b)(1) of the Fur Products Labeling Act and the rules and regulations promulgated thereunder in abbreviated form;

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

1. Fails to disclose:

(a) The name or names of the animal or animals producing the fur or furs contained in a fur product as set forth in the Fur Products Name Guide and as prescribed by the rules and regulations;

(b) That the fur products contain or are composed of bleached, dyed, or otherwise artificially colored fur, when such is the fact;

(c) That the fur products are composed, in whole or in substantial part, of paws, tails, bellies, or waste fur, when such is the fact;

(d) The name of the country of origin of the imported furs contained in fur products;

2. Represents that fur products are auction stock, bankrupt stock, or stock from a famous New York wholesaler, or words of similar import, when such is contrary to the fact.

## DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to section 3.21 of the Commission's rules of practice, the initial decision of the hearing examiner shall, on the 21st day of May 1958, become the decision of the Commission; and, accordingly:

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

IN THE MATTER OF  
METROPOLITAN FIBRE BATTING CORP. ET AL.

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

*Docket 7023. Complaint, Jan. 9, 1958—Decision, May 21, 1958*

Consent order requiring manufacturers with place of business in Glendale, Long Island, N.Y., to cease violating the Wool Products Labeling Act by labeling as "70% Reprocessed Wool," "80% Reused Wool," and "100% Reprocessed Wool" wool battings which contained substantially less reprocessed or re-used wool than the percentages thus represented; by making similar false statements on sales invoices and shipping memoranda; and by failing to comply with other labeling requirements of the act.

*Mr. Thomas A. Ziebarth* for the Commission.

*Mr. Nathan Lieberman, pro se*, and for Metropolitan Fibre Batting Corp., and Celina Lieberman.

INITIAL DECISION BY EVERETT F. HAYCRAFT, HEARING EXAMINER

On January 9, 1958, the Federal Trade Commission issued its complaint against Metropolitan Fibre Batting Corp., a corporation, and Nathan Lieberman and "Celina" Lieberman, erroneously referred to in the complaint as "Calina" Lieberman, individually and as officers of said corporation, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of the Federal Trade Commission Act, the Wool Products Labeling Act of 1939 and the rules and regulations promulgated under said Wool Products Labeling Act. After the issuance of said complaint and the filing of their answer thereto, the respondents on March 10, 1958, entered into an agreement for consent order with counsel supporting the complaint disposing of all the issues in this proceeding in accordance with section 3.25 of the rules of practice and procedure of the Commission, which agreement has been duly approved by the Bureau of Litigation.

By the terms of said agreement, the respondents admitted all the jurisdictional facts alleged in the complaint and agreed that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations. Respondents in the agreement expressly waived any further procedural steps before the hearing examiner and the Commission; the making of findings of fact or conclusions of law; and all of the rights they may have to challenge or

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contest the validity of the order to cease and desist entered in accordance with this agreement.

It was further provided in said agreement that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and the said agreement. It was further agreed that the agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission, and that said agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint. The agreement also provided that the order to cease and desist issued in accordance with said agreement shall have the same force and effect as if entered after a full hearing; that it may be altered, modified, or set aside in the manner provided for other orders; and that the complaint may be used in construing the terms of the order.

This proceeding having now come on for final consideration by the hearing examiner on the complaint and the aforesaid agreement for consent order, and it appearing that said agreement provides for an appropriate disposition of this proceeding, the aforesaid agreement is hereby accepted and is ordered filed upon becoming part of the Commission's decision in accordance with sections 3.21 and 3.25 of the rules of practice; and in consonance with the terms of said agreement, the hearing examiner makes the following jurisdictional findings and order:

1. Respondent Metropolitan Fibre Batting Corp., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 79-30 71st Avenue, Glendale, Long Island, N.Y.

Individual respondents Nathan Lieberman and Celina Lieberman are president and secretary-vice president, respectively, of the corporate respondent.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents hereinabove named. The complaint states a cause of action against said respondents under the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and this proceeding is in the interest of the public.

## ORDER

*It is ordered*, That respondents Metropolitan Fibre Batting Corp., a corporation, and its officers, and Nathan Lieberman and Celina

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Lieberman, individually and as officers of said corporation, and respondents' representatives, agents, and employees, directly or through any corporate or other device, in connection with the introduction or manufacture for introduction into commerce, or the offering for sale, sale, transportation, or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, and the Wool Products Labeling Act of 1939, of woolen battings or other "wool products" as such products are defined in and subject to, said Wool Products Labeling Act, do forthwith cease and desist from:

A. Misbranding such products by:

1. Falsely or deceptively 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, or label or other means of identification showing in a clear and conspicuous manner:

(a) The percentage of the total fiber weight of such wool product exclusive of ornamentation not exceeding 5 percent of said total fiber weight, of (1) wool, (2) reprocessed wool, (3) reused wool, (4) each fiber other than wool where said percentage by weight of such fiber is 5 percent or more, and (5) the aggregate of all other fibers.

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

(c) The name or the registered identification number of the manufacturer of such wool product or one or more persons engaged in introducing such wool product into commerce, or in the offering for sale, sale, transportation, distribution or delivery for shipment thereof in commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939.

*It is further ordered*, That Metropolitan Fibre Batting Corp., a corporation, and its officers, and Nathan Lieberman and Celina Lieberman, individually and as officers of said corporation, and respondents' representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of woolen battings or any other products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Misrepresenting the character or amount of the constituent fibers contained in such products on invoices or shipping memoranda applicable thereto or in any other manner.

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Decision

## DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to section 3.21 of the Commission's rules of practice, the initial decision of the hearing examiner shall, on the 21st day of May 1958, become the decision of the Commission; and, accordingly:

*It is ordered,* That respondents Metropolitan Fibre Batting Corp., a corporation, and Nathan Lieberman and "Celina" Lieberman, erroneously referred to in the complaint as "Calina" Lieberman, individually and as officers of said corporation, shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist.

## IN THE MATTER OF

## NATIONWIDE CLOTHIERS, INC., ET AL.

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

*Docket 7038. Complaint, Jan. 15, 1958—Decision, May 21, 1958*

Consent order requiring a manufacturer of men's and boys' clothing, operating a national chain of some 30 retail stores and with main offices in Brooklyn and New York City, to cease violating the Wool Products Labeling Act by labeling as "100% All Wool," men's sport coats which contained a substantial percentage of nonwool fibers, by failing in other respects to comply with the labeling requirements of the act, and by making fictitious pricing claims for their garments in newspaper advertising.

*Mr. Michael J. Vitale and Mr. Alvin D. Edelson* for the Commission.  
*Mr. Morris K. Bauer*, of New York, N.Y., for respondents.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

The Federal Trade Commission (hereinafter referred to as the Commission) on January 15, 1958, issued its complaint herein under the Federal Trade Commission Act and the Wool Products Labeling Act of 1939 against the above-named respondents, Nationwide Clothiers, Inc., a corporation; A. B. Joffe Co., Inc., a corporation; and Albert B. Joffe and Julius Blankstein, individually and as officers of said corporations. The complaint charges respondents with having violated in certain particulars the provisions of said acts. The respondents were duly served with process.

On March 27, 1958, there was submitted to the undersigned hearing examiner of the Commission for his consideration and approval an "agreement containing consent order to cease and desist," which had been entered into by and between respondents, their counsel, and counsel supporting the complaint, under date of March 20, 1958, and subject to the approval of the Bureau of Litigation of the Commission. Such agreement had been thereafter duly approved by the Director and an Assistant Director of that Bureau.

On due consideration of the said "agreement containing consent order to cease and desist," the hearing examiner finds that said agreement, both in form and in content, is in accord with section 3.25 of the Commission's rules of practice for adjudicative proceedings, and that by said agreement the parties have specifically agreed that:

1. Respondent Nationwide Clothiers, Inc. is a corporation, organized and existing under and by virtue of the laws of the State of

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Delaware, with its principal place of business located at 268 Fourth Avenue, New York City, N.Y.

Respondent A. B. Joffe Co., Inc. is a corporation, organized and existing under and by virtue of the laws of the State of New York, with its principal place of business located at No. 1 Junius Street, Brooklyn, New York, N.Y.

The individual respondents, Albert B. Joffe and Julius Blankstein, are officers of the aforementioned corporate respondents and maintain business addresses at the same addresses as the corporate respondents.

2. Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, the Federal Trade Commission, on January 15, 1958, issued its complaint in this proceeding against respondents, and a true copy was thereafter duly served on respondents.

3. Respondents admit all the jurisdictional facts alleged in the complaint, and agree that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations.

4. This agreement disposes of all of this proceeding as to all parties.

5. Respondents waive:

(a) Any further procedural steps before the hearing examiner and the Commission;

(b) The making of findings of fact or conclusions of law;

(c) All of the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with this agreement.

6. The record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and this agreement.

7. This agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission.

8. This agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

The parties have further specifically agreed that the proposed order to cease and desist included in said agreement may be entered in this proceeding by the Commission without further notice to respondents; that when so entered it shall have the same force and effect as if entered after a full hearing; that it may be altered, modified or set aside in the manner provided for other orders; and

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that the complaint may be used in construing the terms of the order.

Upon due consideration of the complaint filed herein and the said "agreement containing consent order to cease and desist," the latter is hereby approved, accepted and ordered filed, if and when it shall have become a part of the Commission's decision. The hearing examiner finds from the complaint and the said "agreement containing consent order to cease and desist" that the Commission has jurisdiction of the subject matter of this proceeding and of the persons of each of the respondents herein; that the complaint states a legal cause for complaint under the Federal Trade Commission Act and the Wool Products Labeling Act of 1939 against each of the respondents, both generally and in each of the particulars alleged therein; that this proceeding is in the interest of the public; that the following order as proposed in said agreement is appropriate for the just disposition of all of the issues in this proceeding; and that said order therefore should be, and hereby is, entered as follows:

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*It is ordered*, That the respondents, Nationwide Clothiers, Inc., a corporation, and its officers, and A. B. Joffe Co., Inc., a corporation, and its officers, and Albert B. Joffe and Julius Blankstein, individually, and as officers of the aforementioned corporate respondents, 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 or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, and the Wool Products Labeling Act of 1939, of wool products, as such products are defined in and subject to the Wool Products Labeling Act of 1939, do forthwith cease and desist from misbranding such products by:

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

2. Failing to securely affix to or place on each such product a stamp, tag, label or other means of identification showing in a clear and conspicuous manner:

(a) The percentage of the total fiber weight of such wool products, exclusive of ornamentation not exceeding 5 percent of said total fiber weight, of (1) wool, (2) reprocessed wool, (3) reused wool, (4) each fiber other than wool where said percentage by weight of such fiber is 5 percent or more, and (5) the aggregate of all other fibers;

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(b) The maximum percentage of the total weight of such wool products, of any nonfibrous loading, filling, or adulterating matter;

(c) The name or the registered identification number of the manufacturer of such wool product or of one or more persons engaged in introducing such wool product into commerce, or in the offering for sale, sale, transportation, distribution, or delivery for shipment thereof in commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939;

3. Using abbreviated words or terms descriptive of fiber content on stamps, tags, labels or other means of identification attached to said wool products;

4. Failing to separately set forth on the required stamp, tag, label, or other means of identification, the character and amount of the constituent fibers contained in the interlinings of said wool products;

5. Failing to attach a stamp, tag, or label or other mark of identification containing the information required under section 4(a)(2) of the Wool Products Labeling Act on each unit of multiple-piece garments.

*It is further ordered*, That respondents Nationwide Clothiers, Inc., a corporation, and its officers, and A. B. Joffe Co., Inc., a corporation, and its officers, and Albert B. Joffe and Julius Blankstein, individually, and as officers of the aforementioned corporate respondents, 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 men's or boy's clothing or other merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that certain amounts are the regular or usual retail price of their clothing, or other merchandise, when such amounts are in excess of the price at which the respondents have regularly or usually sold said clothing, or other merchandise, through their various retail stores.

## DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to section 3.21 of the Commission's rules of practice, the initial decision of the hearing examiner shall, on the 21st day of May 1958, become the decision of the Commission; and, accordingly:

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

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

*Docket 6974. Complaint, Dec. 11, 1957—Decision, May 22, 1958*

Consent order requiring a furrier in Los Angeles, Calif., to cease violating the Fur Products Labeling Act by mutilating labels attached to fur products prior to sale to the ultimate consumer; by falsely naming the animals producing the fur, on labels and invoices; by falsely naming the country of origin on invoices; and by failing in other respects to comply with the invoicing and labeling requirements; by advertising in newspapers which failed to disclose the names of animals producing furs, that certain products contained artificially colored or cheap or waste fur, etc., which falsely represented furs as "Direct from factory to you" and misrepresented prices; and by failing to keep adequate records as the basis for pricing claims.

*Mr. John J. McNally* supporting the complaint.

*Mr. Norman S. Berliner*, of Los Angeles, Calif., for respondent.

INITIAL DECISION BY JOSEPH CALLAWAY, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondent on December 11, 1957, charging him with having violated the Fur Products Labeling Act, the rules and regulations issued thereunder, and the Federal Trade Commission Act by misbranding, falsely invoicing and falsely advertising certain fur products. After being served with the complaint respondent entered into an agreement, dated February 13, 1958, containing a consent order to cease and desist, disposing of all the issues in this proceeding without hearing, which agreement has been duly approved by the Assistant Director and the Director of the Bureau of Litigation. Said agreement has been submitted to the undersigned, heretofore duly designated to act as hearing examiner herein, for his consideration in accordance with section 3.25 of the rules of practice of the Commission.

Respondent, pursuant to the aforesaid agreement, has admitted all of the jurisdictional allegations of the complaint and agreed that the record may be taken as if findings of jurisdictional facts had been made duly in accordance with such allegations. Said agreement further provides that respondent waives all further procedural steps before the hearing examiner or the Commission, including the making of findings of fact or conclusions of law and the right to challenge

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or contest the validity of the order to cease and desist entered in accordance with such agreement. It has also been agreed that the record herein shall consist solely of the complaint and said agreement; that the agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission, that said agreement is for settlement purposes only and does not constitute an admission by respondent that he has violated the law as alleged in the complaint; that said order to cease and desist shall have the same force and effect as if entered after a full hearing and may be altered, modified, or set aside in the manner provided for other orders, and that the complaint may be used in construing the terms of the order.

This proceeding having now come on for final consideration on the complaint and the aforesaid agreement containing the consent order, and it appearing that the order and agreement cover all of the allegations of the complaint and provide for appropriate disposition of this proceeding, the agreement is hereby accepted and ordered filed upon this decision and said agreement becoming part of the Commission's decision pursuant to sections 3.21 and 3.25 of the rules of practice, and the hearing examiner accordingly makes the following findings, for jurisdictional purposes, and order:

1. Respondent Felix Presburger is an individual trading as Felix Presburger with his office and principal place of business at 635 South Hill Street, Los Angeles, Calif.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent hereinabove named. The complaint states a cause of action against said respondent under the Fur Products Labeling Act and the Federal Trade Commission Act, and this proceeding is in the interest of the public.

## ORDER

*It is ordered,* That respondent Felix Presburger, an individual trading as Felix Presburger, or under any other trade name or names, and respondent's representatives, agents, and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the sale, advertising, or offering for sale, in commerce, or the transportation or distribution in commerce, of fur products or in connection with the sale, advertising, offering for sale, transportation or distribution of fur products which have been made in whole or in part of fur which has been shipped and received in commerce, as "commerce," "fur," and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

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A. Removing, or participating in the removal of labels required by the Fur Products Labeling Act to be affixed to fur products, prior to the time any fur product is sold and delivered to the ultimate consumer.

B. Misbranding fur products by:

1. Setting forth, on labels attached to fur products, the name of any animal other than the name or names provided for in paragraph B.2.(a) below.

2. Failing to affix labels to fur products showing:

(a) The name or names of the animal or animals producing the fur or furs contained in the fur product as set forth in the Fur Products Name Guide and as prescribed under the rules and regulations;

(b) That the fur product contains or is composed of used fur, when such is the fact;

(c) That the fur product contains or is composed of bleached, dyed or otherwise artificially colored fur, when such is the fact;

(d) That the fur product is composed in whole or in substantial part of paws, tails, bellies, or waste fur, when such is the fact;

(e) The name, or other identification issued and registered by the Commission, of one or more persons who manufactured such fur product for introduction into commerce, introduced it into commerce, sold it in commerce, advertised or offered it for sale, or transported or distributed it in commerce.

(f) The name of the country of origin of any imported furs used in the fur product;

3. Setting forth the term "blended" on labels affixed to fur products to refer to or describe fur products which contain or are composed of bleached, dyed, or otherwise artificially colored fur.

