

terminating any such contract subject to such reasonable restrictions concerning their re-entry into business as may be lawful within the jurisdiction in which any such purchaser is located;

8. Policing, enforcing or continuing in operation or effect any condition, agreement, understanding, act or practice from which respondents are ordered to cease and desist by the foregoing sections hereof;

9. Performing any act of intimidation or coercion through statements, oral or written, made by representatives of respondents, either at the time when a purchaser agrees to purchase any such products from respondents or during the course of any calls made upon such purchasers at their places of business or at any other place, or using any other plan, practice, system or method of doing business, for the purpose or with the effect of intimidating, coercing, or requiring purchasers of any such products from respondents to do anything which respondents are ordered to cease and desist from requiring such purchasers to do by any of the foregoing paragraphs hereof.

Provided, however, That nothing herein contained shall be construed to limit or otherwise affect any resale price maintenance contracts which respondents may enter into in conformity with Section 5 of the Federal Trade Commission Act as amended by the McGuire Act (15 U.S.C. Sec. 45).

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 9th day of July 1960, 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

KADIAK FISHERIES COMPANY ET AL.

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

Docket 7562. Complaint, Aug. 6, 1959—Decision, July 13, 1960

Consent order requiring Seattle packers of canned salmon and other sea food products to cease violating Sec. 2(c) of the Clayton Act by such practices

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as giving reductions in price to certain buyers or their agents which were offset in whole or in part by reduction of either the primary or field broker's commission earned on such sales.

COMPLAINT

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

PARAGRAPH 1. Respondents Kadiak Fisheries Company and Chignik Fisheries Company, hereinafter sometimes referred to as corporate respondents, are corporations organized, existing and doing business under and by virtue of the laws of the State of Washington, with their principal offices and places of business located at 1826 Exchange Building, Seattle, Wash.

Respondent Leo T. Krielsheimer, hereinafter sometimes referred to as individual respondent, is an individual and is president and sales manager of both of the corporate respondents. He directs and controls their business practices and policies, including their sales and distribution policies. His principal office and place of business is the same as that of the corporate respondents.

PAR. 2. All of the said respondents, both corporate and individual, have been for the past several years and are now engaged in the business of packing, selling and distributing canned salmon and other seafood products, all of which are hereinafter referred to as seafood products, to various buyers located in the several States of the United States. They sell and distribute their products through primary brokers, generally located in Seattle, Wash., and through field brokers located in various market areas throughout the United States.

When selling through primary brokers said respondents pay these brokers a commission or brokerage fee for their services, usually at the rate of 5% of the net selling price of the merchandise sold. When selling through field brokers respondents do not utilize a primary broker; instead, they pay a commission or brokerage fee usually at the rate of 2½% of the net selling price of the merchandise sold.

Respondents' annual volume of business during the past several years has been substantial.

PAR. 3. In the course and conduct of their business respondents, both corporate and individual, for the past several years have sold and distributed and are now selling and distributing seafood prod-

ucts in commerce, as "commerce" is defined in the aforesaid Clayton Act, to buyers located in the several States of the United States other than the State of Washington in which respondents are located. Respondents, and each of them, transport or cause such seafood products, when sold, to be transported from their place of business in the State of Washington to such buyers, or to the buyers' customers, located in various other States of the United States. There has been at all times mentioned herein a continuous course of trade in commerce in said seafood products across state lines between respondents and the respective buyers of said products.

PAR. 4. In connection with the sale and distribution of their seafood products in commerce, the corporate respondents, under the control and direction of the individual respondent, have made grants or allowances in substantial amounts in lieu of brokerage, or have made price concessions which reflect brokerage to certain buyers of said seafood products. One method used by respondents in making such grants or allowances, but not necessarily limited to this one method, was to give reduction in prices to certain buyers, or agents of buyers, which reductions were coupled with or were offset in whole or in part by a reduction of either the primary or field broker's commission or brokerage fee earned on said sales.

PAR. 5. The acts and practices of respondents, both corporate and individual, as alleged and described herein, are in violation of subsection (c) of Section 2 of the Clayton Act, as amended (U.S.C. Title 15, Section 13).

Mr. Cecil G. Miles, Mr. Charles D. Gerlinger and Mr. Franklin A. Snyder for the Commission.

Bogle, Bogle & Gates, of Seattle, Wash., by *Mr. Robert W. Graham* for respondents.

INITIAL DECISION BY EARL J. KOLB, HEARING EXAMINER

The complaint in this proceeding, issued August 6, 1959, charges violation of Section 2(c) of the Clayton Act, as amended, in connection with the packing, selling, and distributing of canned salmon and other seafood products by respondents Kadiak Fisheries Company and Chignik Fisheries Company, Washington corporations, with their principal offices and places of business located at 1826 Exchange Building, Seattle, Wash., and individual respondent Leo T. Kreielsheimer, named in the complaint as Leo T. Krielsheimer, President and Sales Manager of both of said corporations and located at the same address as the corporate respondents.

After the issuance of the complaint, respondents entered into an agreement containing consent order to cease and desist with counsel

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in support of the complaint, disposing of all the issues as to all parties in this proceedings, 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 respondents that they have violated the law as alleged in the complaint.

By the terms of said agreement, the 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.