4. Setting forth on labels attached to fur products information required under section 4(2) of the Fur Products Labeling Act and the rules and regulations thereunder mingled with nonrequired information or in handwriting;

C. Falsely or deceptively invoicing fur products by:

1. Failing to furnish invoices to purchasers of fur products showing:

(a) The name or names of the animal or animals producing the fur or furs contained in the fur product as set forth in the Fur Products Name Guide and as prescribed under the rules and regulations;

(b) That the fur product contains or is composed of used fur, when such is the fact;

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- (c) That the fur product contains or is composed of bleached, dyed, or otherwise artificially colored fur, when such is the fact;
- (d) That the fur product is composed in whole or in substantial part of paws, tails, bellies, or waste fur, when such is the fact;
- (e) The name and address of the person issuing such invoice;
- (f) The name of the country of origin of any imported fur contained in a fur product.

## 2. Furnishing invoices to purchasers of fur products showing:

- (a) The name of a country other than the country of origin of the animal that produced the fur contained in such fur product;
- (b) The name of an animal other than the name or names provided for in paragraph C.1.(a) above;

## 3. Failing to furnish invoices to purchasers of fur products containing an item number or mark assigned to such products;

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

## 1. Fails to disclose:

- (a) The name or names of the animal or animals producing the fur or furs contained in the fur product, as set forth in the Fur Products Name Guide and as prescribed under the rules and regulations;
- (b) That the fur product contains or is composed of bleached, dyed, or otherwise artificially colored fur, when such is the fact;
- (c) That the fur product contains or is composed, in whole or in substantial part, of paws, tails, bellies, or waste fur, when such is the fact;

## 2. Sets forth information required under section 5(a) of the Fur Products Labeling Act and the rules and regulations thereunder in abbreviated form;

## 3. Sets forth the term "blended" to refer to or describe fur products which contain or are composed of bleached, dyed, or otherwise artificially colored fur;

## 4. Represents that respondent is the manufacturer of fur products being offered for sale unless such is the fact;

## 5. Represents that savings are to be effectuated by purchasers of fur products through the use by respondent of comparative prices, percentage savings claims, or reductions from regular or usual prices unless there are maintained by respondent full and adequate records disclosing the facts upon which such claims or representations are based, as required by rule 44(e) of the rules and regulations.

## DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to section 3.21 of the Commission's rules of practice, the initial decision of the hearing examiner shall, on the 22d day of May 1958, become the decision of the Commission; and, accordingly:

*It is 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 the order to cease and desist.

## Decision

IN THE MATTER OF  
CHARLES COHEN TRADING AS SANTA ANA FUR CO.  
AND CHARLES OF THE SANTA ANA FUR CO.

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

*Docket 6993. Complaint, Dec. 16, 1957—Decision, May 22, 1958*

Consent order requiring a furrier in Santa Ana, Calif., to cease violating the Fur Products Labeling Act by removing labels from fur products prior to sale to the ultimate consumer; by naming on invoices fictitious or non-existent animal or animals other than those producing the fur; by failing to comply in other respects with the labeling and invoicing requirements; by advertising in newspapers which failed to disclose the names of animals producing furs or named other animals, failed to disclose that certain products were composed of artificially colored fur and the name of the country of origin of imported furs, and failed to give other required information; represented prices as reduced from regular prices which were in fact fictitious, represented falsely that he designed and manufactured his fur products, that prices were reduced in a so-called "Disruption Sale" and that they were below cost; and by failing to keep adequate records as a basis for the pricing claims.

*Mr. John J. McNally* supporting the complaint.  
Respondent, pro se.

INITIAL DECISION BY JOSEPH CALLAWAY, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondent on December 16, 1957, charging him with having violated the Fur Products Labeling Act, the rules and regulations issued thereunder, and the Federal Trade Commission Act by misbranding, falsely invoicing and falsely advertising certain fur products. After being served with the complaint respondent entered into an agreement, dated February 15, 1958, containing a consent order to cease and desist, disposing of all the issues in this proceeding without hearing, which agreement has been duly approved by the Assistant Director and the Director of the Bureau of Litigation. Said agreement has been submitted to the undersigned, heretofore duly designated to act as hearing examiner herein, for his consideration in accordance with section 3.25 of the rules of practice of the Commission.

Respondent, pursuant to the aforesaid agreement, has admitted all of the jurisdictional allegations of the complaint and agreed that the record may be taken as if findings of jurisdictional facts had

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been made duly in accordance with such allegations. Said agreement further provides that respondent waives all further procedural steps before the hearing examiner or the Commission, including the making of findings of fact or conclusions of law and the right to challenge or contest the validity of the order to cease and desist entered in accordance with such agreement. It has also been agreed that the record herein shall consist solely of the complaint and said agreement, that the agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission; that said agreement is for settlement purposes only and does not constitute an admission by respondent that he has violated the law as alleged in the complaint; that said order to cease and desist shall have the same force and effect as if entered after a full hearing and may be altered, modified, or set aside in the manner provided for other orders, and that the complaint may be used in construing the terms of the order.

This proceeding having now come on for final consideration on the complaint and the aforesaid agreement containing the consent order, and it appearing that the order and agreement cover all of the allegations of the complaint and provide for appropriate disposition of this proceeding, the agreement is hereby accepted and ordered filed upon this decision and said agreement becoming part of the Commission's decision pursuant to sections 3.21 and 3.25 of the rules of practice, and the hearing examiner accordingly makes the following findings, for jurisdictional purposes, and order:

1. Respondent, Charles Cohen, is an individual trading as Santa Ana Fur Co., and as Charles of the Santa Ana Fur Co. The office and principal place of business of the said individual respondent is located at 308 North Broadway, Santa Ana, Calif.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent hereinabove named. The complaint states a cause of action against said respondent under the Fur Products Labeling Act and the Federal Trade Commission Act, and this proceeding is in the interest of the public.

## ORDER

*It is ordered,* That respondent Charles Cohen, an individual trading as Santa Ana Fur Co. and as Charles of the Santa Ana Fur Co., or under any other trade name or names, and respondent's representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the

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sale, advertising, or offering for sale, in commerce, or the transportation or distribution in commerce, of fur products, or in connection with the sale, advertising, offering for sale, transportation or distribution of fur products which have been made in whole or in part of fur which has been shipped and received in commerce, as "commerce," "fur," and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

A. Removing or participating in the removal of labels required by the Fur Products Labeling Act to be affixed to fur products, prior to the time any fur product is sold and delivered to the actual consumer.

B. Misbranding fur products by:

1. Failing to affix labels to fur products showing:

(a) The name or names of the animal or animals producing the fur or furs contained in the fur product as set forth in the Fur Products Name Guide and as prescribed under the rules and regulations;

(b) That the fur product contains or is composed of used fur, when such is the fact;

(c) That the fur product contains or is composed of bleached, dyed or otherwise artificially colored fur, when such is the fact;

(d) That the fur product is composed in whole or in substantial part of paws, tails, bellies, or waste fur, when such is the fact;

(e) The name, or other identification issued and registered by the Commission, of one or more persons who manufactured such fur product for introduction into commerce, introduced it into commerce, sold it in commerce, advertised or offered it for sale, or transported or distributed it in commerce;

(f) The name of the country of origin of any imported furs used in the fur product;

2. Setting forth on labels attached to fur products:

(a) Information required under section 4(2) of the Fur Products Labeling Act and the rules and regulations thereunder mingled with nonrequired information;

(b) Information required under section 4(2) of the Fur Products Labeling Act and the rules and regulations thereunder in handwriting;

C. Falsely or deceptively invoicing fur products by:

1. Failure to furnish invoices to purchasers of fur products showing:

(a) The name or names of the animal or animals producing the fur or furs contained in the fur product as set forth in the Fur

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Products Name Guide and as prescribed under the rules and regulations;

(b) That the fur product contains or is composed of used fur, when such is the fact;

(c) That the fur product contains or is composed of bleached, dyed, or otherwise artificially colored fur, when such is the fact;

(d) That the fur product is composed in whole or in substantial part of paws, tails, bellies, or waste fur, when such is the fact;

(e) The name and address of the person issuing such invoices;

(f) The name of the country of origin of any imported fur contained in a fur product.

2. Setting forth on invoices the name of an animal which is fictitious or nonexistent in place of the name or names of the animal or animals producing the fur as required by paragraph C.1(a) above.

3. Setting forth on invoices the name of an animal other than the name or names of the animal or animals producing the fur as required by paragraph C.1(a) above.

4. Setting forth on invoices information required under section 5(b)(1) of the Fur Products Labeling Act and the rules and regulations thereunder in abbreviated form;

5. Failing to furnish invoices to purchasers of fur products showing the item number or mark assigned to such products, as required by rule 40 of the rules and regulations.

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

1. Fails to disclose the name or names of the animal or animals producing the fur or furs contained in the fur product as set forth in the Fur Products Name Guide and as prescribed under the rules and regulations.

2. Fails to disclose that fur products contain or are composed of bleached, dyed, or otherwise artificially colored fur, when such is the fact.

3. Contains the name of an animal other than the name or names of the animal or animals producing the fur contained in fur products as required by paragraph D.1 above.

4. Fails to disclose the name of the country of origin of any imported furs contained in fur products.

5. Fails to set forth the information required by section 5(a) of the Fur Products Labeling Act in type of equal size and conspicuous-

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ness and in close proximity with each other, as required by rule 38(a) of the rules and regulations.

6. Represents, directly or by implication, that the regular or usual price of any fur product is any amount which is in excess of the prices at which such products, in the recent regular course of business, have been usually and customarily sold by the respondent.

7. Represents, directly or by implication, that fur products being offered for sale were created, designed or manufactured by respondent, where such is contrary to the fact.

8. Represents, directly or indirectly, through the use of such terms as "Disruption Sale," "Clearance," "Remodeling Sale," "Liquidation," or through terms of like import or meaning, that fur products being offered for sale are from respondent's regular inventory or stocks or must be disposed of at reduced prices, where such is contrary to the fact.

9. Represents, directly or by implication, that fur products are being offered for sale at prices which are the same as, or are below, respondent's wholesale costs of such products, where such is contrary to the fact.

10. Makes pricing claims and representations of the type referred to in paragraphs D. 6 and 9 above, unless there are maintained by respondent full and adequate records disclosing the facts upon which such claims or representations are based, as required by rule 44(e) of the rules and regulations.

## DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to section 3.21 of the Commission's rules of practice, the initial decision of the hearing examiner shall, on the 22d day of May 1958, become the decision of the Commission; and, accordingly:

*It is 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 the order to cease and desist.

IN THE MATTER OF  
SEON ZERAH ET AL. DOING BUSINESS AS HAWTHORNE  
WATCH CO.

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

*Docket 7011. Complaint, Dec. 27, 1957—Decision, May 22, 1958*

Consent order requiring a partnership in San Francisco, Calif., selling its merchandise to jobbers and dealers for resale, to cease representing falsely in catalogs, on counter display cards, and on containers, that certain of their watches containing one jewel were "jeweled," guaranteed for 1 year, had been awarded a gold medal in competitions at London, Paris, and Geneva, and that secondhand, rebuilt watches were new; and to cease attaching to their merchandise, or furnishing to their customers for attachment thereto, tags printed with fictitious and greatly exaggerated prices.

*Mr. John J. McNally*, for the Commission.

*Mr. Seon Zerah* and *Mr. Jacques Raoul Zerah*, of San Francisco, Calif., *pro se*.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

The Federal Trade Commission (sometimes also hereinafter referred to as the Commission) issued its complaint herein, charging the above-named respondents with having violated the provisions of the Federal Trade Commission Act in certain particulars.

On March 11, 1958, there was submitted to the undersigned hearing examiner of the Commission for his consideration and approval an "agreement containing consent order to cease and desist," which had been entered into by and between respondents and the attorney for the Commission, under date of February 25, 1958, subject to the approval of the Bureau of Litigation of the Commission, which had subsequently duly approved the same.

On due consideration of such agreement, the hearing examiner finds that said agreement, both in form and in content, is in accord with section 3.25 of the Commission's rules of practice for adjudicative proceedings, and that by said agreement the parties have specifically agreed to the following matters:

1. Respondents Seon Zerah and Jacques Raoul Zerah are individuals and copartners doing business as Hawthorne Watch Co. with their office and principal place of business located at 593 Mission Street, San Francisco, Calif.

2. Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on December 27, 1957, issued its complaint in this proceeding against respondents and a true copy was thereafter duly served on respondents.

3. Respondents admit all of the jurisdictional facts alleged in the complaint and agree that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations.

4. This agreement disposes of all of this proceeding as to all parties.

5. Respondents waive:

(a) Any further procedural steps before the hearing examiner and the Commission;

(b) The making of findings of fact or conclusions of law; and

(c) All of the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with this agreement.

6. The record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and this agreement.

7. This agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission.

8. This agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

9. That the proposed order set forth in the agreement may be entered by the Commission without further notice to the respondents, and when so entered it shall have the same force and effect as if entered after a full hearing; may be altered, modified, or set aside in the manner provided for other orders; and that the complaint may be used in construing the terms of the order.

The hearing examiner further finds from the complaint and said agreement that the Commission has jurisdiction of the subject matter of this proceeding and of the person of each of the respondents; that the complaint states a legal cause for complaint under the Federal Trade Commission Act, both generally and in each of the particular charges alleged therein; that this proceeding is in the interest of the public; and that the order proposed in the said agreement is appropriate for the full disposition of all the issues as to all of the parties to this proceeding.

The said agreement, including the order proposed therein, is therefore accepted by the hearing examiner and transmitted to the Commission herewith for filing if the Commission so decides; and said

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proposed order is adopted and hereinafter made and entered as the "Order" portion of this initial decision: *Provided*, That neither said agreement nor this initial decision shall become a part of the official record of this proceeding, nor shall this initial decision be published unless and until they respectively become parts of the official decision of the Commission.

## ORDER

*It is ordered*, That respondents Seon Zerah and Jacques Raoul Zerah, as individuals, or as corpartners doing business as Hawthorne Watch Co., or under any other trade 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 merchandise, including watches or other items of jewelry, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

- (1) Representing, directly or by implication that any such watch:
  - (a) Is a "jeweled" watch, or that it contains a jeweled movement, unless such watch contains at least seven jewels, each of which serves a mechanical purpose as a frictional bearing;
  - (b) Is guaranteed, unless the nature and extent of the guarantee and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed;
  - (c) Has been awarded a gold medal or other prize, honor or recognition, in competition with other watches.
- (2) Representing, directly or by implication, that any such merchandise, including watches or other items of jewelry, are new, when such are secondhand or reconstructed.
- (3) Supplying purchasers of merchandise, including watches and other items of jewelry, with price tags having prices or amounts which are in excess of the usual or regular retail selling prices of such merchandise, or otherwise representing that the usual or regular retail price of such merchandise is any amount greater than the price at which such merchandise is usually and regularly sold at retail.
- (4) Putting into operation any plan whereby retailers or others may misrepresent the regular or usual retail prices of merchandise.

## DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to section 3.21 of the Commission's rules of practice, the initial decision of the hearing examiner shall, on the 22d day of

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May 1958, become the decision of the Commission; and, accordingly:

*It is ordered*, That respondents Seon Zerah and Jacques Raoul Zerah, as individuals, or as copartners doing business as Hawthorne Watch Co., shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist.

IN THE MATTER OF  
FEDERAL CREDIT BUREAU OF THE UNITED STATES,  
INC., ET AL.

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

*Docket 6989. Complaint, Dec. 13, 1957—Decision, May 24, 1958*

Consent order requiring operators of a collection agency who maintained a single office in Chicago, to cease representing falsely on printed forms, sales manuals furnished their agents, and by oral statements of agents that they had a nationwide departmentalized organization with local bonded collectors and attorneys in various States who would personally contact each debtor; that they would make prompt periodic reports on all accounts assigned for collection; that they maintained a credit reporting system available without cost to clients; that they would charge a maximum of 33 $\frac{1}{3}$  percent of accounts they collected; that clients would receive their share of collections every 90 days or less; and, through use of their corporate name, that they were connected with the United States Government; and to cease using misleading form letters to obtain by subterfuge information concerning alleged debtors.

*William A. Somers, Esq.*, for the Commission.

*Ward C. Swallow, Esq.*, of Chicago, Ill., for respondents.

INITIAL DECISION BY JAMES A. PURCELL, HEARING EXAMINER

The complaint in this proceeding, issued December 13, 1957, charges the respondent Federal Credit Bureau of the United States, Inc., a corporation, and Cornelius J. Kelleher, Leonard W. Zinck, Alyce Kelleher, and Harriet Zinck, individually and as officers of said corporation, with violation of the Federal Trade Commission Act in connection with representations by them made in their business of soliciting accounts for collection and improper use of a corporate name implying connection with or as an agency of the U.S. Government.

After the issuance of said complaint, respondents, on February 18, 1958, entered into an agreement for a consent order with counsel in support of the complaint, disposing of all of the issues in this proceeding, which agreement was duly approved by the Director and Assistant Director of the Bureau of Litigation of the Federal Trade Commission. It was expressly provided in said agreement that the signing thereof is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

By the terms of said agreement, the respondents admitted all of the jurisdictional allegations of the complaint and agreed that the record herein may be taken as though the Commission had made findings of jurisdictional facts in accordance with such allegations. By said agreement the parties expressly waived a hearing before the hearing examiner or the Commission, the making of findings of fact or conclusions of law by the hearing examiner or the Commission, the filing of exceptions and oral argument before the Commission, and all further and other procedure before the hearing examiner and the Commission to which the respondents may otherwise be entitled under the Federal Trade Commission Act or the rules of practice of the Commission.