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 provides 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, and issues the following order:

ORDER

It is ordered, That Kadiak Fisheries Company, a corporation, and its officers, Chignik Fisheries Company, a corporation, and its officers, and Leo T. Krielsheimer, named in the complaint as Leo T. Krielsheimer, individually and as an officer of said respondent corporations, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the sale

of seafood products in commerce, as "commerce" is defined in the Clayton Act, as amended, do forthwith cease and desist from:

Paying, granting, or allowing, directly or indirectly, to any buyer, or to anyone acting for or in behalf of, or who is subject to the direct or indirect control of such buyer, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, upon or in connection with any sale of seafood products to such buyer for his own account.

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 13th day of July 1960, become the decision of the Commission; and, accordingly:

It is ordered, That Kadiak Fisheries Company, a corporation, and Chignik Fisheries Company, a corporation, and Leo T. Krielsheimer, named in the complaint as Leo T. Krielsheimer, individually and as an officer of said corporations, 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

RALPH NEWBURGER DOING BUSINESS AS CHICAGO
GOLD SMELTING & REFINING COMPANY

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

Docket 7750. Complaint, Jan. 18, 1960—Decision, July 15, 1960

Consent order requiring an individual in Chicago to cease representing falsely in advertising in newspapers, magazines, and other matter that he was the largest and oldest direct mail purchaser of precious metals and diamonds, and that he paid \$35 an ounce for gold; that he was a smelter or refiner, through use of "Smelting", "Refining", or similar words in his trade name and otherwise; and that he employed a staff of experts to assay and evaluate precious metals and diamonds from would-be sellers.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Ralph Newburger, doing business as Chicago Gold Smelting & Refining Company, hereinafter referred to as respondent, has violated the provisions of said

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Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Ralph Newburger is an individual trading and doing business as Chicago Gold Smelting & Refining Company, with his office and principal place of business located at Room 1306, 6 East Monroe Street, Chicago 3, Ill.

PAR. 2. Respondent is now, and for more than two years last past has been, engaged in the purchasing of gold, silver and other precious metals and diamonds, by mail, in commerce, and at all times mentioned herein has maintained a course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 3. In the course and conduct of his business, and for the purpose of inducing the sale of gold, silver and other precious metals, and diamonds, by the public to him, respondent made certain statements and representations in newspapers of interstate circulation, trade papers, journals and magazines having national circulation, and in form letters, circulars, or other advertising material circulated by said respondent. Among and typical, but not all inclusive, of the statements and representations so made are the following:

It is a pleasure to let you know that we are the largest Direct-By-Mail gold purchasing agents in the United States.

When you deal with the Chicago Gold Smelting & Refining Company, you are taking no risk, because you are dealing with the largest and oldest Direct-By-Mail gold and diamond buying institution in the United States, * * *

Highest cash prices paid for Old and New Gold, * * *

\$35.00 per ounce is the standard price for the pure gold content.

Your articles will be carefully examined and weighed for their gold and diamond contents by our staff of gold and diamond experts.

PAR. 4. Through the use of the aforesaid statements and representations, and others similar thereto, and by the use of the words "Smelting" and "Refining" in his trade name, the respondent represents, directly and by implication:

1. That respondent is a smelter and refiner of gold and other precious metals and that he owns or controls the smeltery and refinery where the gold and other precious metals sold to him are smelted and refined.

2. That respondent is the largest and oldest direct mail purchaser of gold and diamonds.

3. That respondent pays \$35.00 an ounce for gold.

4. That respondent employs a staff of experts to assure the sellers of gold and diamonds a completely accurate assay and valuation of such products sent to him for sale.

PAR. 5. The said statements and representations, as hereinbefore set forth, are false, misleading and deceptive. In truth and in fact:

1. Respondent is not a smelter or refiner of gold and other precious metals, nor does respondent own, operate or control a smeltery or refinery.

2. Respondent is neither the largest nor oldest mail purchaser of gold or diamonds.

3. Respondent does not pay \$35.00 an ounce for gold.

4. Respondent does not maintain a staff of experts to assay and evaluate the gold or diamonds sent to him for sale.

PAR. 6. There is a preference on the part of a substantial portion of persons, having gold and other precious metals to sell, to deal direct with a smeltery or refinery, in the belief that by the elimination of middlemen the sellers will receive a higher price and other advantages.

PAR. 7. Respondent, in the course and conduct of his business, is engaged in competition in commerce with other individuals and with firms and corporations who are likewise engaged in the purchasing of gold, other precious metals and diamonds.

PAR. 8. The use by the respondent of the said trade name, statements and representations has had, and now has, the tendency and capacity to mislead a substantial portion of the public into the erroneous and mistaken belief the statements and representations were and are true, and to induce a substantial portion of the public, because of such erroneous and mistaken belief, to sell their gold and other precious metals and diamonds to the respondent. As a result of said practice, as aforesaid, trade in commerce has been, and is being, unfairly diverted to respondent from his competitors, and injury has thereby been, and is being, done to competition in commerce.

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

Mr. William A. Somers for the Commission.

Mr. Jack Rosen, of Chicago, Ill., for respondent.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

The Federal Trade Commission (sometimes also hereinafter referred to as the Commission) on January 18, 1960, issued its complaint herein, charging the above-named respondent with having

violated the provisions of the Federal Trade Commission Act in certain particulars.