By said agreement, respondents further agreed that the order to cease and desist issued in accordance with said agreement shall have the same force and effect as though made after a full hearing, presentation of evidence and findings and conclusions thereon, and specifically waived any and all right, power or privilege to challenge or contest the validity of such order.

It was further provided that said agreement, together with the complaint, shall constitute the entire record herein; that the complaint herein may be used in construing the terms of the order issued pursuant to said agreement; and that the said order may be altered, modified or set aside in the manner provided by statute for other orders of the Commission.

Said agreement recites that respondent Federal Credit Bureau of the United States, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of Illinois; that respondents Cornelius J. Kelleher, Leonard W. Zinck, Alyce Kelleher, and Harriet Zinck are individuals and officers of said corporate respondent. Said corporate and individual respondents have their office and principal place of business located at 7404-2 South Racine Avenue, Chicago 36, Ill., respondents having moved their place of business from the address set forth in the complaint issued herein.

The hearing examiner has considered such agreement and the order therein contained. In order to carry out the obvious intent of the parties, and to clarify the language of "paragraph 2" of the order contained in said agreement, but in no wise to alter the intent or enlarge the effect thereof, said "paragraph 2" has been reworded as will hereinafter in said order appear. It appearing that said agreement and order as amended provides for an appropriate disposition of this proceeding, the same is hereby accepted and, without further notice to respondents, is ordered filed upon becoming part of the

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Commission's decision in accordance with sections 3.21 and 3.25 of the rules of practice, and in consonance with the terms of said agreement, the hearing examiner finds that the Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of all the respondents named herein, and that this proceeding is in the interest of the public, wherefore he issues the following order:

## ORDER

*It is ordered,* That respondent Federal Credit Bureau of the United States, Inc., a corporation, and its officers, and respondents Cornelius J. Kelleher, Leonard W. Zinck, Alyce Kelleher, and Harriet Zinck, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the business of collecting accounts owed to others or in obtaining information concerning delinquent debtors, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist:

1. Representing, directly or indirectly, that:

(a) Respondents operate a nationwide organization or employ bonded collectors, investigators or attorneys in the various States of the United States, unless such is a fact.

(b) Debtors, whose accounts are assigned or turned over to respondents for collection, will be personally contacted.

(c) Status reports or accounts will be made at specific periods of time, unless such is the fact.

(d) Respondents are a credit reporting organization, either local or national.

(e) A maximum of 33½ percent, or any other percentage less than that actually charged, will be retained by respondents from accounts collected.

(f) Respondents will remit to clients their share of all accounts respondents collect within any specific time, unless such is the fact.

(g) That respondents' business is departmentalized.

2. Failing to remit money due clients within the time agreed upon, if no time has been agreed upon, within a reasonable time.

3. Using the corporate name Federal Credit Bureau of the United States, Inc., or any other corporate or trade name indicating that respondents, or any of them, are connected with or are an agency of the U.S. Government or representing, in any manner, that they are connected with or are an agency of the U.S. Government.

4. Using, or causing to be used in their behalf, in connection with the collection of accounts or in obtaining information concerning delinquent debtors, any forms, letters, questionnaires, or material printed or written, which do not expressly state that the information requested is for the purpose of collecting accounts and obtaining information concerning delinquent debtors.

## DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

The Commission having considered the hearing examiner's initial decision filed April 4, 1958, accepting an agreement containing a consent order to cease and desist theretofore executed by the respondents and counsel in support of the complaint, service of which was completed on April 23, 1958; and

It appearing that the order in the initial decision departs from the order agreed upon by the parties in that the paragraph numbered "2" has been reworded, purportedly "to carry out the obvious intent of the parties, and to clarify the language" of said paragraph; and

The Commission being of the opinion that under the provisions of subsection (d) of section 3.25 of the rules of practice the hearing examiner has no authority to change the language of an order contained in an agreement of the parties, even for the purpose of clarification:

*It is ordered*, That the paragraph numbered "2" in the order contained in the initial decision be, and it hereby is, modified to read as follows:

2. Failing to remit money due clients within the time agreed upon, if no time has been agreed upon, within a reasonable time.

*It is further ordered*, That the initial decision as so modified shall, on May 24, 1958, become the decision of the Commission.

*It is further ordered*, That the respondents, Federal Credit Bureau of the United States, Inc., a corporation, and Cornelius J. Kelleher, Leonard W. Zinck, Alyce Kelleher, and Harriet Zinck, individually and as officers of said corporation, shall, within sixty (60) days after service upon them of this decision, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with the order contained in the aforesaid initial decision as modified.

## IN THE MATTER OF

KLEAR VISION CONTACT LENS SPECIALISTS, INC.,  
ET AL.CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE  
FEDERAL TRADE COMMISSION ACT*Docket 7010. Complaint, Dec. 27, 1957—Decision, May 24, 1958*

Consent order requiring a manufacturer of contact lenses in New York City, to cease representing falsely in advertisements in newspapers, circulars, pamphlets etc., that all persons could successfully wear its contact lenses which would never cause irritation or discomfort, would completely replace eyeglasses and were a substitute for bifocals, would correct all defects in vision, would stay in place under all conditions, and differed from other lenses in that they permitted air and tears to bathe the cornea.

*Mr. Frederick McManus* for the Commission.

*Mr. Joel J. Weiner*, of New York, N.Y., for the respondents.

## INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

The complaint in this matter charges the respondents with misrepresenting contact lenses sold by them, in violation of the Federal Trade Commission Act. An agreement has now been entered into by respondents and counsel supporting the complaint which provides, among other things, that respondents admit all of the jurisdictional allegations in the complaint; that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and agreement; that the inclusion of findings of fact and conclusions of law in the decision disposing of this matter is waived, together with any further procedural steps before the hearing examiner and the Commission; that the order hereinafter set forth may be entered in disposition of the proceeding, such order to have the same force and effect as if entered after a full hearing, respondents specifically waiving any and all rights to challenge or contest the validity of such order; that the order may be altered, modified, or set aside in the manner provided for other orders of the Commission; that the complaint may be used in construing the terms of the order; and that the agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

The hearing examiner having considered the agreement and proposed order and being of the opinion that they provide an adequate basis for appropriate disposition of the proceeding, the agreement is hereby accepted, the following jurisdictional findings made, and the following order issued:

1. Respondent Klear Vision Contact Lens Specialists, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York. Respondents Lawrence Lewison and Shirley Lewison are officers of said corporate respondent. The office and principal place of business of all respondents is located at 7 West 44th Street, New York, N.Y.

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 <sup>1</sup>

*It is ordered*, That respondents, Klear Vision Contact Lens Specialists, Inc., a corporation, and its officers, and Lawrence Lewison and Shirley Lewison, individually and as officers of said corporation, their representatives, agents and employees, directly or through any corporate or other device, in connection with the sale of contact lens, do forthwith cease and desist from directly or indirectly:

1. Disseminating or causing to be disseminated any advertisement, by means of the U.S. mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement represents directly, indirectly, or by implication that:

(a) All persons in need of visual correction can successfully wear respondents' contact lenses;

(b) There is never irritation or discomfort from wearing respondents' lenses;

(c) All persons can wear respondents' lenses all day without discomfort; or that any person can wear respondents' lenses all day without discomfort except after that person has become fully adjusted thereto;

(d) Eyeglasses can always be discarded upon the purchase of respondents' lenses;

(e) Respondents' contact lenses will correct defects in vision in all cases which require bifocal lenses;

(f) Respondents' contact lenses will correct all defects in vision;

(g) Respondents' contact lenses will stay in place under all conditions;

<sup>1</sup> Order published as modified by commission order of Mar. 23, 1960.

(h) Respondents' contact lenses are different than other fluidless contact lenses in that they permit air and tears to bathe the cornea.

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

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to section 3.21 of the Commission's rules of practice, the initial decision of the hearing examiner did, on the 24th day of May 1958, become the decision of the Commission; and, accordingly:

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

## Decision

## IN THE MATTER OF

## WYBRANT SYSTEM PRODUCTS CORP. ET AL.

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

*Docket 6472. Complaint, Nov. 21, 1955—Decision, May 29, 1958*

Order requiring operators in New York City of "The Wybrant System" involving treatment and sale of preparations to prevent baldness and grow hair, to limit to cases other than those of male pattern baldness claims in advertising that use of their preparations and treatment would prevent or overcome excessive hair fall or baldness or cause hair to grow; and to reveal that the great majority of cases of excessive hair fall and baldness are stages of male-pattern baldness and that in such cases their preparations would be of no value.

*Mr. Harold A. Kennedy and Mr. Jerome Garfinkel* supporting the complaint.

*Howrey & Simon* by *Mr. Edward F. Howrey and Mr. Harold F. Baker and Mr. John Bodner, Jr.* all of Washington, D.C., for respondents.

## INITIAL DECISION BY JOSEPH CALLAWAY, HEARING EXAMINER

The complaint in this proceeding was originally issued November 21, 1955, charging the respondents with the dissemination of false advertising for certain medicinal and cosmetic preparations, allegedly advertised to prevent baldness, grow new hair on bald heads and permanently eliminate dandruff and itching of the scalp. The language of the complaint brings the charges within the purview of section 12 of the Federal Trade Commission Act, the violation of which is made an unfair and deceptive act within the meaning of section 5 of the act. The complaint was amended by order of the hearing examiner on March 12, 1956, to charge that failure to reveal in the advertising that respondents' preparations were ineffective in cases of male pattern baldness was of itself a cause of deception, it being alleged that cases of that type constitute the vast majority of the cases of baldness.

Answer to the complaint as amended filed April 20, 1956, denied that respondents were engaged in the sale or distribution of cosmetics or medicinal products either in local or interstate commerce; alleged that their business was confined to that of administering service treatments in their offices in New York City; that a very small amount of preparations were shipped from its New York

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City offices by the respondent corporation to clients in other states who had previously received treatments in a New York City office of the partnership; alleged that the partnership advertised exclusively in two New York City newspapers inviting persons to come to the New York City offices for diagnosis and treatment and for no other purpose; that the corporate respondent does no advertising; denied that such advertising as is done by the partnership is false and denied jurisdiction of the Commission over the acts and practices of respondents. In said answer respondents renewed motion to dismiss, previously made to the original complaint, before amendment, which was denied.

Thereafter hearings were held in New York, Philadelphia, and Chicago for the taking of evidence in support of the allegations of the complaint; in New York City and Washington, D.C., in opposition to the allegations of the complaint; in Chicago and Washington, D.C., in rebuttal and in Washington, D.C., in sur-rebuttal. Following the hearing mentioned in sur-rebuttal the record was closed for the reception of evidence. Subsequently the hearing examiner of his own motion reopened the hearing for the taking of additional testimony. In a motion to set aside the order reopening the case for further evidence, respondents made certain admissions which made further hearings unnecessary. The record was again closed insofar as the taking of testimony was concerned. All parties were represented by counsel and given full opportunity to and did introduce evidence pertinent to the issues, examine and cross-examine witnesses and argue points of law and evidence. All parties were given opportunity to and did file for the consideration of the hearing examiner proposed findings, conclusions, orders and the reasons therefor. All such findings, conclusions and orders not hereinafter adopted, found or concluded are hereby specifically rejected.

Upon the entire record of the proceedings and from observation of the witnesses while testifying, the hearing examiner makes the following findings as to the facts, conclusions and order:

## FINDINGS AS TO THE FACTS AND CONCLUSIONS

*A. The Business of Respondents*

The respondents in this proceeding are William W. Wybrants, Wade M. Wybrants, two brothers and their mother Adel Wybrants, doing business as a partnership under the trade name of "The Wybrant System," and Wybrant System Products Corp., a New York corporation. The principal place of business of the partnership and the corporation are both located at 353 West 54th Street

in New York City. The individual respondents are the officers of the corporate respondent and direct and control its acts, practices and policies.

The said partnership maintains six branch offices or treatment parlors in New York City where hair and scalp treatments known as the "Wybrant System Treatment" are given.

The corporate respondent bottles and sells shampoos and lotions (that are used by the partnership in the scalp treatments) to some of the members of the public who have received hair and scalp treatments by the partnership at one of the six offices in New York City where such treatments are given. These shampoos and lotions are found to be cosmetics within the intent and meaning of the Federal Trade Commission Act.

The gross receipts of the partnership for such treatments during the years 1953, 1954 and 1955 were respectively as follows: \$235,268.84; \$383,936.90 and \$461,855.53. During the same periods of time the corporate respondent made out-of-state sales of items for use in connection with hair and scalp treatments to some of the members of the public who had received hair and scalp treatments by the partnership at the partnership offices in New York City as follows:

1955—Lotion No. 2, \$432; Shampoos \$92; steamers and parts \$70.75; vibrators and brushes \$62.50; commercial steamers and parts \$46.38; applicators for vibrators \$4.50; total \$718.13.

1954—Lotion No. 2, \$337.50; Shampoos \$90.25; steamers and parts \$241; vibrators and brushes \$129.50; commercial steamer and parts \$18; oil \$4; total \$820.25.

1953—Lotion No. 2 \$320; Shampoos \$65.75; steamers and parts \$73.50; vibrators and brushes \$46.75; oil \$2.50; total \$508.50.

The gross receipts of the corporate respondent for the years 1955, 1954 and 1953 were as follows: 1955, \$25,987.84; 1954, \$21,478.46; 1953, \$16,951.49.

Respondents have admitted in an amendment to their answer that subtracting the out-of-State sales of items by the corporate respondent for use in connection with hair and scalp treatments for each of the years 1955, 1954, and 1953 given above, from the gross receipts of the corporate respondent for each of those years, given above, leaves the amount of sales by the corporate respondent in the State of New York of the items listed above, sold for use in connection with hair and scalp treatments. There is no evidence of the partnership selling any of the shampoos or lotions unless use of these preparations in giving the treatments mentioned be considered sales.

*B. Dissemination of the Advertising*

The corporate respondent does no advertising. The partnership advertised extensively in the Mirror a New York City daily newspaper in 1953 and in the Mirror and the News, another New York daily newspaper in 1954 and 1955. Typical of representations contained in respondents said advertising are the following:

**STOP HAIR LOSS with six treatments or YOU PAY NOTHING****Wybrant Guarantee:**

With just six invigorating scalp treatments the Wybrant System will stop your abnormal hair loss, overcome dandruff and itchy scalp and in general make your scalp feel better than it has in years \* \* \* or your money will be promptly refunded

\* \* \* \* \*

There is nothing to buy or to do at home while taking our treatment (below "before" and "after" pictures of a man's bald head).

Many clients want to do more than just stop excessive hair fall—they want to grow new hair on thin or bald areas. Wybrant has been outstandingly successful in helping the majority of these clients. (Com. Ex. 4.)

We've been saying for a long time now that we can grow hair for the overwhelming majority of men. We have surveys, testimonials and pictures to prove it.

\* \* \* \* \*

It's easy to get started. You can come in at any time and get a free hair and scalp examination. And you can get an introductory treatment for only \$1.00. It is a refreshing 45 minute treatment, consisting of a triple shampoo, two applications of the famous Wybrant formula, two soothing steam sessions and 10 minutes of wonderful scalp massage. (Com. Ex. 1.)

Now who are these people? Are they selected clients who were suffering from some mysterious ailment which cleared up over night while they happened to be treating at WYBRANT? No sir! They were suffering from normal baldness. (Com. Ex. 3.)

The respondents' advertisements appeared in the city and suburban edition of the Mirror and the metropolitan edition of the Daily News. These editions circulated in New York City and within a 50-mile radius of the city. The average daily circulation figures for the city and suburban edition of the Mirror in 1953 were 742,656. This included circulation in cities, towns, townships, and counties in New Jersey and Connecticut. In Hudson County, N.J., alone such average daily circulation was 20,356. In Fairfield, Greenwich, New Canaan, Ridgefield, Stamford, and Westport the average daily circulation of the city and suburban edition was 4,313. The average daily circulation of the metropolitan edition of the News during 1955 was 1,829,671. This included circulation in cities, towns, townships, and counties in New Jersey and Connecticut. In Hudson County, N.J.,

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alone such daily circulation was 65,859. In Fairfield County, Conn., in the town above mentioned such daily circulation was approximately 14,480. These figures do not purport to be complete as to the circulation outside of the State of New York of the editions of the two newspapers carrying respondents' advertising. They are merely used to illustrate the fact that such out-of-the-State circulation was substantial. There is no showing of substantial distribution by mail either in New York City or elsewhere of the editions of these papers carrying respondents' advertising. The evidence shows that respondents could not advertise in a New York newspaper that confined its circulation to the State of New York, because no newspaper so confined its circulation.

*C. The Preparations*

It was agreed in an amendment to respondents' answer that for the purpose of this case the composition of respondents' lotion No. 2 or the Wybrant formula described in the complaint is as follows:

Water.....	97-98%
A sulfated or sulfanated surface active agent. Oil of Wintergreen. A trace of light carbon Gum. Perfume and/or other essential oil.....	3%

The record shows that respondents' shampoo No. 5 mentioned in the complaint, from chemical analysis has the same composition as alleged in the complaint, which is

Water.....	approx. 90%
Alkanolamine—fatty acid condensate. Soap. Perfume. Color.....	approx. 10-11%

The record further shows that the ingredients of the shampoos 6, 7, and 8 mentioned in the complaint are basically the same as shampoo No. 5, the quantity of the ingredients varying for use with fine, course, dry, and oily hair. These are all detergent base shampoos.

*D. Jurisdiction*

If respondents' advertisements are false and were disseminated for the purpose of inducing or were likely to induce directly or indirectly the purchase of respondents' preparations (lotion No. 2 and the shampoos), such is a violation of section 12(a)(1) of the Federal Trade Commission Act.

Corporate respondents' gross receipts for the year 1955 were \$25,987.84. These receipts consist of sales of items for use in connection with hair and scalp treatments both out of the State and within the State. Out-of-State sales for such items that year totaled \$718.13, of which lotion No. 2 accounted for \$432 and shampoos \$92. Thus

lotion No. 2 represented approximately 60 percent of the out-of-State sales of such items that year and shampoos accounted for something over 12 percent. If sales of lotion No. 2 and the shampoos account for the same percentage of items sold within the State during that year for use in connection with hair and scalp treatments such within the State sales of lotion No. 2 were approximately \$15,592 and the within State sales of the shampoos were approximately \$3,119. But the admission of respondents in regard to such sales within the State of New York do not break the receipts down into dollars and cents for each individual item as is done by testimony in regard to the out-of-State sales of such items. However in the absence of any evidence to the contrary, the within and without the State sales of lotion No. 2 were substantial and within and without the State sales of the shampoos cannot be considered negligible. The fact that such sales of lotion No. 2 and of the shampoos took place during the same period of time within which the partnership was disseminating its advertising and were only to persons who had received treatment at the partnership offices leads to the inevitable conclusion that such sales were induced indirectly by the partnership advertising. Lotion No. 2 was compounded by respondents and its composition was regarded as a trade secret. It is therefore found that the dissemination of the advertising by the partnership was likely to induce indirectly the purchase of lotion No. 2 and the shampoos from corporate respondent.<sup>1</sup>

The fact that all of the advertising was done by the partnership and the sales above mentioned were by the corporate respondent is of no moment. Under the evidence, for the purpose of this proceeding, sales by the corporate respondent should be considered and are considered the same as if they had been made by the partnership. The members of the partnership owned and controlled the corporate respondent.

It is also contended that the use of respondents' preparations in giving treatments in their various offices in New York City constituted sales of respondents' preparations. That is a different question to the one just decided or the questions decided in the *O-Jib-Wa* case, *supra*, and the case of *U.S. v. Thomas Management Corp.*<sup>2</sup> Such a finding is not believed necessary to a decision in this case under the pleadings or the evidence, and is therefore refused.

<sup>1</sup> See Comm. Opinion in the Matter of O-Jib-Wa Medicine Co., et al, docket No. 6548, dated June 27, 1957.

<sup>2</sup> (1952) CCH Trade Cases, par. 67, 251.

*E. Analysis of Representations Made in the Advertising*

The next question to be determined is what did respondents represent in the advertising.

The complaint alleges that by the representations in the advertising respondents have falsely represented that through the use of their preparations (lotion No. 2 and the shampoos mentioned in the complaint) regardless of their exact formula in the homes of users and in conjunction with their methods and treatments, dandruff and itching of the scalp will be permanently eliminated, baldness and excessive hair loss will be prevented and new hair will be grown on bald areas in the majority of cases. In regard to baldness and excessive hair loss, it is also alleged that the advertisements are false because they fail to reveal that the vast majority of cases of excessive hair loss and baldness are the beginning and more fully developed stages of what is known to dermatologists as male pattern baldness and that in cases of that type of baldness the use of respondents' preparations regardless of their exact formula will be of no value. All of these allegations are denied.

*1. Dandruff and itching*

The charge that respondents have represented that their preparations in conjunction with their methods and their treatments will permanently eliminate dandruff and itching of the scalp may be disposed of first. The representation is that dandruff and itching or itchy scalp will be "overcome" and in other instances that dandruff will be "removed" and scalp itch "relieved." "Permanently eliminated" are the words of the complaint. They are not in the advertising. "The Commission cannot interpolate into the petitioners' representations words not there and then find the petitioner guilty of misrepresentation because the petitioners' product does not meet the Commission's revised representations."<sup>3</sup> To this hearing examiner "overcome," "remove," and "relieve" are far from "permanently eliminate." "To overcome" or "remove" dandruff and "relieve" itchy scalp does not mean that those who take respondents' treatment will never again have dandruff or itchy scalp. The testimony of witnesses on that point was not needed.<sup>4</sup>

*2. Excessive hair fall, baldness and growth of new hair*

Respondents' advertising did not represent that the use of their preparations in the homes of users will prevent excessive hair fall or

<sup>3</sup> *International Parts Corp., v. F.T.C.*, 133 F. 2d 883.

<sup>4</sup> *Zenith Radio Corp., v. F.T.C.*, 143 F. 2d 29.

baldness and cause new hair to grow on bald areas in a majority of cases. The representations were that respondents' treatments in which the preparations were used would achieve these results. In the *Matter of Thomas Management Corp., et al.* Docket No. 4422<sup>5</sup> the Commission held that similar advertising represented that "said preparations and treatments \* \* \* would stop loss of hair, cause new hair to grow and promote the normal growth of hair on thin or bald spots." In that case, on the basis of such advertising and a finding that it was false an order was issued directing respondents to cease and desist from disseminating any advertisement in commerce, which represented that respondents' preparations would prevent the abnormal loss of hair or induce a normal growth of hair on thin or bald spots. Later the U.S. District Court found that similar advertising was violative of the order to cease and desist.<sup>6</sup> It is therefore found that respondents' advertising represented directly and by implication that the use of respondents' preparations and treatment will prevent excessive hair fall and baldness and cause new hair to grow in bald areas in a majority of cases.

On the point of growing new hair respondents' advertisements are found to convey the impression that new full bodied hair will be grown of like texture and color as the other hair on the head, in contrast with thin, fuzzy hair, called lanugo hair by the experts.

*F. Evidence on the Effect of Respondents' Preparations and Treatment*

Three medical experts were called to support the allegations of the complaint that respondents' advertisements were false. They were Dr. John W. Daughtery of New York City, Dr. Albert M. Kligman of Philadelphia, and Dr. Adolph Rostenberg, Jr. of Chicago. In opposition respondents offered two medical experts who testified, Dr. Irvin I. Lubowe of New York City and Dr. Moses Wharton Young of Washington, D.C., and 39 satisfied clients. In rebuttal, the testimony of one medical expert, Dr. Rattner and 14 clients and former clients of respondents was received. One expert on photography from the Federal Bureau of Investigation also testified in rebuttal in regard to his evaluation of certain pictures put in evidence by respondents. Two photographic experts also testified in sur-rebuttal. Various exhibits were also received in evidence in connection with the testimony of the witnesses, including three published articles by Dr. Lubowe which were received by agreement for the opinions expressed

<sup>5</sup> 34 F.T.C. Decisions, p. 1305.

<sup>6</sup> U.S. v. *Thomas Management Corp., et al.*, 1952 CCH Trade Cases, par. 67,251.

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in the articles by Dr. Lubowe. The qualifications of all experts are shown in the record.

In the cross-examination of the medical experts each side was allowed to read to the witness from the writings of other recognized experts, but the quotations so read were not considered as evidence unless the witness agreed with them.

## 1. Expert medical testimony

(a) *Dandruff and itching*

Every expert who was asked the question agreed that respondents' preparations and their treatment will remove and overcome dandruff and relieve itching of the scalp. There was no evidence to the contrary. It is therefore found that the representations in the advertising in regard to these two conditions were true.

(b) *Excessive hair fall, baldness, and growing new hair*

Dr. Daughtery, Dr. Kligman and Dr. Rostenberg all expressed the opinion that respondents' preparation regardless of their formula and their treatment will not prevent baldness or excessive hair loss or cause new full bodied hair to grow on bald areas in that type of baldness known as male pattern baldness which type comprises the great majority of all cases of baldness. The estimates given by them of the percentage of all baldness that is male pattern baldness varied from 80 to 95 percent. They further testified in effect that male pattern baldness has its origin in heredity endocrine balance and aging, although the precise method of causation is unknown.

Dr. Lubowe had made observations over a period of time of a number of clients of respondents while they were taking treatment. These cases numbered 29 to begin with, but later were reduced to 21 because 8 of them failed to return for further treatment. He said that 19 of the 21 had premature alopecia which he recognized as the same thing as male pattern baldness. Basing his opinion on his observation of these 21 cases, he said respondents' treatments did cause new hair to grow in bald areas during the period of observation. Pictures of these 29 clients were received in evidence as respondents' exhibit 8-A through 8-Z-3. The pictures included "before" and "after" pictures of the 21 on which he based his opinion. Dr. Lubowe made no differentiation between lanugo hair and full bodied pigmented hair in his evaluation of these cases. He further stated that one cannot make a clinical scientific evaluation on that small number of cases. At another place in his testimony he said, "I cannot make a general

statement. My conclusions are purely based on 19 patients, clients of premature alopecia.”

Dr. Lubowe also was of the opinion that hair follicles, from which the hairs on the head grow, may lie dormant for several years without producing hair and then be stimulated to reproduce. He had in an experiment of his own, not connected with the Wybrant study, caused follicles that had been dormant for 10 to 25 years to reproduce hair in cases of total baldness by treating the patients with cortisone. Respondents' preparations contain no cortisone and there is no relationship between total baldness and male pattern baldness. He agreed that an atrophied follicle could not produce hairs, but said that it was hard to determine whether the follicle is dormant or atrophied without pulling it out. He further stated that there was a possibility that in the 21 cases studied for the Wybrants, increased circulation in the scalp due to the treatments may have been a factor in causing dormant hair follicles to grow new hair. He refused to state that was the cause of hair regrowth in the Wybrant study, because he said there were many factors that will affect the regrowth or the stimulation of a dormant hair follicle.

Dr. Lubowe's testimony on what respondents called the "Hair Fall Survey" was disregarded. The methods used and what was done in this so-called survey are shown in the evidence in regard to respondents' exhibit No. 6 for identification. The exhibit was rejected.

Dr. Moses Wharton Young testified as to the research he had conducted on the cause of male pattern baldness. He stated that, based on his research, he was of the opinion that the hair falls out from the top of the head in human males because there is insufficient blood supply to maintain the growth and reproduction of the hair in this area; that his studies indicated that in men who had male pattern baldness the soft tissues of the scalp were thinner than in men with good heads of hair, thus reducing the vascular bed. In other words the skin is tight over the top of the head of a man with male pattern baldness and there is less blood flowing into the area to support the growth of hair. He further said that anything that would increase the blood supply in that area would be desirable, that manual massage and heat would increase the flow, stimulate the flow of the blood supply to the top of the head. He disagreed with the experts who had testified in support of the allegations of the complaint to the effect that male pattern baldness has its origin in heredity, endocrine balance and aging.

Dr. Young did not attempt to state what would be a sufficient blood supply to sustain the growth of hair on the top of the head, or how much massage or heat would be needed. He had never observed the Wybrant treatment in operation. When asked on cross-examination whether he had any opinion as to whether the Wybrant System treatment grows hair he said he had never observed the treatment in operation; that his studies were started 15 years ago and made before he ever heard of the Wybrant case.

Dr. Herbert Rattner testifying in rebuttal criticized Dr. Young's theory and the sufficiency of the evidence to support his theory of the cause of male pattern baldness with which Dr. Rattner disagreed. He also stated the Wybrant treatment of applying heat and massage to the scalp would in his opinion cause the circulation of the blood in the scalp to be stimulated a few hours at most after each treatment. He further testified with reference to Dr. Lubowe's clinical evaluation of the effect of the Wybrant treatment on 21 patients, 19 of whom had male pattern baldness, that such test was not a scientifically good test; that for a disease as common as ordinary (male pattern) baldness "You should be able to get hundreds of people, before you can make a test." He gave other testimony in criticism of another experiment or survey offered in evidence by respondents. Since the conclusion from the other experiment was not admitted in evidence, Dr. Rattner's criticism of that experiment is not considered.

Dr. Rattner also agreed with the other medical experts who testified in support of the allegations of the complaint, that male pattern baldness has its origin in heredity, endocrine balance and aging.

The complaint defines male pattern baldness as that type of baldness having its origin in heredity, endocrine balance and aging, and alleges that such type of baldness comprises the vast majority of all cases of baldness; that respondents' preparations and their treatments will not prevent baldness, excessive hair loss or cause new hair to grow in bald areas in cases of that type of baldness. It therefore becomes necessary to determine the preponderance of the medical testimony on the allegation that male pattern baldness has its origin in heredity, endocrine balance and aging.

The medical experts who testified in support of that allegation were all specialists in the field of dermatology. They all stated that excess hair loss and baldness come within the field of their specialty. The evidence shows that each of them had come in contact with patients suffering from these conditions as a part of their work over a number of years. Dr. Daughtery, Dr. Kligman, and Dr. Rattner have been

in private practice as dermatologists over a number of years. Dr. Rostenberg while not in private practice has seen such patients regularly as they come into the hospital clinic. Dr. Kligman has done considerable research on hair and scalp problems. Their opinions were based in part on their experience. They also keep up with the literature in their field of specialization.

The main challenge to this evidence on the origin of male pattern baldness from a medical expert comes from Dr. Moses Wharton Young. He is not a specialist in dermatology, nor does he practice dermatology. He sees only about 10 cases a year of male pattern baldness such persons coming to him from having read about his theories in the newspapers, although he did state he had observed hundreds of such cases in his research. His specialty is anatomy and neuroanatomy. The latter is that branch of anatomy which deals particularly with the nervous system, with the brain and nerves and associated structures. He stated that his work with respect to the scalp had been "limited to scientific and anatomical investigation of the scalp and its associated structures and not to treating patients or anything else." His explanation as to the cause of male pattern baldness must therefore be regarded as purely theoretical, and in a field in which he has not specialized. His theory is rejected by the other experts mentioned, who are practical men and who come in contact with cases of male pattern baldness in the practice of their specialty.

The only challenge to the testimony of Dr. Daughtery, Dr. Kligman, and Dr. Rostenberg from a medical expert on the lack of effect of respondents' preparations and treatment in cases of male pattern baldness comes from Dr. Lubowe. He bases his conclusions solely on 21 cases and refuses to make a general statement.

It is therefore found that a preponderance of the medical expert testimony establishes that male pattern baldness has its origin in heredity, endocrine balance and aging and that in cases of male pattern baldness, the use of respondents' preparations, regardless of their formula, and treatment will not prevent baldness or excessive hair loss or cause new hair to grow on bald areas.

There is no dispute among the experts that the great majority of all cases of excessive hair loss and baldness are the beginning and more fully developed stages of male pattern baldness. The estimates range from 75 percent in the case of Dr. Lubowe to over 95 percent by several of the experts who were called to testify in support of the complaint.

## Findings

## 2. Lay testimony

In addition to the medical testimony on the point of whether respondents' preparations and treatment will prevent excessive hair fall and baldness and cause new hair to grow on bald areas in a majority of cases, there is to be considered (1) the lay testimony of the 39 clients of respondents who testified in their defense (2) the lay testimony of the 14 clients and former clients of respondents who testified in rebuttal and (3) the testimony of the photographic experts, Mr. Shaneyfelt of the Federal Bureau of Investigation, Mr. Hagget and Mr. DeVincent who testified about the "before" and "after" pictures of the 29 clients of respondents. The 21 cases, 19 of whom Dr. Lubowe said had male pattern alopecia and on which he based his opinions were a part of these 29.

The hearing examiner gave careful attention to the testimony of the 39 clients of respondents who testified in their defense and to the testimony of the 14 clients and former clients of respondents who testified in rebuttal. He also observed the head and hair of each of these 53 lay witnesses. Of those who testified that they had thin hair on the top or crown of their head before starting treatment, most of them still had thin hair in that area, but they said it was not as thin as before starting treatment. Most of those who had frontal baldness before starting treatment still had "high foreheads" where they stated it had been bald or thinner before treatment. Most of these witnesses were continuing treatment and hopeful of better results than they had experienced up to date. One of the most enthusiastic of these witnesses was a man who had started treatments approximately eight years before and was still continuing them. His head was almost completely bald on top but he was very hopeful that the very few full bodied hairs and the fuzz there would eventually mature into a full head of normal hair.

The hearing examiner is of the opinion that some of these witnesses had deluded themselves into believing what they wanted to believe. At the same time it cannot be said that they all had deluded themselves. Out of this number some must have grown new hair of the same color and texture as their other hair while taking treatment, and decrease in hair fall after starting treatment must have occurred in a considerable number. However, it cannot be said from the testimony of these witnesses that they had male pattern baldness before starting treatment, or that if they did that the decreased hair fall and new hair grown was the result of the Wy-

brant treatment. Dr. Lubowe himself said that many factors, including nutritional and metabolic factors may play a part in stimulating a dormant hair follicle to produce new hair.