On May 17, 1960, 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 May 2, 1960, 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 § 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 Ralph Newberger (erroneously referred to in the complaint as Ralph Newburger), trading and doing business as Chicago Gold Smelting & Refining Company, has his office and principal place of business located at Room 1306, 6 East Monroe Street, Chicago 3, Ill.

2. The 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.

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

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

5. 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.

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

7. 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.

8. The following order to cease and desist may be entered in this proceeding by the Commission without further notice to the respondent. When so entered it shall have the same force and effect as if entered after a full hearing. It may be altered, modified or set aside

in the manner provided for other orders. 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," said agreement is hereby approved and accepted and is ordered filed if and when said agreement shall have become a part of the Commission's decision. The hearing examiner finds from the complaint and the said agreement that the Commission has jurisdiction of the subject matter of this proceeding and of the respondent herein; that the complaint states a legal cause for complaint under the Federal Trade Commission Act against the respondent, 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 the issues in this proceeding as to all of the parties hereto; and that said order, therefore, should be and hereby is entered as follows:

It is ordered, That respondent Ralph Newberger, trading and doing business as Chicago Gold Smelting & Refining Company, or under any other name, and respondent's agents, representatives and employees, directly or through any corporate or other device, in connection with the offering to purchase or purchasing of precious metals, diamonds or other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the words "Smelting," "Refining," or any other word of similar import, in any trade or corporate name, or representing in any other manner that respondent is a smelter or refiner, or owns or controls a smeltery or refinery;

2. Representing, directly or by implication:

(a) That respondent is the largest or oldest direct mail purchaser of precious metals or diamonds; or is the largest or oldest direct mail purchaser of any other product, unless such is the fact;

(b) That respondent pays \$35.00 an ounce for gold; or pays any other amount, unless such is the fact;

(c) That respondent employs a staff of experts to assay and evaluate the precious metals, diamonds or other products sent to him by persons desiring to sell the same to him.

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 15th day of July 1960, become the decision of the Commission; and accordingly:

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It is ordered, That respondent Ralph Newberger (erroneously referred to in the complaint as Ralph Newburger), trading and doing business as Chicago Gold Smelting & Refining Company, 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
BERNARD INDUSTRIES, INC., ET AL.

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

Docket 7822. Complaint, Mar. 11, 1960—Decision, July 15, 1960

Consent order requiring a New York City distributor of men's ties falsely as "Imported from Switzerland" or "Made in Switzerland", and ties composed of material weighted with metal and blended with synthetics as "All Silk."

COMPLAINT

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

PARAGRAPH 1. Respondent Bernard Industries, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 112 Madison Avenue, in the City of New York, State of New York.

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

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of men's neckties to retailers for resale to the public.

PAR. 3. In the course and conduct of their business respondents now cause, and for some time last past have caused, their said merchandise, when sold, to be shipped from their place of business in

the State of New York to purchasers thereof located in various other states of the United States and in the District of Columbia and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business and for the purpose of inducing the sale of their said merchandise, respondents falsely represent by labels, that their said merchandise is "All Silk", "Imported from Switzerland" and "Made in Switzerland".

Certain of respondents' merchandise represented to be "All Silk" is composed of material which is weighted with metal, blended with synthetic and other material and is not "All Silk", as represented by the label.

Certain of respondents' merchandise represented as "Imported from Switzerland" and "Made in Switzerland", is manufactured in the United States.

PAR. 5. By the aforesaid practices respondents place in the hands of retailers means and instrumentalities by and through which they may mislead the public as to the character of the material in the merchandise and the country of origin thereof.

PAR. 6. In the conduct of their business and at all times mentioned herein, respondents have been in substantial competition in commerce with corporations, firms and individuals in the sale of men's silk ties of the same general kind and nature as that sold by respondents.

PAR. 7. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices, has had and now has the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of respondents' products by reason of the said erroneous and mistaken belief, and as a consequence thereof, substantial trade in commerce has been and is being unfairly diverted to respondents and their competitors and substantial injury has thereby been and is being done to competition in commerce.

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

Mr. Harry E. Middleton, Jr., for the Commission.

Spar, Schlem & Burroughs, of New York, N.Y., by Mr. Charles Spar, for respondents.

INITIAL DECISION BY EARL J. KOLB, HEARING EXAMINER

The complaint in this proceeding issued March 11, 1960, charges the respondents Bernard Industries, Inc., a New York corporation, located at 112 Madison Avenue, New York, N.Y., and Bernard Bernard and Lotte Bernard, individually and as officers of said corporation and located at the same address as the corporate respondent, with violation of the provisions of the Federal Trade Commission Act in the sale and distribution of men's neckties.

After the issuance of the complaint, respondents entered into an agreement containing consent order to cease and desist with counsel in support of the complaint, disposing of all the issues as to all parties in this proceeding.

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 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.

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 provides 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 Bernard Industries, Inc., a corporation, and its officers, and Bernard Bernard and Lotte Bernard, 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 sale and distribution of men's ties or other similar products 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 their products are of foreign origin, when, in fact, such products are manufactured in whole or in substantial part in the United States; or misrepresenting in any manner the country of origin of their products;
2. Misrepresenting in any manner the materials of which their products are made;
3. Putting into operation or participating in any plan or practice whereby retailers or others may misrepresent the origin of their products or the materials of which they are made.