The testimony of Mr. Shaneyfelt of the Federal Bureau of Investigation and that of Mr. Martin Hagget and Mr. DeVincent in regard to the "before" and "after" photographs, respondents' exhibits 8-A through 8-Z-3, and the other exhibits offered in connection with their first mentioned exhibits remain to be discussed. Mr. Shaneyfelt seemed to think that the "before" and "after" photographs did not show any increase in the amount of hair, basing his opinion upon an examination of these exhibits and his experience in photography including his interpretation of photographs for the Federal Bureau of Investigation. Mr. Hagget and Mr. DeVincent in their testimony including the exhibits showing "blow-ups" of some of the original pictures convinced the hearing examiner that the "after" pictures did show more hair than the "before" pictures. These exhibits, respondents' exhibits, 8-A through 8-Z-3, included pictures of the 21 clients of respondents, 19 of whom Dr. Lubowe testified had premature alopecia (male pattern baldness). In view of Dr. Lubowe's statement in regard to these cases, already discussed, the question of whether the "after" pictures showed more hair than the "before" pictures becomes academic.

### 3. Preponderance of the evidence

The conclusion is that considering both the medical expert testimony, the lay testimony and all the exhibits in evidence, the preponderance of all the evidence supports the conclusion that the use of respondents' preparations regardless of their formula and their treatment will not prevent baldness or excessive hair fall or cause new hair to grow on bald areas in cases of male pattern baldness.<sup>7</sup> There was no lay testimony offered to disturb the conclusions from the medical testimony that male pattern baldness has its origin in heredity, endocrine balance and aging and that the great majority of all cases of baldness are of the male pattern type.

### G. *Final Conclusions*

As to whether the use of respondents' preparations and their treatment will prevent excessive hair fall and baldness and cause new hair to grow in bald areas in other types of baldness than male pattern baldness, is not involved in this proceeding. Under the allegations of the complaint and the evidence, the questions remaining are:

<sup>7</sup> *Bristol Meyers Co., v. F.T.C.*, 185 F. 2d 58.

(a) Whether respondents' advertising is false because they have advertised that their preparations, their methods and their treatment will prevent excessive hair fall and baldness and cause new hair to grow in bald areas, when the evidence shows such is not true in the great majority of all cases of baldness;

(b) Whether respondents failure to reveal in their advertising that the great majority of all cases of baldness are of that type in which their preparations and their treatment will be of no value for the purposes mentioned above, is itself a cause of deception, and

(c) Whether the Commission has authority to require respondents to make the revelation mentioned in (b) above, in their advertising.

Under (a) above the advertising of the partnership is misleading in a material respect and therefore false advertising within the intent and meaning of the Federal Trade Commission Act, because it does not limit their claims for their preparations and their treatment to cases of baldness and excessive hair fall other than those coming within the classification of male pattern baldness. The advertising further emphasizes that they can help 7 out of 10 cases of baldness coming to them, that they can grow hair for the overwhelming majority of men and that the people for whom they have grown hair were suffering from normal baldness. By this type of advertising respondents have represented that their preparations and their treatment will prevent baldness and excessive hair fall and cause hair to grow in bald areas, in cases of male pattern baldness. This was definitely false advertising in view of the preponderance of the evidence in this proceeding, and it is so found.

Under (b) above it is found that the statements and representations in said advertisements have the capacity and tendency to suggest and do suggest to persons who have excessive hair fall or who are bald that there is a reasonable probability that they are threatened with or have a type of baldness which will be prevented or overcome by the use of respondents' preparations and their treatment and to spend their money therefor. This being true, it follows that failure of respondents to reveal in their advertising that the great majority of all cases of excessive hair fall and baldness are the beginning and more fully developed states of male pattern baldness which will not be helped by respondents' preparations and their treatment is itself a cause of deception.

In considering whether the Commission has authority to require respondents to make the revelation mentioned in the advertising, the court has held that the Commission may require affirmative disclosures where necessary to prevent deception in cases brought under

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section 5 of the Federal Trade Commission Act, not involving foods, drugs, cosmetics or devices.<sup>8</sup>

Section 15(a) of the act in defining a false advertisement of food, drugs, devices and cosmetics provides as follows:

The term "false advertisement" means an advertisement, other than labeling, which is misleading in a material respect; and in determining whether any advertisement is misleading, there shall be taken into account (among other things) not only representations made or suggested by statement, word, design, device, sound, or any combination thereof, *but also the extent to which the advertisement fails to reveal facts material in the light of such representations* or material with respect to consequences which may result from the use of the commodity to which the advertisement relates under the conditions prescribed in said advertisement, or under such conditions as are customary or usual. [Underscoring supplied.]

In the *Alberty* case<sup>9</sup> which involved the dissemination of advertising for drugs the court said in effect that the Commission could not require such an affirmative disclosure in advertising, because there had been no finding in that case, that failure to make such disclosure was in itself a cause of deception. Here there is such a finding based upon evidence in the record. The complaint, as amended, also alleges in this proceeding that failure to make such revelation was in itself a cause of deception. So it is concluded that in this proceeding the Commission has authority to require respondents to reveal in their advertising disseminated in commerce that the great majority of all cases of excessive hair fall and baldness are of the type known as male pattern baldness and that in that type of baldness, respondents' preparations and their treatment will not be of value in preventing excessive hair fall, overcoming baldness, or causing new hair to grow in bald areas.

The aforesaid acts and practices of respondents, Adel Wybrants, William W. Wybrants, and Wade M. Wybrants, as herein found are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices within the intent and meaning of the Federal Trade Commission Act.

## ORDER

*It is ordered,* That respondents Wybrant System Products Corp., a corporation, and Adel Wybrants, William W. Wybrants, and Wade M. Wybrants, individually and as officers of said corporation, and as copartners trading as The Wybrant System, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of their lotion No. 2, also known as the Wybrant

<sup>8</sup> *Haskelite Manufacturing Co., v. F.T.C.*, 127 F. 2d 165.

<sup>9</sup> 182 F. 2d 36.

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formula, or their shampoos, the compositions of which are set out in the findings herein, for use in the treatment of conditions of the hair and scalp, or any preparation of substantially similar composition, do forthwith cease and desist from:

1. Disseminating or causing to be disseminated, by means of the United States mails, or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which represents, directly or by implication, that the use of any such preparations, alone or in conjunction with any method or treatment, will prevent or overcome excessive hair fall or baldness or cause new hair to grow, unless any such representation be expressly limited to cases other than those arising by reason of male pattern baldness, and unless the advertisement clearly and conspicuously reveals the fact that the great majority of cases of excessive hair fall and baldness are the beginning and more fully developed stages of male pattern baldness and that in such cases said preparations will be of no value in preventing or overcoming excessive hair fall or baldness or in causing new hair to grow.

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

## OPINION OF THE COMMISSION

By TAIT, Commissioner:

The complaint, as amended, charges respondents, by its language, with violating sections 12(a) (1) and 12(a) (2) of the Federal Trade Commission Act through disseminating, or causing to be disseminated, false advertisements.<sup>10</sup> The advertising claims involved include those which represent that respondents' preparations and treatments will prevent baldness and grow hair. The hearing examiner in an initial decision filed September 30, 1957, held that the allegations of the complaint (with several exceptions not involved in the appeals)

<sup>10</sup> SEC. 12(a). It shall be unlawful for any person, partnership, or corporation to disseminate, or cause to be disseminated, any false advertisement—

(1) By U.S. mails, or in commerce by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of food, drugs, devices or cosmetics; or

(2) By any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase in commerce of food, drugs, devices, or cosmetics.

were sustained by the evidence, and ordered respondents, except the corporate respondent, to cease and desist the advertising found to be unlawful. Counsel for respondents and counsel in support of the complaint have filed cross-appeals.

The respondents are Wybrant System Products Corp., a corporation, and Adel Wybrants, William W. Wybrants, and Wade M. Wybrants. Adel Wybrants is the mother of William and Wade. The three Wybrants are named in the complaint individually and as officers of the said corporation and also as copartners, trading and doing business as "The Wybrant System." This partnership and the corporation both have their principal place of business at 353 West 54th Street, New York, N.Y. The individual respondents control the stock of the corporation and direct and control its policies and practices. Six branch offices or treatment parlors are maintained by The Wybrant System in New York City where hair and scalp treatments are given.

The advertisements involved in this proceeding were published under the name "The Wybrant System" and appeared in two New York papers with interstate distribution, the Mirror and the News. The out-of-State circulation of these papers was found to be substantial. The record shows some distribution by mail of the editions of the papers carrying respondents' advertising. For instance, there is evidence of the circulation of at least 225 copies of these editions by mail. This advertising represents directly and by implication that the use of respondents' preparations and treatment will prevent excessive hair fall and baldness and will cause new hair to grow in a majority of cases.

The corporate respondent bottles and sells shampoos and lotions to persons who have received The Wybrant System hair and scalp treatments. These are the same preparations or some of the same preparations that are used for the treatments. Sales of such preparations, found to be cosmetics within the intent and meaning of the Federal Trade Commission Act, include sales made outside of the State of New York.

#### RESPONDENTS' APPEAL

One of the principal contentions of the respondents is that there has been a failure to prove the jurisdictional requirement of interstate commerce under section 12. In arguing that there has been no showing the advertisements were disseminated in commerce for the purpose or with the likelihood of inducing a purchase within the meaning of section 12, respondents appear to be relying largely upon

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their position that the advertisements relate solely to a treatment which, as such, is not covered by the statute, and which was not advertised to sell the preparations.

The record, we believe, contains sufficient evidence to satisfy the jurisdictional requirement not only of section 12(a) (1), but also of section 12(a) (2). Respondents advertised in newspapers with interstate distribution. Respondent corporation sold preparations to purchasers in interstate commerce. The testimony of many witnesses shows that as a direct result of the advertisements, prospective clients were induced to call at an office of The Wybrant System for treatment of the hair and scalp. It is also shown by the testimony that such persons after becoming clients purchased respondents' preparations for home use. The preparations were in fact sold only to clients or former clients. It is apparent that purchases were induced indirectly as a result of the advertising, regardless of whether the advertisements mention the preparations. From such showing it follows that the minimum statutory requirement of a likelihood of the purchase of preparations is met. Under 12(a) (1), there is here shown the dissemination of advertisements in interstate commerce which were at least "likely to induce, directly or indirectly, the purchase of \* \* \* cosmetics." Under 12(a) (2), there is shown the dissemination of advertisements which were at least "likely to induce, directly or indirectly, the purchase in commerce of \* \* \* cosmetics."

It is also urged that counsel supporting the complaint failed to prove that respondents' advertisements contain any false representations and that the examiner erroneously evaluated the evidence. What the examiner essentially found was that the weight of the evidence supports a conclusion that the use of respondents' preparations and their treatment will not prevent baldness or excessive hair fall or cause new hair to grow in cases of male pattern baldness. In so finding, it appears that he carefully considered all the evidence, including the testimony of expert medical witnesses for and against the allegations of the complaint. It is our opinion that he properly weighed this evidence and that his findings in respect thereto are fully supported by the record.

Finally, on their appeal respondents assert that the examiner erred in ruling that passages from medical treatises were inadmissible as evidence. Respondents offered as evidence four excerpts from books on dermatology, described by them as written by well-recognized authorities. The examiner refused to admit the excerpts because the authors were not present for cross-examination. Respondents argue

that this ruling conflicts with the holding in *Dalcin Corporation, et al. v. Federal Trade Commission*, 219 F. 2d 742 (1954), cert. denied 75 S. Ct. 571 (1955). The Commission does not so understand the *Dalcin* decision. The court there stated that:

When used to prove the truth of their contents scientific writings are clearly hearsay and are rejected as judicial evidence in all but a few jurisdictions.

It went on to say that cogent arguments can be made in favor of their use, but recognized the difficulty under the hearsay rule. "Yet that objection," the court said, "may be largely obviated by requiring the introduction of the articles through experts in the field who will, themselves, be subject to cross-examination." No such procedure was followed herein. Moreover, not only did the court in *Dalcin* note that the examiner should have a certain broad discretion in this connection, it did not reverse the decision because of the exclusion of the scientific writings. It stated that it would do this only where substantial justice so requires and that it would hesitate in most cases to say that a rule almost universal in the courts would, in an administrative proceeding, deny the parties substantial justice. Under the circumstances, we cannot find that the examiner committed error here in refusing to admit the scientific writings.

#### APPEAL OF COUNSEL SUPPORTING THE COMPLAINT

Counsel first takes exception to the examiner's failure to find that the use of respondents' preparations during the course of a Wybrant treatment involves a sale and a purchase of such preparations. This is a distinct question from that relating to the sale of preparations in bottles for home use. It appears that the treatment consists not only of applying preparations to the hair and scalp but some additional service as well, such as brushing and massaging. The issue here raised is one of fact which can be resolved only upon consideration of all relevant circumstances. It is not determinative of the question that some preparations are used in the giving of treatments and that such are necessary to the sought-after results. Rather, we believe the answer lies in the essential character of the transaction; that is, does it consist mainly of a transfer of goods or is it basically the rendering of a service in which the use of preparations is purely incidental thereto? In resolving such a question, factors to be considered would include the following:

- (a) The significance of the preparations in the overall performance with reference to purposes and effects;

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(b) The percentage of the monetary value of the preparations used to the total cost of the entire treatment to the client;

(c) The importance of the skill of the operator giving the treatment compared to the importance of the functions of the preparations; and

(d) The necessity for taking office treatments as the only way to obtain desired preparations, when such are considered by potential purchasers to be efficacious in themselves and apart from the treatments.

Because of an insufficiency in the record, we make no ruling as to whether the use of preparations in connection with an office treatment may or may not constitute a sale; the holding here is simply that the evidence is not such as to permit a decision on the question one way or the other. In the matter of *Gilbert S. Bishop, d/b/a Bishop Hair Experts*, docket No. 6554 (May 1958), it was not necessary to decide any such question since preparations were sold in bottles for home use to clients in connection with visits for office treatments.

It is also argued that the examiner should not have limited his findings and order with respect to hair growing claims to bald areas alone. This point is well taken since, as the record clearly shows, male pattern baldness is a condition in which the hair follicles gradually atrophy and disappear. In the earlier stages there may be a thinning of the hair on the scalp, but no bald areas. The weight of the evidence supports a finding and conclusion that not at any stage of male pattern baldness, whether or not there is a bald area, will respondents' preparations and treatment cause the growth of new hair.

With respect to the order it is urged that respondents should be required to disclose in connection with claims for the prevention of baldness and the growth of hair that their preparations will have no value in the "great majority" of cases rather than merely the "majority" of cases. We believe the record showing of estimates of male pattern baldness as constituting from 75 to 95 percent of the cases, which was found to constitute the great majority, clearly justifies a requirement of disclosure that such is the great majority.

In further connection with the order, it is counsel's contention that the examiner should have additionally proscribed dissemination by the United States mail. We agree. Since some distribution by mail of the papers carrying respondents' advertising is shown by the evidence, the prohibitions of the order should include dissemination by this means.

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Counsel's final contention is that the examiner improperly dismissed the complaint as to the respondent Wybrant System Products Corp. The examiner found, improperly, we believe, that the corporate respondent does no advertising. In this instance we have a partnership composed of the individual respondents and a corporation in which the individual respondents are the officers and controlling stockholders. It is well settled that a corporation can act only through its agents. In view of the circumstances in this record, it cannot be assumed that when the officers of the corporation acted, they were acting solely as copartners in a distinct and separate enterprise.

All the sales of the preparations here involved for home use were made to clients of The Wybrant System. Thus, it is clear that to the extent that the advertising attracted clients, it was such as to result in benefits to the corporation. Moreover, the testimony is to the effect that in the regular course of business, orders for preparations (although not every such order) are taken by employees of the partnership and turned over to the corporation. It is clear, therefore, that the corporation and the partnership were not acting independently so far as there existed a program of advertising which brought in clients and so far as such clients thereafter became purchasers from the corporation. The effect was an adoption by the corporation of the advertising of the partnership. In our opinion, these factors in conjunction with the close identification in ownership and control as between the partnership and the corporation in this case justify a conclusion that the practices herein involved of the copartners were in fact the practices of the corporation, the latter acting through its agents, the officers. Thus, the corporation is also responsible for the advertising and should be named in the order.

Respondents' appeal is denied and the appeal of counsel supporting the complaint is granted in part and denied in part as indicated herein. The findings, conclusions, and order in the initial decision are modified to conform with this opinion.

## FINAL ORDER

Counsel for the respondents and counsel in support of the complaint having respectively filed their cross-appeals from the initial decision of the hearing examiner, and the matter having been heard on briefs and oral argument; and the Commission having rendered its decision denying the appeal of respondents and granting in part and denying in part the appeal of counsel in support of the complaint, and modifying certain findings and conclusions of the initial decision in the

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manner indicated in the accompanying opinion and further directing modification of the order to cease and desist contained in the initial decision :

*It is ordered,* That the following order be, and it hereby is, substituted for the order contained in the said initial decision :

## ORDER

*It is ordered,* That respondents Wybrant System Products Corp., a corporation, and Adel Wybrants, William W. Wybrants, and Wade M. Wybrants, individually and as officers of said corporation, and as copartners trading as The Wybrant System, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of their lotion No. 2, also known as the Wybrant formula, or their shampoos, the compositions of which are set out in the findings herein, for use in the treatment of conditions of the hair and scalp, or any preparation of substantially similar composition, do forthwith cease and desist from :

1. Disseminating or causing to be disseminated, by means of the United States mails, or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which represents, directly or by implication, that the use of any such preparations, alone or in conjunction with any method or treatment, will prevent or overcome excessive hair fall or baldness or cause new hair to grow, unless any such representation be expressly limited to cases other than those arising by reason of male pattern baldness, and unless the advertisement clearly and conspicuously reveals the fact that the great majority of cases of excessive hair fall and baldness are the beginning and more fully developed stages of male pattern baldness and that in such cases said preparations will be of no value in preventing or overcoming excessive hair fall or baldness or in causing new hair to grow.

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

*It is further ordered,* That the respondents shall, within sixty (60) days after service upon them of this order, file with the Commission

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a report, in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist.

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

## Decision

IN THE MATTER OF  
MARTIN BERDY

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

*Docket 6950. Complaint, Nov. 20, 1957—Decision, May 30, 1958*

Order requiring an individual in New York City to cease violating the Wool Products Labeling Act by tagging as "wool," interlining materials which contained substantial amounts of nonwoolen fibers, and failing to label such products as required by the Act.

*Mr. Daniel T. Coughlin* for the Commission.

No appearances for respondent.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

This proceeding involves charges that respondent Martin Berdy, an individual, has violated the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, together with the rules and regulations promulgated under said latter act, by falsely and deceptively stamping, tagging, and labeling certain wool products with respect to the character and amount of the constituent fibers therein; by misbranding such products; and by otherwise misrepresenting such products as 100 percent wool or 100 percent reprocessed wool. The complaint was filed November 20, 1957, and was lawfully served thereafter upon respondent who failed to answer said complaint or otherwise appear herein.

Upon proper order served upon said respondent, initial hearing was held in New York, N.Y., whereat Commission counsel appeared but respondent did not appear. The respondent's default of answer and of other appearance prior to or at the hearing was taken and entered of record by the hearing examiner. Commission's counsel presented evidence in support of his case-in-chief and rested. Such evidence, in substance, consisted of statements and exhibits, the latter including affidavits, certificates, and other documentary evidence as well as certain physical exhibits identified as samples correctly taken from the wool products so misrepresented, mislabeled and sold in commerce. The record contains evidence that the respondent, after being fully advised that his products and transmission and sale thereof in commerce were violative of the acts herein involved, nevertheless knowingly and willfully proceeded to sell considerable quanti-

ties of said products in commerce on the basis stated to a representative of the Commission by him, in substance, that he needed the money.

The hearing examiner thereupon closed the proceeding for the taking of evidence and requested Commission's counsel to submit proposed findings, conclusion and order, which were duly filed February 21, 1958.

Upon due and impartial consideration of the whole record, it is found that the material allegations of the complaint are each and all sustained by the evidence, the hearing examiner specifically finding the facts to be as follows:

Respondent is an individual sometimes trading under the name of Rodney Mills, Inc., and the Modern Rug Co., Inc., located at 95 Rodney French Boulevard, New Bedford, Mass. The principal place of business of the respondent is located at 470 Fourth Avenue, New York, N.Y.

Subsequent to the effective date of the Wool Products Labeling Act of 1939, and the rules and regulations thereunder, respondent introduced into commerce, sold, transported, distributed, delivered for shipment and offered for sale in commerce, as "commerce" is defined in said act, wool products, as "wool products" are defined therein.

Certain of said wool products were misbranded by respondent within the intent and meaning of section 4(a)(1) of the Wool Products Labeling Act and the rules and regulations thereunder, in that said products were falsely and deceptively stamped, tagged and labeled with respect to the character and amount of the constituent fibers therein. Among such misbranded products were woven interlining materials labeled and tagged "wool," whereas, in truth and in fact, said material contained substantial amounts of nonwoolen fibers.

The wool products of respondent were further misbranded within the intent and meaning of the Wool Products Labeling Act, and the rules and regulations thereunder, in that they were not stamped, tagged, or labeled as required under the provisions of section 4(a)(2) of said act.

Respondent in the conduct of his business is in competition, in commerce, with other individuals and with firms and individuals likewise engaged in the sale of interlining materials.

Respondent in the course and conduct of his business, as aforesaid, in commerce, as "commerce" is defined in the Federal Trade Commission Act, has misrepresented the fiber content of certain of said wool products, in that they have falsely and deceptively described and indentified in sales invoices and shipping memoranda applicable thereto as "100 percent wool" or "100 percent reprocessed wool,"

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whereas, in truth and in fact, said wool products contained substantially less than 100 percent wool or 100 percent reprocessed wool.

The said acts and practices of respondent have had, and now have, the tendency and capacity to mislead and deceive the purchasers of said wool products as to the true fiber content thereof and cause them to misbrand products manufactured by them in which said materials were used.

## CONCLUSIONS OF LAW

There being jurisdiction of the person of respondent upon the foregoing findings of fact, the hearing examiner makes the following conclusions of law:

1. The acts and practices of respondent constituted misbranding of wool products and were, and are, in violation of the Wool Products Labeling Act, and the rules and regulations thereunder, and constituted, and now constitute, unfair and deceptive acts and practices and unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

2. The Federal Trade Commission has jurisdiction over all of said respondent's acts and practices which have been hereinabove found to be false, misleading, and deceptive.

3. The public interest in the proceeding is clear, specific, and substantial.

Upon the foregoing findings of fact and conclusions of law, the following order is hereby entered:

## ORDER

*It is ordered,* That respondent Martin Berdy, his agents, representatives and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the offering for sale, sale, transportation or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act and the Wool Products Labeling Act of woven interlining materials or other "wool products" as such products are defined and subject to the Wool Products Labeling Act of 1939, which products contain, purport to contain or are in any way represented as containing "wool," "reprocessed wool," or "reused wool," as those terms are defined in said act, do forthwith cease and desist from misbranding such products by:

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

2. Failing to securely affix to or place on each such product a stamp, tag, label or other means of identification showing in a clear and conspicuous manner:

(a) The percentage of the total fiber weight of such product exclusive of ornamentation not exceeding five percentum of said total weight of (1) wool, (2) reprocessed wool, (3) reused wool, (4) each fiber other than wool where said percentage by weight of such fiber is five percentum or more, and (5) the aggregate of all other fibers;

(b) The maximum percentage of the total weight of such wool product of any nonfibrous loading, filling or adulterating matter;

(c) The name or the registered identification number of the manufacturer of such wool product or of one or more persons engaged in introducing such wool product into commerce or in the offering for sale, sale, transportation, distribution or delivery for shipment thereof in commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939.

*It is further ordered,* That respondent Martin Berdy, his agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of woven interlining materials, or any other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting the constituent fibers thereof, on invoices or other shipping memoranda or in any other manner.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to section 3.21 of the Commission's rules of practice, the initial decision of the hearing examiner shall, on the 30th day of May 1958, become the decision of the Commission; and, accordingly:

*It is ordered,* That respondent Martin Berdy, an individual, 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 the order to cease and desist.

## Decision

IN THE MATTER OF  
NORTH AMERICAN NUT CO., INC., ET AL.CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE  
FEDERAL TRADE COMMISSION ACT*Docket 7050. Complaint, Jan. 27, 1958—Decision, May 31, 1958*

Consent order requiring distributors in New York City of vending machines and vending machine supplies, to cease representing falsely in advertising in newspapers, periodicals, letters, etc., and through promotional material furnished their salesmen and agents, that they offered employment to selected persons who would operate their vending machines and must have working capital for the purchase of merchandise to be dispensed therefrom, that such investment was secured and without risk and would earn excessive profits, that they would provide supervisory and financial assistance, and that they were representatives of a large New York company.

*Mr. Terral A. Jordan* for the Commission.

*Mr. Jac M. Wolff*, of New York, N.Y., for respondents.

## INITIAL DECISION BY EARL J. KOLB, HEARING EXAMINER

The complaint in this proceeding issued January 27, 1958, charges the respondents North American Nut Co., Inc., a corporation, Nut-O-Matic Co., Inc., a corporation, and Martin Richmond and George Weinstein, individually and as officers of said corporations, the office and principal place of business of all respondents being located at 27 William Street, New York, N.Y., with violation of the provisions of the Federal Trade Commission Act in the advertising, selling and distributing of vending machines and vending machine supplies.

After the issuance of the complaint, said respondents entered into an agreement containing consent order to cease and desist with counsel in support of the complaint, disposing of all the issues in this proceeding, which agreement was duly approved by the Director and Assistant Director of the Bureau of Litigation.

It was expressly provided in said agreement that the signing thereof is for settlement purposes only and does not constitute an admission by said respondents that they have violated the law as alleged in the complaint.

By the terms of said agreement, the said respondents admitted all the jurisdictional facts alleged in the complaint and agreed that the record herein may be taken as if the Commission had made findings of

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jurisdictional facts in accordance with the allegations, and that said agreement disposes of all of this proceeding as to all parties.

By said agreement, the parties expressly waived any further procedural steps before the hearing examiner and the Commission; the making of findings of fact or conclusions of law; and all the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement.

Respondents further agreed that the order to cease and desist, issued in accordance with said agreement, shall have the same force and effect as if made after a full hearing.

It was further provided that said agreement, together with the complaint, shall constitute the entire record herein; that the complaint herein may be used in construing the terms of the order issued pursuant to said agreement; and that said order may be altered, modified or set aside in the manner prescribed by the statute for orders of the Commission.

The hearing examiner has considered such agreement and the order therein contained, and, it appearing that said agreement and order provide for an appropriate disposition of this proceeding, the same is hereby accepted and is ordered filed upon becoming part of the Commission's decision in accordance with sections 3.21 and 3.25 of the rules of practice, and, in consonance with the terms of said agreement, the hearing examiner finds that the Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents named herein, that this proceeding is in the interest of the public, and issues the following order :

## ORDER

*It is ordered,* That respondents, North American Nut Co., Inc., a corporation, and Nut-O-Matic Co., Inc., a corporation, and their officers, and Martin Richmond and George Weinstein, individually and as officers of each of the aforesaid corporations, and their agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of vending machines, vending machine supplies or similar kinds of merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or indirectly, that :

1. Employment is offered either generally or to specially selected persons either by respondents or by any other person, firm or corporation ;

2. Persons will be selected to operate and service vending machines owned by respondents;
3. Persons must own an automobile or furnish references in order to purchase respondents' vending machines;
4. The cash investment required to purchase respondents' said vending machines is to provide working capital for the purchase of an inventory of merchandise to be dispensed in said vending machines;
5. The cash investment required to purchase respondents' vending machines is secured by an inventory of merchandise worth the amount invested or there is no risk of losing said investment;
6. Persons purchasing respondents' said vending machines will not be required to engaged in selling or soliciting;
7. The earnings or profits derived from the operation of respondents' said vending machines will be of any greater amount than that usually and customarily earned by operators of respondents' said vending machines;
8. Profitable or satisfactory vending machine locations will be secured, the said vending machines will be installed in profitable or satisfactory locations or the vending machine routes of purchasers will be otherwise established or supervised to assure their profitable or satisfactory operation;
9. The sale of merchandise by respondents' vending machines is a permanent business or is unaffected by economic depression;
10. Respondents are the agents or representatives of or affiliated with the A. L. Bazzini Co., Inc., New York, N.Y., or any other person, firm or corporation when such is not the fact.

## DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to section 3.21 of the Commission's rules of practice, the initial decision of the hearing examiner shall, on the 31st day of May 1958, become the decision of the Commission; and, accordingly:

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

IN THE MATTER OF  
ADVANCE SPECTACLE CO., INC., ET AL.<sup>1</sup>

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

*Docket 6285. Complaint, Jan. 10, 1955—Decision, June 3, 1958*

Consent order requiring a Chicago firm to cease representing falsely in advertising that eyeglasses made according to prescriptions furnished by customers using its "14 LENS SAMPLE CARD" and other devices would correct defects in vision of all persons.

*Mr. William A. Somers* for the Commission.

*Froelich, Grossman, Teton and Tabin*, of Chicago, Ill., by *Mr. Alfred B. Teton*, for respondents.

INITIAL DECISION BY EARL J. KOLB, HEARING EXAMINER

The complaint in this proceeding issued January 10, 1955, charges the respondents Advance Spectacle Co., Inc., a corporation, and Michael M. Egel, individually and as an officer of Advance Spectacle Co., Inc., located at 537 South Dearborn Street, Chicago, Ill., with violation of the provisions of the Federal Trade Commission Act in the sale of eyeglasses.

After the issuance of the complaint, said respondents entered into an agreement containing consent order to cease and desist with counsel in support of the complaint, disposing of all the issues in this proceeding, which agreement was duly approved by the Director and Assistant Director of the Bureau of Litigation.

It was expressly provided in said agreement that the signing thereof is for settlement purposes only and does not constitute an admission by said respondents that they have violated the law as alleged in the complaint.

By the terms of said agreement, the said respondents admitted all the jurisdictional facts alleged in the complaint and agreed that the record herein may be taken as if the Commission had made findings of jurisdictional facts in accordance with the allegations,

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<sup>1</sup> This order "clarifies", by insertion of the words "or reducing" before the last word ("lenses") of paragraph 1, the otherwise identical order to cease and desist issued on May 22, 1955, 51 F.T.C. 1216, in this proceeding. That order was vacated and set aside October 11, 1957, and the case remanded for the reason that respondents asserted a misunderstanding on their part as to the scope of the order agreed to and it appeared to the Commission that the discussion on the record at the time of submittal of the agreement containing the order indicates a possible basis for the respondents' misunderstanding.

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and that said agreement disposes of all of this proceeding as to all parties.

By said agreement, the parties expressly waived any further procedural steps before the hearing examiner and the Commission; the making of findings of fact or conclusions of law; and all the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement.

Respondents further agreed that the order to cease and desist, issued in accordance with said agreement, shall have the same force and effect as if made after a full hearing.

It was further provided that said agreement, together with the complaint, shall constitute the entire record herein; that the complaint herein may be used in construing the terms of the order issued pursuant to said agreement; and that said order may be altered, modified or set aside in the manner prescribed by the statute for orders of the Commission.

The hearing examiner has considered such agreement and the order therein contained, and, it appearing that said agreement and order provide for an appropriate disposition of this proceeding, the same is hereby accepted and is ordered filed upon becoming part of the Commission's decision in accordance with sections 3.21 and 3.25 of the rules of practice, and, in consonance with the terms of said agreement, the hearing examiner finds that the Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents named herein, that this proceeding is in the interest of the public, and issues the following order:

## ORDER

*It is ordered,* That respondent Advance Spectacle Co., Inc., a corporation, and its officers, and respondent Michael M. Egel, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of eyeglasses, do forthwith cease and desist from:

1. Disseminating, or causing to be disseminated, any advertisement by means of the United States mails, or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement represents, directly or by implication, that the eyeglasses sold by respondents, made pursuant to the results of tests of the eyes using respondents' devices, will correct, or are capable of correcting, defects in vision of persons unless expressly limited to those persons approximately forty years of age and older

who do not have astigmatism or diseases of the eye and who require only simple magnifying or reducing lenses.

2. Disseminating, or causing to be disseminated, any advertisement by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of their eyeglasses in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement contains the representation prohibited in paragraph 1 hereof.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to section 3.21 of the Commission's rules of practice, the initial decision of the hearing examiner shall, on the 3d day of June 1958, become the decision of the Commission; and, accordingly:

*It is 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 the order to cease and desist.

## Decision

IN THE MATTER OF  
GLENOIT MILLS, INC., ET AL.CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE  
FEDERAL TRADE COMMISSION ACT*Docket 6968. Complaint, Dec. 4, 1957—Decision, June 5, 1958*

Consent order requiring the manufacturer of an orlon-dynel fabric simulating fur designated "Glenara" to cease representing falsely in advertisements in newspapers and magazines, and others published by sellers of garments made from "Glenara," that the fabric was made from pelts, hair, or fur fibers of fur-bearing animals, particularly mink, was "let out" in the same manner as mink, was made into garments by master furriers as if real fur were used, and that it looked and felt like mink.