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 15th day of July 1960, 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

AMERICAN INTERNATIONAL INDUSTRIES, INC., ET AL.

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

Docket 7849. Complaint, Mar. 29, 1960—Decision, July 15, 1960

Consent order requiring a Philadelphia distributor of phonograph records and record vending racks to cease using deceptive employment offers, exaggerated earnings claims, and other misrepresentations in advertising in news-

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papers and in letters and other matter mailed to prospective purchasers, as in the order below set forth, to induce purchase of its merchandise.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that American International Industries, Inc., a corporation, and Joseph Alper and N. Francis Alper, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provision of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent American International Industries, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office and place of business located at 507-12 Lewis Tower Building in the City of Philadelphia, State of Pennsylvania.

Respondents Joseph Alper and N. Francis Alper are officers of said respondent corporation. They formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of phonograph records and record vending racks. In the course and conduct of their business as aforesaid, respondents now cause and have caused said records and racks, when sold, to be shipped from their place of business in the State of Pennsylvania to purchasers thereof located in various other States of the United States and in the District of Columbia, and maintain and at all times mentioned herein have maintained a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 3. In the course and conduct of their business as aforesaid, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of phonograph records and vending racks of the same general kind and nature as those sold by respondents.

PAR. 4. In the course and conduct of their business as aforesaid, and for the purpose of inducing the sale of their phonograph records and vending racks, respondents have made various statements and

representations concerning their said products and methods of conducting their said business. Such statements and representations are made, and have been made, by means of advertisements published in The Wall Street Journal, Cleveland Plain Dealer, Richmond (Va.) News Leader and other newspapers circulated in areas where respondents do business, and by means of letters, brochures and other promotional and advertising literature mailed and circulated throughout the country to prospective purchasers.

Among and typical, and illustrative, but not all inclusive, of the statements and representations made, circulated and disseminated as aforesaid are the following:

1. (By newspaper advertisements)

DISTRIBUTOR
MALE OR FEMALE
FULL OR PART TIME

Earn extra money in your own business. No experience or personal selling necessary. Requires only few hours a week spare time to service BEST BRAND RECORD DISPLAYS, located by us in food markets, drug stores, etc. Cheap record racks are rapidly being replaced by SENSATIONAL BEST BRAND SELF-SERVICE RECORD DISPLAYS. Store makes money, so do you. Excellent profit . . . but this is NOT A GET RICH QUICK SCHEME, as we are a highly respected record company rated in Dun & Bradstreet.

Must have car and minimum of \$975 for record inventory, displays, store accounts, and advertising material. Write for local appointment, include phone number.

BEST RECORDS DIV.
American International
Industries, Inc.
Lewis Tower Bldg.
Phila. 2, Pa.

2. (By letter)

. . . this is an ideal opportunity for you to own . . . a full time, high profit, volume business . . .

. . . Best Brand Record Displays, located by us in high traffic retail stores . . .
. . . keep your racks filled with fast moving record selections.

3. (By promotional brochure)

HERE'S THAT ONCE-IN-A-LIFETIME OPPORTUNITY For Unlimited Success On A Limited Budget.

* * *

Make more money in less time than you thought possible.

* * *

YOU CAN SERVICE 5 RACKS IN ONLY 5 to 6 HOURS A WEEK And Pocket Tremendous Profits.

5 to 6 hours a week servicing your locations can bring you clear profit you never dreamed of making in so little time with so little effort. * * * It won't take long to learn this money-making business and once you do—the sky's the limit.

* * *

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POPULAR, UP-TO-DATE RECORDS SOLD AT YOUR LOCATIONS * * *
 Customers will quickly discover that the newest hits from stage, screen and
 Tin Pan Alley . . . are always available at *your* Best racks.

* * *

. . . Best can bring these superb recordings to music lovers everywhere at prices
 far below those being charged for records of comparative value.

* * *

If you cannot service "Fast-turnover" "High-profit" locations—DO NOT
 APPLY.

* * *

Q. HOW DO I KNOW THAT YOUR COMPANY IS RELIABLE?

A. We are listed by Dun & Bradstreet . . .

* * *

. . . we give the public a truly fine \$3.98 Hi-Fi value for the really sensible
 price of \$1.98

In response to inquiries induced by such advertisements, letters
 and literature, respondents or their employees, agents or representa-
 tives call upon members of the public initiating such inquiries, and
 then make oral representations repetitive or elaborative of and in
 addition to those contained in the aforementioned printed materials.

PAR. 5. Through the use of the aforesaid statements and repre-
 sentations set out and referred to in paragraph 4, above, respondents
 have represented and do now represent, directly or by implication,
 to the purchasing public, that:

1. Respondents' newspaper advertisements constituted offers of
 employment.

2. A highly profitable business could be obtained for an invest-
 ment of \$975.00.

3. All money invested by a purchaser of records and racks from
 respondents was secured by the stock he purchased, full refund of
 which money would be made by respondents on return of such stock
 to them.

4. Weekly net profits of \$50.00, \$100.00 and more would accrue to
 said purchaser on an investment of \$975.00, beginning with his place-
 ment of racks filled with records on the premises of stores located
 by respondents.