*M. J. Vitale and T. A. Ziebarth, Esqs., for the Commission.*

*Wolf, Block, Schorr & Solis-Cohen, by Mr. R. B. Wolf, of Philadelphia, Pa., for respondents.*

## INITIAL DECISION BY JAMES A. PURCELL, HEARING EXAMINER

The complaint in this proceeding, issued December 4, 1957, charges the respondents Glenoit Mills, Inc., a corporation, and A. M. Sonnabend, Clarence E. Hafford, Arnold W. Schmidt and Ray Tetzleff, individually and as officers of said corporation, with violation of the Federal Trade Commission Act by means of the use of certain false, misleading, and deceptive representations in connection with the manufacture, sale and distribution of fabrics made to simulate natural fur, in commerce, as "commerce" is defined in said act.

After the issuance of said complaint respondents Glenoit Mills, Inc., Clarence E. Hafford, Arnold W. Schmidt and Ray Tetzleff, on February 12, 1958, entered into an agreement for a consent order with counsel in support of the complaint which agreement was duly approved by the Director and Assistant Director of the Bureau of Litigation of the Federal Trade Commission.

The agreement disposes of all charges of the complaint as issued except in two particulars:

1. For the reasons stated in an affidavit attached to and made a part of said agreement, the parties have in said agreement specifically provided that the charges of the complaint against the individual respondent A. M. Sonnabend, should be dismissed, said concord being confirmed in the proposed order forming a part of said agreement: and

2. That the charge that respondents' products "look" like mink, as contained in subparagraph 4 of paragraph 6 of the complaint be dismissed because of the subjective character of the charge and the impossibility of proof thereof, said dismissal having been likewise confirmed and incorporated in the proposed order contained in said agreement.

It was expressly provided in said agreement that the signing thereof is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

By the terms of said agreement, the signatory respondents admitted all of the jurisdictional allegations of the complaint and agreed that the record herein may be taken as though the Commission had made findings of jurisdictional facts in accordance with such allegations. The parties expressly waived a hearing before the hearing examiner or the Commission, the making of findings of fact or conclusions of law by the hearing examiner or the Commission, the filing of exceptions and oral argument before the Commission, and all further and other procedure before the hearing examiner and the Commission to which the signatory respondents may otherwise be entitled under the Federal Trade Commission Act or the rules of practice of the Commission.

The signatory respondents further agreed that the order to cease and desist issued in accordance with said agreement shall have the same force and effect as though made after a full hearing, presentation of evidence and findings and conclusions thereon, and specifically waived any and all right, power or privilege to challenge or contest the validity of such order.

It was further provided that said agreement, together with the complaint, shall constitute the entire record herein; that the complaint herein may be used in construing the terms of the order issued pursuant to said agreement; and that the said order may be altered, modified or set aside in the manner provided by statute for other orders of the Commission.

Said agreement recites that the respondent Glenoit Mills, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, and that Clarence E. Hafford, Arnold W. Schmidt, and Ray Tetzleff are individuals and are, respectively, vice president in charge of sales, vice president in charge of production, and treasurer of the corporate respondent. The office and principal place of business of all respondents signatory is located at No. 450 Seventh Avenue, New York, N.Y.

The hearing examiner has considered such agreement and the order therein contained, and, it appearing that said agreement and order provides for an appropriate disposition of the proceeding, the same is hereby accepted and, without further notice to respondents, is ordered filed upon becoming part of the Commission's decision in accordance with sections 3.21 and 3.25 of the rules of practice, and in consonance with the terms of said agreement, the hearing examiner finds that the Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of all the respondents named herein, and that this proceeding is in the interest of the public, wherefore he issues the following order:

## ORDER

*It is ordered*, That respondent Glenoit Mills, Inc., a corporation, and its officers, and Clarence E. Hafford, Arnold W. Schmidt, and Ray Tetzleff, 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 offering for sale, sale or distribution of fabrics made to simulate natural fur, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

- (1) Representing, directly or by implication, that said fabric:
  - a. Is made from the pelts, hair or fur fibers of a fur bearing animal or animals;
  - b. Has the feel of natural fur;
  - c. Is made into coats or other garments by master furriers, unless such is the fact;
  - d. Is made into coats or other garments in the same manner as if real fur were used.

- (2) Using the term "let-out," or any other words of similar import or meaning, to describe or refer to the manner in which respondents' fabrics are made into coats or other garments.

*It is further ordered*, That the complaint, insofar as it relates to respondent A. M. Sonnabend in his individual capacity, and the charge of the complaint concerning the word "Look," as set out in subparagraph 4 of paragraph 6 be, and the same is hereby, dismissed.

## DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to section 3.21 of the Commission's rules of practice, the initial decision of the hearing examiner shall on the 5th day of June 1958, become the decision of the Commission; and, accordingly:

*It is ordered,* That the respondents Glenoit Mills, Inc., a corporation, and Clarence E. Hafford, Arnold W. Schmidt, and Ray Tetzleff, individually and as officers of Glenoit Mills, Inc., shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist.

## Decision

IN THE MATTER OF  
STANDARD WOOL BATTING CORP. ET AL.

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

*Docket 7027. Complaint, Jan. 14, 1958—Decision, June 5, 1958*

Consent order requiring a manufacturer in New York City to cease violating the Wool Products Labeling Act by tagging and invoicing as "100 percent reprocessed wool" and "80 percent reused wool," battings which contained substantially less than such percentages of reprocessed and reused wool, and failing in other respects to comply with the labeling requirements of the act.

*Mr. Kent P. Kratz* for the Commission.

*Mr. Simon Krumholz* and *Mr. Bernard Chosnek, pro se*, and also for Standard Wool Batting Corp.

INITIAL DECISION BY EVERETT F. HAYCRAFT, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on January 14, 1958, charging them with the use of unfair and deceptive acts and practices and unfair methods of competition in commerce in violation of the provisions of the Federal Trade Commission Act, the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated under the Wool Products Labeling Act. After the issuance of said complaint and the filing of their answer thereto, the initial hearing was held on March 19, 1958, in New York, N.Y., at which time, before testimony was taken, an agreement for consent order was entered into by and between the respondents and counsel supporting the complaint, subject to approval by the Bureau of Litigation, in accordance with section 3.25 of the rules of practice and procedure of the Commission. This agreement was duly approved by the Bureau of Litigation and submitted to the hearing examiner on March 26, 1958.

By the terms of said agreement, the respondents admitted all the jurisdictional facts alleged in the complaint and agreed that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations, said agreement disposing of all of this proceeding as to all parties. Respondents in the agreement expressly waived any further procedural steps before the hearing examiner and the Commission; the making of findings of fact or conclusions of law; and all of the rights

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they may have to challenge or contest the validity of the order to cease and desist entered in accordance with this agreement.

It was further provided in said agreement that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and the said agreement. It was further agreed that the agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission, and that said agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint. The said agreement also provided that the order to cease and desist issued in accordance therewith shall have the same force and effect as if entered after a full hearing; that it may be altered, modified or set aside in the manner provided for other orders; and that the complaint may be used in construing the terms of the order.

This proceeding having now come on for final consideration by the hearing examiner on the complaint and the aforesaid agreement for consent order, and it appearing that said agreement provides for an appropriate disposition of this proceeding, the aforesaid agreement is hereby accepted and is ordered filed upon becoming part of the Commission's decision in accordance with sections 3.21 and 3.25 of the rules of practice; and in consonance with the terms of said agreement, the hearing examiner makes the following jurisdictional findings and order:

1. Respondent Standard Wool Batting Corp. is a corporation 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 4235 Park Avenue, New York, N.Y.

Individual respondents Simon Krumholz and Bernard Chosnek are president and treasurer, respectively, of respondent corporation. These individuals formulate, direct, and control the policies, acts, and practices of said corporation. Their address is the same as that of the corporate respondent.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents hereinabove named. The complaint states a cause of action against said respondents under the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and this proceeding is in the interest of the public.

## ORDER

*It is ordered,* That respondents, Standard Wool Batting Corp., a corporation, and its officers, and Simon Krumholz and Bernard

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Chosnek, individually and as officers of said corporation, and respondents' representatives, agents, and employees, directly or through any corporate or other device, in connection with the introduction or manufacture for introduction into commerce, or the offering for sale, sale, transportation, or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, of wool batting or other "wool products" as such products are defined in and subject to the Wool Products Labeling Act of 1939, which products contain, or in any way are represented as containing "wool," "reprocessed," or "reused wool," do forthwith cease and desist from misbranding such products by:

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

2. Failing to securely affix to or place on each such product a stamp, tag, label, or other means of identification showing in a clear and conspicuous manner:

- (a) the percentage of the total fiber weight of such wool product, exclusive of ornamentation not exceeding 5 percentum of said total fiber weight, of (1) wool, (2) reprocessed wool, (3) reused wool, (4) each fiber other than wool where said percentages by weight of such fiber is 5 percentum or more, and (5) the aggregate of all other fibers;

- (b) the maximum percentage of the total weight of such wool product of any nonfibrous loading, filling, or adulterating matter;

- (c) the name or the registered identification number of the manufacturer of such wool product or of one or more persons engaged in introducing such wool product into commerce, or in the offering for sale, sale, transportation, distributing or delivery for shipment thereof in commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939.

*It is further ordered,* That respondents, Standard Wool Batting Corp., a corporation, and its officers, and Simon Krumholz and Bernard Chosnek, individually and as officers of said corporation, and respondents' representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of wool batting or any other product in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Misrepresenting the constituent fibers of which their products are composed or the percentages thereof in invoices, shipping memoranda or in any other manner.

## DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to section 3.21 of the Commission's rules of practice, the initial decision of the hearing examiner shall, on the 5th day of June 1958, become the decision of the Commission; and, accordingly:

*It is 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 the order to cease and desist.

## Decision

IN THE MATTER OF  
WOOL NOVELTY CO., INC., ET AL.

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

*Docket 6867. Complaint, Aug. 20, 1957—Decision, June 6, 1958*

Consent order requiring three affiliated concerns in New York City and Philadelphia, to cease violating the Wool Products Labeling Act by falsely tagging as "100 percent cashmere" and labeling also with a facsimile of the British flag and the significant English historical name "Drake," sweaters which were knitted in Philadelphia of yarn imported from Japan, and failing in other respects to comply with the labeling requirements of the act; and to cease representing falsely by respondent partnership's use of the trade name "Drake Knitting Mills" and the phrase "manufacturers of sweaters and knitted sportswear" on invoices, that the partnership was the manufacturer of sweaters imported from England by corporate respondent and for which it was merely the selling agent.

*Mr. Fletcher G. Cohn and Mr. Arthur B. Edgeworth* for the Commission.

*Mr. Erwin Feldman*, of New York, N.Y., for respondents.

## INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

The Federal Trade Commission (sometimes also hereinafter referred to as the Commission) issued its complaint herein, charging the above-named respondents with having violated the provisions of both the Federal Trade Commission Act and the Wool Products Labeling Act in certain particulars.

On April 3, 1958, there was submitted to the undersigned hearing examiner of the Commission for his consideration and approval an agreement containing consent order to cease and desist, which had been entered into by and between respondents and the attorney for the Commission, under date of March 31, 1958, subject to the approval of the Bureau of Litigation of the Commission, which had subsequently duly approved the same.

On due consideration of such agreement, the hearing examiner finds that said agreement, both in form and in content, is in accord with section 3.25 of the Commission's rules of practice for adjudicative proceedings, and that by said agreement the parties have specifically agreed to the following matters:

1. Respondent Wool Novelty Co., Inc., is a corporation 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 44 West 18th Street, in the city of New York, State of New York. Individual respondents M. C. Roberts, Bernard L. Roberts, and Stanley Roberts are president, vice president, and secretary-treasurer, respectively, of this corporate respondent.

Respondent Atwood Knitwear, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its office and principal place of business located at I and Ontario Streets, in the city of Philadelphia, State of Pennsylvania. Individual respondents Bernard L. Roberts, M. C. Roberts, and Stanley Roberts are president, vice president, and secretary-treasurer, respectively, of this corporate respondent.

Respondents M. C. Roberts, Bernard L. Roberts, and Stanley Roberts are also copartners trading and doing business under the name of Drake Knitting Mills, with their office and principal place of business located at 44 West 18th Street, city of New York, State of New York.

2. Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, the Federal Trade Commission, on August 20, 1957, issued its complaint in this proceeding against respondents, and a true copy was thereafter duly served on respondents.

3. Respondents admit all the jurisdictional facts alleged in the complaint and agree that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations.

4. This agreement disposes of all of this proceeding as to all parties.

5. Respondents waive:

(a) Any further procedural steps before the hearing examiner and the Commission;

(b) The making of findings of fact or conclusions of law; and

(c) All of the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with this agreement.

6. The record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and this agreement.

7. This agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission.

8. This agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

The parties have further specifically agreed that the proposed order to cease and desist included in said agreement may be entered

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in this proceeding by the Commission without further notice to respondents; that when so entered it shall have the same force and effect as if entered after a full hearing; that it may be altered, modified or set aside in the manner provided for other orders; and that the complaint may be used in construing the terms of the order.

Upon due consideration of the complaint filed herein and the said agreement containing consent order to cease and desist, the latter is hereby approved, accepted and ordered filed, if and when it shall have become a part of the Commission's decision. The hearing examiner finds from the complaint and the said agreement containing consent order to cease and desist that the Commission has jurisdiction of the subject matter of this proceeding and of the persons of each of the respondents herein; that the complaint states a legal cause for complaint under the Federal Trade Commission Act and the Wool Products Labeling Act of 1939 against each of the respondents, both generally and in each of the particulars alleged therein; that this proceeding is in the interest of the public; that the following order as proposed in said agreement is appropriate for the just disposition of all of the issues in this proceeding; and that said order therefore should be, and hereby is, entered as follows:

## ORDER

*It is ordered,* That respondents Wool Novelty Co., Inc., a corporation, and its officers; Atwood Knitwear, Inc., a corporation, and its officers; and M. C. Roberts, Bernard L. Roberts, and Stanley Roberts, individually and as officers of said corporations, and as copartners, trading and doing business as Drake Knitting Mills, or under any other name, 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 or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, of sweaters or other "wool products," as such products are defined in and subject to said Wool Products Labeling Act, do forthwith cease and desist from misbranding such products by:

1. Attaching or using stamps, tags, labels, or other means of identification which represent that such products contain a certain percentage of cashmere which is contrary to fact;
2. Otherwise falsely or deceptively stamping, tagging, labeling or otherwise identifying such products as to the character or amount of the constituent fibers contained therein;

3. Falsely or deceptively identifying such products as being manufactured in or imported from Britain or any other foreign country;

4. 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:

(a) The percentage of the total fiber weight of such wool product, exclusive of ornamentation not exceeding 5 percent of said total fiber weight, of (1) wool, (2) reprocessed wool, (3) reused wool, (4) each fiber other than wool where said percentage by weight of such fiber is 5 percent or more, and (5) the aggregate of all other fibers:

(b) The maximum percentage of the total weight of such wool product of any nonfibrous loading, filling, or adulterating matter:

(c) The name or the registered identification number of the manufacturer of such wool product or of one or more persons engaged in introducing such wool product into commerce, or in the offering for sale, sale, transportation, distribution or delivery for shipment thereof in commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939.

*It is further ordered.* That respondents M. C. Roberts, Bernard L. Roberts, and Stanley Roberts, copartners, trading and doing business as Drake Knitting Mills, or under any other name, and respondents' representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale and distribution of sweaters or any other product, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that respondents, or any of them, manufacture any product which is not manufactured in a factory owned and operated or directly and absolutely controlled by them, and from using the word "mills," or any other words or terms of similar import, as part of a corporate or trade name in connection with any product not manufactured by respondents unless the fact that they do not manufacture such product is clearly disclosed.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 6th day of June 1958, become the decision of the Commission; and, accordingly:

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

## Decision

IN THE MATTER OF  
ABRAHAM STURISKY ET AL. TRADING AS ALLISON'S  
CO. ET AL.

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

*Docket 7014. Complaint, Dec. 30, 1957—Decision, June 6, 1958*

Consent order requiring distributors in Brooklyn, N.Y., engaged in selling to wholesalers and jobbers assortments of candy and toys of varying value packed in identical small packages so that the ultimate purchaser could not know what he paid for until after a purchase was made and the package broken open, to cease distributing assortments of merchandise designed or intended to be sold to the purchasing public by lottery or chance.

*John W. Brookfield, Jr., Esq., for the Commission.*

INITIAL DECISION BY JAMES A. PURCELL, HEARING EXAMINER

The complaint in this proceeding, issued December 30, 1957, charges the respondents Abraham Sturisky and Seymour Feldman, individuals and copartners trading as Allison's Co., and Harry V. Schechter, an individual trading as H.V. Schechter Sales Associates, with violation of the Federal Trade Commission Act in connection with the offering for sale, sale and distribution of candy and toy assortments or other merchandise so packed and assembled as to involve the use of a lottery scheme when sold and distributed to the consuming public.

After the issuance of said complaint respondent Harry V. Schechter, on February 12, 1958, and respondents Abraham Sturisky and Seymour Feldman, on February 27, 1958, entered into separate agreements for consent order with counsel in support of the complaint, disposing of all of the issues in this proceeding, which agreements were duly approved by the Director and Assistant Director of the Bureau of Litigation of the Federal Trade Commission. Said agreements are substantially the same in all material respects, having been separately executed for the convenience of the parties respondent for which reason they will be considered as original counterparts for the purposes of this proceeding.