5. Respondents had negotiated contracts with The Great Atlantic
 & Pacific Tea Company, The Kroger Company, Safeway Stores,
 Inc., Sears, Roebuck & Company, Peoples Drug Stores, Inc., and
 other large and reputable food, drug and general merchandise com-
 panies and stores, by which it was agreed that respondents' distrib-
 utor in a given area would install vending racks with phonograph
 records in such companies' "high-traffic" retail stores located in that
 area.

6. In return for the payment of \$975.00 to respondents for records
 and racks the purchaser thereof would be the sole distributor of

records sold by respondents, in a given city or other defined geographical area.

7. A purchaser's opportunity for expansion, with concomitant earnings of incredible amount, was limited only by the industry of the purchaser and the size of the trading area wherein he would be the distributor.

8. A portion of all records sold by respondents to a purchaser in consideration of \$975.00 contained the newest "hit" tunes currently being sold throughout the nation; and on receipt of subsequent orders from the purchaser for the purpose of replenishing stocks, the respondents would have available current "hit" records as of that time.

9. The records sold by respondents had a retail value of \$3.98 or more each.

10. Respondents' integrity was avouched by the fact that they were listed in *Dun & Bradstreet Reference Book*.

PAR. 6. The aforesaid statements and representations were and are false, misleading and deceptive. In truth and in fact:

1. Respondents did not and do not offer employment to or employ persons answering their advertisements. The purpose of said advertising at all times has been and is to obtain leads to persons of established finances in order that a concentrated effort might be made, through personal solicitation, to induce them to enter into contracts for the purchase of phonograph records and vending racks.

2. Seldom, if ever, has an investment of \$975.00 in respondents' phonograph records, vending racks and plan of merchandising resulted in the establishment of a highly profitable business.

3. Money invested in phonograph records and vending racks was not and is not secured by stocks. The maximum amount returnable to an investor who wishes to terminate his contract with respondents and return all stock thereto is limited by contract to \$560 for each unit investment of \$975.00.

4. Seldom, if ever, have net profits of \$50.00 or more weekly been realized by purchasers, from respondents, of phonograph records and vending racks costing \$975.00. Net profits at certain rates cannot be expected by the purchaser from the beginning of operations or at any other time.

5. Respondents did not and do not have contracts with The Great Atlantic & Pacific Tea Company, The Kroger Company, Safeway Stores, Inc., Sears, Roebuck & Company, Peoples Drug Stores, Inc. or other large food, drug or general merchandise companies or stores whereby agreements had been reached which would permit purchasers of respondents' products to place vending racks and phonograph

records on store premises. Invariably, store locations were not determined until after contracts for the sale of records and racks by respondents had been negotiated between them and purchasers, and then purchasers learned that locations were available only in independently-owned restaurants, drug stores and variety stores not having the high traffic and sales potentials promised by respondents.

6. Respondents breached promises made to purchasers of their phonograph records and vending racks to preserve sales territories for the sole and exclusive distributorship of purchasers.

7. Seldom, if ever, has the purchaser of respondents' phonograph records and vending racks costing \$975.00 found that his return therefrom warranted any effort to expand his operations.

8. Few, if any, records available from respondents at the time of the initial sale thereof to purchasers, or later, contained what the consuming public considered to be the newest or current "hit" tunes.

9. Most, if not all, of the records sold by respondents could be obtained by the consuming public for \$1.98 or less from retailers selling records in competition with respondents' customers in the same trading areas where said customers attempted to establish themselves in business.

10. The corporate respondent's listing in *Dun & Bradstreet Reference Book* signified nothing more than that it had a certain credit rating and a certain estimated financial worth.

PAR. 7. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of respondents' phonograph records and vending racks by reason of said erroneous and mistaken beliefs. As a consequence thereof, substantial trade in commerce has been, and is being, unfairly diverted to respondents from their competitors and substantial injury has thereby been, and is being, done to competition in commerce.

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

Mr. Berryman Davis for the Commission.

Ochman and Greenberg, of Philadelphia, by *Mr. Stanley M. Greenberg*, for respondents.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

The complaint in this matter charges the respondents with violation of the Federal Trade Commission Act through the making of certain misrepresentations in connection with the sale of phonograph records and vending racks. 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 is 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 American International Industries, Inc., is a corporation organized, existing and doing business under the laws of the State of Pennsylvania, with its principal office and place of business located at 507-12 Lewis Tower Building, Philadelphia. The individual respondents, Joseph Alper and N. Francis Alper are officers of said corporate respondent, and formulate, direct and control the acts and practices of the corporate respondent. 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, and the proceeding is in the public interest.

ORDER

It is ordered, That respondents American International Industries, Inc., a corporation, and its officers, and Joseph Alper and N. Francis

Alper, individually and as officers of said corporation, and each of them, 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 devices which vend merchandise or which are accessory to the vending of merchandise, or of the merchandise to be vended, 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 by respondents or any of them, or by any other person, firm or corporation.

2. A highly profitable business can be obtained by purchasing or dealing in such devices or merchandise.

3. The investment required to purchase such devices or merchandise is secured or will be refunded if the purchaser requests full refund.