By the terms of said agreements, the respondents admitted all of the jurisdictional allegations of the complaint and agreed that the record herein may be taken as though the Commission had made findings of jurisdictional facts in accordance with such allegations.

By said agreements the parties expressly waived a hearing before the hearing examiner or the Commission, the making of findings of fact or conclusions of law by the hearing examiner or the Commission, the filing of exceptions and oral argument before the Commission, and all further and other procedure before the hearing examiner and the Commission to which the respondents may otherwise be entitled under the Federal Trade Commission Act or the rules of practice of the Commission.

By said agreements, respondents further agreed that the order to cease and desist issued in accordance with said agreements shall have the same force and effect as though made after full hearing, presentation of evidence and findings and conclusions thereon, and specifically waived any and all right, power or privilege to challenge or contest the validity of such order.

It was further provided that said agreements, together with the complaint, as amended, shall constitute the entire record herein; that the complaint herein, as amended, may be used in construing the terms of the order issued pursuant to said agreements; and that the said order may be altered, modified or set aside in the manner provided by statute for other orders of the Commission.

Said agreements recite that respondent Harry V. Schechter is an individual trading and doing business as H. V. Schechter Sales Associates, with his office and principal place of business located at 165 East 19th Street, in the city of Brooklyn, N.Y.; and that respondents Abraham Sturisky and Seymour Feldman are individuals and copartners trading as Allison's Co., with their office and principal place of business located at 470 Alabama Avenue, in the city of Brooklyn, N.Y.

The hearing examiner has considered such agreements and the orders therein contained, and, it appearing that such provide for an appropriate disposition of this proceeding, the same are hereby accepted and, without further notice to respondents, are ordered filed upon becoming part of the Commission's decision in accordance with sections 3.21 and 3.25 of the rules of practice, and in consonance with the terms of said agreements, the hearing examiner finds that the Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of all the respondents named herein, and that this proceeding is in the interest of the public, wherefore, he issues the following order.

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## ORDER

*It is ordered,* That respondents Harry V. Schechter, an individual trading as H. V. Schechter Sales Associates, and Abraham Sturisky and Seymour Feldman, individuals and copartners trading as Allison's Co., or under any other trade name, their agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale or sale and distribution of candy, toys, or any other articles of merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Selling or distributing, to jobbers or other dealers, candy and toys, or other merchandise, so packed and assembled that the sales of such candy, toys, or other merchandise to the general public are to be made, or are intended or designed to be made, by means of a lottery, gaming device or gift enterprise.

2. Selling or distributing any assortments of candy, toys, or other merchandise, which are designed or intended to be used in the distribution of merchandise to the public by lottery or chance.

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

## DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 6th day of June 1958, become the decision of the Commission; and, accordingly:

*It is 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 the order to cease and desist.

IN THE MATTER OF  
SIDNEY FINK ET AL. DOING BUSINESS AS MAJOR  
BRAND TUBE CO., ETC.

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

*Docket 7019. Complaint, Dec. 31, 1957—Decision, June 7, 1958*

Consent order requiring mail order sellers with office in Harrison, N.J., to cease representing falsely in newspapers and other advertising media that all the receiving radio and television tubes listed in their advertisements were new, unused, and of first quality; that they tested and had tested all the tubes they sold; that the cathode-ray picture tubes they offered were new; and failing to disclose in said advertisements, on cartons, on tubes, or in invoices or shipping memoranda, that some of their receiving tubes were used, factory seconds and rejects, or that the cathode-ray tubes contained used envelopes or shells.

*Mr. Harold A. Kennedy* and *Mr. Thomas F. Howder* for the Commission.

*Mr. Jack E. Brown*, of New York, N.Y., for respondents.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

The Federal Trade Commission (hereinafter referred to as the Commission) on December 31, 1957, issued its complaint herein under the Federal Trade Commission Act against the above-named respondents, Sidney Fink and Jack Fink, individuals doing business as Major Brand Tube Co., Teltron Electric Co., Video Electric Co. and Solar Electronics. The complaint charges respondents with having violated in certain particulars the provisions of said act. The respondents were duly served with process.

On April 7, 1958, there was submitted to the undersigned hearing examiner of the Commission for his consideration and approval an agreement containing consent order to cease and desist, which had been entered into by and between respondents, their counsel, and counsel supporting the complaint, under date of April 1, 1958, and subject to the approval of the Bureau of Litigation of the Commission. Such agreement had been thereafter duly approved by the Director and an Assistant Director of that Bureau.

On due consideration of the said agreement containing consent order to cease and desist, the hearing examiner finds that said agreement, both in form and in content, is in accord with section

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## Decision

3.25 of the Commission's rules of practice for adjudicative proceedings, and that by said agreement the parties have specifically agreed that:

1. Respondent Sidney Fink is an individual doing business as Major Brand Tube Co., Teltron Electric Co., Video Electric Co., and Solar Electronics, with his office and principal place of business located at 428 Harrison Avenue, in the city of Harrison, State of New Jersey.

According to the affidavits attached to the agreement and made a part thereof, respondent Jack Fink has had no part in the formulation, direction or control of the policies, practices and acts of said businesses. It is accordingly recommended that the complaint should be dismissed as to this individual respondent.

2. Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on December 31, 1957, issued its complaint in this proceeding against respondent, and a true copy was thereafter duly served on respondent.

3. Respondent admits all the jurisdictional facts alleged in the complaint and agrees that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations.

4. This agreement disposes of all of this proceeding as to all parties.

5. Respondent waives:

(a) Any further procedural steps before the hearing examiner and the Commission;

(b) The making of findings of fact or conclusions of law;

(c) All of the rights he may have to challenge or contest the validity of the order to cease and desist entered in accordance with this agreement.

6. The record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and this agreement.

7. This agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission.

8. This agreement is for settlement purposes only and does not constitute an admission by respondent that he has violated the law, as alleged in the complaint.

The parties have further specifically agreed that the proposed order to cease and desist included in said agreement may be entered in this proceeding by the Commission without further notice to respondent; that when so entered it shall have the same force and

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effect as if entered after a full hearing; that it may be altered, modified or set aside in the manner provided for other orders; and that the complaint may be used in construing the terms of the order.

Upon due consideration of the complaint filed herein and the said agreement containing consent order to cease and desist, the latter is hereby approved, accepted and ordered filed, if and when it shall have become a part of the Commission's decision. The hearing examiner finds from the complaint and the said agreement containing consent order to cease and desist that the Commission has jurisdiction of the subject matter of this proceeding and of the persons of each of the respondents herein; that the complaint states a legal cause for complaint under the Federal Trade Commission Act against the respondent signatory to the agreement, both generally and in each of the particulars alleged therein; that this proceeding is in the interest of the public; that the following order as proposed in said agreement is appropriate for the just disposition of all of the issues in this proceeding; and that said order therefore should be, and hereby is, entered as follows:

## ORDER

*It is ordered*, That respondent Sidney Fink, individually and doing business as Major Brand Tube Co., Teltron Electric Co., Video Electric Co., Solar Electronics, or under any other name, and respondent's representative, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of used tubes and factory rejects or seconds and cathode-ray tubes containing used parts in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that any used products or products containing used parts, are new;
2. Representing, directly or by implication, that any factory rejects or seconds are first-quality, provided, however, that nothing herein will prohibit respondent from representing the true or actual quality thereof;
3. Representing, directly or by implication, that respondent has tested said products, unless such is the fact;
4. Failing to clearly disclose with respect to tubes which are used or factory rejects or seconds, in advertising, on the cartons in which the tubes are packaged, on invoices and shipping memoranda and on the tubes themselves, that such tubes are used or are factory rejects or seconds; or

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5. Failing to clearly disclose in advertising, on the cartons in which they are packaged, on invoices and shipping memoranda and on such tubes themselves, that such cathode-ray tubes contain used envelopes or shells, or any other used parts, when such is the fact.

*It is further ordered,* That the complaint herein be, and the same hereby is, dismissed as to respondent Jack Fink.

## DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to section 3.21 of the Commission's rules of practice, the initial decision of the hearing examiner shall, on the 7th day of June 1958, become the decision of the Commission; and accordingly:

*It is ordered,* That the above-named respondents except respondent Jack Fink shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist.

IN THE MATTER OF  
R. H. WHITE CORP.

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

*Docket 6884. Complaint, Sept. 11, 1957—Decision, June 9, 1958*

Order dismissing complaint charging misbranding of fur products in violation of the Fur Products Labeling Act for the reason that the practices complained of were discontinued over a year before it was filed and there was no likelihood that they would be resumed in the future.

*Mr. Michael J. Vitale and Mr. Thomas A. Ziebarth* supporting the complaint.

*Mr. Richard K. Lyon of Lyon, Wilner & Bergson*, of Washington, D.C. for respondent.

INITIAL DECISION BY JOHN B. POINDEXTER, HEARING EXAMINER

On September 11, 1957, the Federal Trade Commission issued a complaint charging respondent with misbranding and falsely and deceptively invoicing and advertising fur products in violation of the Federal Trade Commission Act and the Fur Products Labeling Act.

After service of the complaint on respondent, respondent by and through its attorneys, filed an answer and motion to dismiss the complaint. Respondent admitted and explained the violations charged against it and, as grounds for its motion to dismiss, stated the following:

During the early part of 1956, respondent entered into an arrangement with S. Mann Furs, Inc. of New York, N.Y., a manufacturer of fur products, whereby Mann would ship fur products to respondent on consignment for promotion and sale in the basement of respondent's department store in Boston, Mass. (At that time and prior thereto respondent also conducted a highly reputable fur business in its upstairs fur department.) Mann agreed to pay for transportation and promotional advertising and to accept the return of any fur products not sold. Mann's personnel were to supervise and assist in the pricing and selling of the furs and respondent was to pay only for the merchandise actually disposed of during the promotion.

In carrying out the arrangement with S. Mann Furs Inc., on two isolated occasions, to wit January 24, 1956 and May 6-8, 1956, certain of the fur products being sold in the basement of the respondent's department store in Boston were not labeled as required by the Fur Products Labeling Act. However, respondent states that the legal onus of such violations of the act rightfully should be borne by its consignor S. Mann Furs, Inc., of New York, which concern was the owner of the furs sold on a consignment basis in respondent's basement on the two isolated occasions and was responsible, among other things, for the labeling, invoicing and advertising of the furs offered for sale during the two promotions in question. S. Mann Furs, Inc., paid for the advertisements complained about.

Respondent closed its Boston store on June 15, 1957, prior to the filing of the complaint herein and respondent's sole and principal place of business is now at Worcester, Mass., where it has been operating since 1954. Prior to respondent's cessation of business in Boston on June 15, 1957, respondent had been serving the Boston community for more than 100 years and has enjoyed an enviable reputation for fair dealing and business integrity and has never engaged in or followed the practice of misbranding, misadvertising, or other unethical conduct.

Since the closing of its Boston store on June 15, 1957, respondent has only operated the store in Worcester and none of the persons involved in the basement store promotion in Boston are now employed by respondent. Furthermore, to the extent that the Worcester store may sell furs in the future, it plans to do so through a leased department under a license to a lessee of a good business reputation.

The record discloses that the violations complained about last occurred on May 8, 1956, more than 1 year prior to the filing of the complaint herein. The president of respondent corporation has submitted an affidavit stating, among other things, that respondent does not intend to violate the act in the future. Accordingly, respondent requests that the complaint be dismissed. Counsel supporting the complaint has filed an answer in opposition to the motion to dismiss.

When it is considered that the violations complained about occurred and were discontinued more than 1 year prior to the filing of the complaint herein, all of the other unusual circumstances of this case, and the sworn assurances of respondent's president that the practices complained about will not be revived, the examiner, like the Commission in *Bell & Howell Co.*, docket No. 6729, is persuaded that the "practices alleged have been surely stopped and there is no likelihood that they will be resumed in the future."

## Opinion

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Everything that could be accomplished by a cease and desist order has been accomplished. It would not be in the public interest for the Commission to issue an order to cease and desist at this time. It is the opinion of the examiner that the complaint in this proceeding should be dismissed without prejudice.

## ORDER

*It is ordered,* That the complaint in this proceeding be, and it hereby is, dismissed without prejudice to the right of the Commission to issue a new complaint or to take such further or other actions against the respondent at any time in the future as may be warranted by the then existing circumstances.

## OPINION OF THE COMMISSION

By KERN, Commissioner:

The initial decision filed by the hearing examiner ruled on the motion to dismiss which the respondent submitted as part of its answer. The hearing examiner held that because the unlawful practices were discontinued more than a year prior to the institution of this proceeding and it appeared that there was no likelihood of their being revived, issuance of an order to cease and desist was not in the public interest. The proposed order accordingly would dismiss this proceeding without prejudice and counsel supporting the complaint under their appeal except to that action as erroneous.

No oral testimony was received. The record which was the basis for the hearing examiner's challenged ruling was composed of the complaint and the respondent's combined answer and motion, and attached memorandum, together with counsel's reply in opposition to the motion and an affidavit submitted by the respondent. Hence our consideration of the appeal is likewise limited to those record matters.

The complaint issuing on September 11, 1957, charged misbranding and other practices by the respondent in violation of the Fur Products Labeling Act, and the rules promulgated thereunder. The respondent then filed its combined answer and motion to dismiss containing admissions of certain of the complaint's allegations. It also included recitations explaining the unlawful practices as inadvertent and as discontinued and asserting that their use was limited to two sales promotions engaged in by the respondent's Boston store which were conducted under the supervision of the consignor of the fur products being offered, the last of which promotions occurred in May, 1956; and the answer further expressed "firm and positive assur-

ances" by the respondent against the resumption of such practices in the future.

Staff counsel's reply opposing the motion to dismiss stated that the facts alleged in the complaint were substantially admitted under the respondent's combined answer and motion. The reply also averred, among other things, that while counsel had no reason to doubt the truth of the facts stated by respondent, the fact that the unlawful acts were limited to and had not recurred after the two special promotions in 1956, was not necessarily controlling to disposition of the proceeding. The respondent subsequently filed an affidavit by its president corroborating certain of the statements in its answer. The foregoing matters accordingly constituted the record presented for the hearing examiner's consideration when he filed his initial decision on December 17, 1957.

In their appeal, counsel states in effect that if this case had proceeded to hearings and its exigencies had so required, they would have presented evidence showing that, before the second sales promotion, the respondent had notice that the marketing practices followed in the earlier one were being questioned in a Commission investigation as not in conformity with the act. Counsel accordingly requests that we regard the respondent's subsequent abandonment of its violations as an effort to forestall adversary proceedings by the Commission rather than a good-faith expression of a desire to abide by the law.

Counsel supporting the complaint have advanced cogent reasons, both in their brief and in oral argument, why the defense of abandonment should not be here considered. The contentions in this vein are advanced, however, for the first time on appeal. After the motion to dismiss was filed, counsel supporting the complaint took no exception to the basic or essential facts asserted in the respondent's answer and affidavit and made no effort to supplement the record with additional facts bearing on the good faith of the respondent's discontinuance. They thus permitted the motion to go to the hearing examiner for decision virtually by default and, on the record presented to him, the hearing examiner's action of dismissal without prejudice clearly was appropriate.

Under the circumstances, we are of the opinion that our action should be governed similarly. We recognize, of course, the Commission's power to remand a proceeding to a hearing examiner for the reception of such evidence as may be necessary to provide an adequate basis for an informed decision on any question presented for review. But such a procedure is costly, time-consuming, and, to a degree, harassing to the respondent. We believe

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that in the instant matter the public interest will best be served by allowing the initial decision to stand undisturbed and by underwriting the professions of respondent's affidavit of abandonment by continued close scrutiny of its future operations.

To the extent that one of the statements contained in the initial decision may be construed as holding that no legal liability attached to the respondent for the unlawful practices engaged in, the initial decision is erroneous. The record supports determinations that the respondent participated in the profits derived from the sales promotions conducted in its store and in its name and it, therefore, shared legal responsibility for the admitted violations occurring in the course of those sales. Therefore, the initial decision will be modified accordingly. While the initial decision, including the order of dismissal without prejudice, is adopted as the Commission's decision, such action in the unique procedural situation presented here is not to be regarded as a precedent applicable to motions for dismissal similarly bottomed on alleged abandonment.

## FINAL ORDER

Counsel supporting the complaint having filed an appeal from the hearing examiner's initial decision in this proceeding and the matter having come on to be heard upon the record, including the oral arguments of counsel; and the Commission having determined that the appeal should be denied and the initial decision modified by striking the third sentence of the fourth paragraph thereof, and that the initial decision as thus modified should be adopted as the decision of the Commission:

*It is ordered,* That the initial decision of the hearing examiner be, and it hereby is, modified by striking the third sentence of the fourth paragraph thereof.

*It is further ordered,* That the complaint herein be, and it hereby is, dismissed without prejudice to the right of the Commission to issue a new complaint or to take such further or other action against the respondent at any time in the future as may be warranted by then existing circumstances.