4. Profits in any amount can be realized in excess of the average profits realized by all of their customers contemporaneously engaged in the operation of similar devices situated in similar locations and engaged in selling the same kind of merchandise.

5. Respondents, or any of them, have contracts, understandings or agreements with any persons, firms or corporations whereby it is understood or agreed that such persons, firms, or corporations will permit purchasers of such devices or merchandise to install or place the same for sale on their premises.

6. Customers will be granted exclusive sales territories or be the sole distributors of such devices or merchandise in given areas.

7. Opportunity exists for growth in the sale of such merchandise purchased from respondents or any of them.

8(a). Any phonograph records sold by respondents or any of them are new tunes or current hit tunes.

(b) Respondents, or any of them, will make available to customers phonograph records not yet manufactured, as and when such records appear on the market and become popular with consumers in the trade areas where said customers do business.

9. The retail value of any merchandise is in excess of the price at which such merchandise is usually and customarily sold in the trade area or areas in which the representation is made.

10. The integrity of respondents, or any of them, is avouched by Dun & Bradstreet.

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 15th day of July 1960, 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
ERIC DISTRIBUTING COMPANY ET AL.

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

Docket 7796. Complaint, Feb. 25, 1960—Decision, July 16, 1960

Consent order requiring San Francisco, Calif., distributors for several record manufacturers to retail outlets and jukebox operators, to cease paying concealed "payola" to television and radio disc jockeys to have their records broadcast day after day in order to increase sales.

COMPLAINT

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

PARAGRAPH 1. Respondent Eric Distributing Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at 1251 Folsom Street, in the City of San Francisco, State of California.

Respondent Irving Pinensky is the president of the respondent corporation and formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices herein set out. The address of the individual respondent is the same as that of said corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the offering for sale, sale and distribution of phonograph records as an independent distributor for several record manufacturers to retail outlets and jukebox operators in various States of the United States.

In the course and conduct of their business, respondents now cause, and for some time last past have caused, the records they distribute, when sold, to be shipped from their place of business in

the State of California, to purchasers thereof located in various other States of the United States, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in phonograph records in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 3. In the course and conduct of their business, at all times mentioned herein, respondents have been, and are now, in substantial competition, in commerce, with corporations, firms and individuals in the sale and distribution of phonograph records.

PAR. 4. After World War II, when television and radio stations shifted from "live" to recorded performances for much of their programming, the production, distribution and sale of phonograph records emerged as an important factor in the musical industry with a sales volume of approximately \$400,000,000 in 1958.

Record manufacturing companies and distributors ascertained that popular disk jockeys could, by "exposure" or the playing of a record day after day, sometimes as high as six to ten times a day, substantially increase the sales of those records so "exposed." Some record manufacturers and distributors obtained and insured the "exposure" of certain records in which they were financially interested by disbursing "payola" to individuals authorized to select and "expose" records for both radio and television programs.

"Payola", among other things, is the payment of money or other valuable consideration to disk jockeys of musical programs on radio and television stations to induce, stimulate or motivate the disk jockeys to select, broadcast, "expose" and promote certain records in which the payer has a direct financial interest.

Disk jockeys, in consideration of their receiving the payments heretofore described, either directly or by implication represent to their listening public that the records "exposed" on their broadcasts have been selected on their personal evaluation of each record's merits or its general popularity with the public, whereas, in truth and in fact, one of the principal reasons or motivations guaranteeing the record's "exposure" is the "payola" payoff.

PAR. 5. In the course and conduct of their business in commerce during the last several years, the respondents have engaged in unfair and deceptive acts and practices and unfair methods of competition in the following respects:

The respondents alone, or with certain unnamed record manufacturers, negotiated for and disbursed "payola" to disk jockeys broadcasting musical programs over radio or television stations broadcasting across State lines, or to other personnel who influenced the selection of the records "exposed" by the disk jockeys on such programs.

Deception is inherent in "payola" inasmuch as it involves the payment of a consideration on the express or implied understanding that the disk jockey will conceal, withhold or camouflage such fact from the listening public.

The respondents, by participating individually or in a joint effort with certain collaborating record manufacturers, have aided and abetted the deception of the public by various disk jockeys by controlling or unduly influencing the "exposure" of records by disk jockeys with the payment of money or other consideration to them, or to other personnel which select or participate in the selection of the records used on such broadcasts.

Thus, "payola" is used by the respondents to mislead the public into believing that the records "exposed" were the independent and unbiased selections of the disk jockeys based either on each record's merit or public popularity. This deception of the public has the capacity and tendency to cause the public to purchase the "exposed" records which they otherwise might not have purchased and, also, to enhance the popularity of the "exposed" records in various popularity polls, which in turn has the capacity and tendency to substantially increase the sales of the "exposed" records.

PAR. 6. The aforesaid acts, practices and methods have the capacity and tendency to mislead and deceive the public, and to hinder, restrain and suppress competition in the offering for sale, sale and distribution of phonograph records, and to divert trade unfairly to the respondents from their competitors, and substantial injury has thereby been done and may continue to be done to competition in commerce.

PAR. 7. The aforesaid acts and practices of respondents, as alleged herein, were and are all to the prejudice and injury of the public and of respondents' competitors and constitute unfair and deceptive acts and practices and unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

Mr. John T. Walker and Mr. James H. Kelley for the Commission.

Howard & Prim, by Mr. N. Richard Smith, of San Francisco, Calif., for respondents.

INITIAL DECISION BY WALTER R. JOHNSON, HEARING EXAMINER

In the complaint dated February 25, 1960, the respondents are charged with violating the provisions of the Federal Trade Commission Act.

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On April 6, 1960, the respondents and their attorney entered into an agreement with counsel in support of the complaint for a consent order.

Under the foregoing agreement, the respondents admit the jurisdictional facts alleged in the complaint. The parties agree, among other things, that the cease and desist order there set forth may be entered without further notice and have the same force and effect as if entered after a full hearing and the document includes a waiver by the respondents of all rights to challenge or contest the validity of the order issuing in accordance therewith. The agreement further recites that it 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.

The hearing examiner finds that the content of the agreement meets all of the requirements of Section 3.25(b) of the Rules of the Commission.

The hearing examiner being of the opinion that the agreement and the proposed order provide an appropriate basis for disposition of this proceeding as to all of the parties, the agreement is hereby accepted and it is ordered that the agreement shall not become a part of the official record of the proceeding unless and until it becomes a part of the decision of the Commission. The following jurisdictional findings are made and the following order issued.

1. Respondent Eric Distributing Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at 1251 Folsom Street, in the City of San Francisco, State of California.

Respondent Irving Pinensky is the president of the respondent corporation and his address is the same as that of said corporate respondent.

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

ORDER

It is ordered, That respondents Eric Distributing Company, a corporation, and its officers, and Irving Pinensky, 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 phonograph records which have been distributed, in commerce, or which are used by radio or television stations in broadcasting programs in commerce, as "commerce" is de-

fined in the Federal Trade Commission Act, do forthwith cease and desist from:

(1) Giving or offering to give, without requiring public disclosure, any sum of money or other material consideration, to any person, directly or indirectly, to induce that person to select, or participate in the selection of, and the broadcasting of, any such records in which respondents, or either of them, have a financial interest of any nature.

(2) Giving or offering to give, without requiring public disclosure, any sum or money, or other material consideration, to any person, directly or indirectly, as an inducement to influence any employee of a radio or television broadcasting station, or any other person, in any manner, to select, or participate in the selection of, and the broadcasting of, any such records in which respondents, or either of them, have a financial interest of any nature.

There shall be "public disclosure" within the meaning of this order, by any employee of a radio or television broadcasting station, or any other person, who selects or participates in the selection and broadcasting of a record when he shall disclose, or cause to have disclosed, to the listening public at the time the record is played, that his selection and broadcasting of such record are in consideration for compensation of some nature, directly or indirectly, received by him or his employer.

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 16th day of July 1960, 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

J. D. BRUMBACH DOING BUSINESS AS J. D. BRUMBACH
QUILTING MILL

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

Docket 7823. Complaint, Mar. 11, 1960—Decision, July 16, 1960

Consent order requiring a manufacturer in Reading, Pa., to cease violating the Wool Products Labeling Act by such practices as labeling as "wool" and

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invoicing as "Reproc. Wool", quilted woolen lining and interlining materials which contained a substantial quantity of non-woolen fibers, and by failing in other respects to comply with labeling requirements.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that J. D. Brumbach, an individual doing business as J. D. Brumbach Quilting Mill, hereinafter referred to as the respondent, has violated the provisions of said Acts and the Rules and Regulations promulgated under said Wool Products Labeling Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent J. D. Brumbach is an individual doing business under the firm name, J. D. Brumbach Quilting Mill. His office and place of business is located at 921 Douglas Street, Reading, Pa.

PAR. 2. Subsequent to the effective date of the Wool Products Labeling Act of 1939, and more especially since January 1, 1959, respondent has manufactured for introduction into commerce, 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.

PAR. 3. Certain of said wool products were misbranded by the respondent within the intent and meaning of Section 4(a)(1) of the Wool Products Labeling Act and the Rules and Regulations promulgated thereunder, in that they were falsely and deceptively labeled or tagged with respect to the character and amount of the constituent fibers contained therein.

Among such misbranded wool products were quilted woolen lining and interlining materials labeled or tagged by the respondent as "wool", whereas, in truth and in fact said products contained a substantial quantity of fibers other than wool.

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

PAR. 5. The respondent in the course and conduct of his business, as aforesaid, was and is in substantial competition with corporations, firms and other individuals in the manufacture and sale of wool products, including quilted woolen lining and interlining materials.

PAR. 6. The acts and practices of the respondent as set forth above were, and are, in violation of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, and constituted, and now constitute, unfair and deceptive acts and practices and unfair methods of competition in commerce, within the intent and meaning of the Federal Trade Commission Act.

PAR. 7. In the course and conduct of his business, as aforesaid, respondent has made various statements concerning his wool products on sales invoices. Among and typical, but not all inclusive, of such statements was the term "Reproc. Wool".

PAR. 8. The aforesaid statement as to fiber content was false, misleading and deceptive, since, in truth and in fact, said quilted lining and interlining materials were not composed exclusively of reprocessed wool but contained substantially less woolen fiber than represented on said invoices.

PAR. 9. The practice of respondent of selling his misbranded wool products to manufacturers of garments and of furnishing false invoices to such manufacturers has the tendency and capacity to cause such manufacturers to misbrand the garments in which said products are used.

PAR. 10. The acts and practices of respondent as alleged in paragraph 7, were and are to the prejudice and injury of the public and of the respondent's competitors and constituted, and now constitute, unfair and deceptive acts and practices and unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

Mr. Harry E. Middleton, Jr., supporting the complaint.

DeLong, Dry & Binder, of Reading, Pa., for respondent. *Mr. John W. Dry* of Counsel.

INITIAL DECISION BY LEON R. GROSS, HEARING EXAMINER

On March 11, 1960, the Federal Trade Commission issued a complaint against the above-named respondent charging him with: Misbranding certain products sold by him in interstate commerce, in contravention of the requirements of Section 4(a)(1) of the Wool Products Labeling Act and the Rules and Regulations promulgated thereunder; failing to stamp, tag or label certain products sold by respondent in interstate commerce as required under the provisions of Section 4(a)(2) of the Wool Products Labeling Act and the Rules and Regulations issued thereunder. A true and correct copy of the complaint was served upon respondent as required by law. Respondent appeared in this proceeding by counsel and thereafter entered into an Agreement Containing Consent Order to Cease and

Desist which is dated May 4, 1960. The agreement has been signed by respondent and his attorney. It has also been signed by counsel supporting the complaint, and approved by the Director, Associate Director and Assistant Director of the Bureau of Litigation of the Federal Trade Commission. The agreement provides that it is to be a definitive disposition of all issues in this proceeding, as to all of the parties herein involved. On May 12, 1960, the agreement was submitted to the undersigned hearing examiner.

In the agreement of May 4, 1960, 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.

In said agreement respondent waives (a) any further procedural steps before the hearing examiner and the Federal Trade Commission; (b) the making of findings of fact or conclusions of law; (c) all rights respondent may have to challenge or contest the validity of the cease and desist order entered pursuant to the agreement. The parties to the agreement of May 4, 1960, agree further that the record upon which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and this 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. The agreement provides further that the order to cease and desist entered in accordance with its provisions may be entered without further notice to the respondent; that the order, when so entered shall have the same force and effect as if entered after a full hearing; that the order 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 agreement provides that it is for settlement purposes only and does not constitute an admission by respondent that he has violated the law as alleged in the complaint.

This proceeding having now come on for final consideration on the complaint and the aforesaid agreement of May 4, 1960, containing consent order, and it appearing that the order provided for in said agreement covers all of the allegations of the complaint and provides for an appropriate disposition of this proceeding as to all parties; the agreement of May 4, 1960, is hereby accepted, approved and ordered filed at the same time that this decision becomes the decision of the Federal Trade Commission pursuant to Sections 3.21 and 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings; and

The undersigned hearing examiner having considered the agreement and proposed order and being of the opinion that the ac-

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ceptance thereof will be in the public interest, makes the following jurisdictional findings, and issues the following order:

JURISDICTIONAL FINDINGS

1. That the Federal Trade Commission has jurisdiction over the parties and the subject matter of this proceeding;
2. Respondent J. D. Brumbach is an individual with his office and principal place of business located at 921 Douglas Street, Reading, Pennsylvania, where he does business as J. D. Brumbach Quilting Mill.
3. Respondent is engaged in commerce as "commerce" is defined in the Federal Trade Commission Act.
4. The complaint herein states a cause of action against said respondent under the Federal Trade Commission Act, and the Wool Products Labeling Act, and this proceeding is in the public interest.

ORDER

It is ordered, That respondent J. D. Brumbach, an individual doing business as J. D. Brumbach Quilting Mill, or under any other name, and respondent's 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 interlinings or other wool products, as "wool products" are defined in and subject to the Wool Products Labeling Act, do forthwith cease and desist from misbranding such products by:

1. Falsely or deceptively stamping, tagging, labeling or identifying such products as to the character or amount of the constituent fibers contained therein.
2. Failing to affix labels to such products showing each element of information required to be disclosed by Section 4(a) (2) of the Wool Products Labeling Act of 1939.

It is further ordered, That respondent J. D. Brumbach, an individual, doing business as J. D. Brumbach Quilting Mill or under any other name, 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 of his products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting the constituent fiber of which his products are composed or the per-

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centages of amounts thereof in sales, 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 16th day of July 1960, 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

SPARTAN ELECTRIC RADIATOR CORPORATION

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

Docket 7839. Complaint, Mar. 21, 1960—Decision, July 16, 1960

Consent order requiring a New York City distributor of chrome-plated brass shower heads imported from Japan to cease furnishing to its retailer-customers advertising material—in payment of the cost of which it participated—setting out various fictitious amounts as “Value” or as “Usually”, together with lesser sales prices, thereby falsely representing the “Value” and “Usually” prices as the usual retail selling prices, and the difference between the larger and smaller amounts as the purchaser's savings.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the Spartan Electric Radiator Corporation, a corporation, hereinafter referred to as the respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows:

PARAGRAPH 1. Respondent Spartan Electric Radiator Corporation is a New York corporation with its office and principal place of business located at 52-55 74th Street, Maspeth 78, N.Y.

PAR. 2. Respondent is the distributor of chrome-plated brass shower heads imported from Japan and causes and has caused such

