

Complaint

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IN THE MATTER OF

CADET DISTRIBUTING COMPANY, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket 8037. Complaint, July 11, 1960—Decision, Oct. 4, 1960*

Consent order requiring distributors of phonograph records in Detroit, Mich., to cease giving concealed payola to disc jockeys or other personnel of radio and television programs to induce frequent playing of their records 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 Cadet Distributing Company, Inc., a corporation, and Harry Levin, Hyme Levin and Isadore Levin, 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 Cadet Distributing Company, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Michigan, with its principal office and place of business located at 3766 Woodward Avenue, in the City of Detroit, State of Michigan.

Respondents Harry Levin, Hyme Levin and Isadore Levin 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 distribution, offering for sale and sale of phonograph records to various retail outlets and jukebox operators.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said records, when sold, to be shipped from Michigan to purchasers thereof located in northwestern Ohio, and maintain, and at all times mentioned herein have maintained, a course of trade in said phonograph records in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business, and at all times mentioned herein, respondents have been in competition, in

commerce, with corporations, firms and individuals in the sale of phonograph records.

PAR. 5. After World War II when TV 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 6 to 10 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 TV programs.

"Payola," among other things, is the payment of money or other valuable consideration to disk jockeys of musical programs on radio and TV stations to induce, stimulate or motivate the disk jockey to select, broadcast, "expose" and promote certain records in which the payer has a 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. 6. 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 distributors 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 influence 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 distributors have aided and abet-

ted 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 selection 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 might otherwise 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. 7. 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 manufacture, sale or distribution of phonograph records, and to divert trade unfairly to the respondents from their competitors and injury has thereby been done and may continue to be done to competition in commerce.

PAR. 8. 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. Arthur Wolter, Jr., for the Commission.

Mr. Nathan E. Shur, of Detroit, Mich., for respondents.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The complaint charges respondents, who are engaged in the distribution, offering for sale and sale of phonograph records to various retail outlets and jukebox operators, with violation of the Federal Trade Commission Act, in that respondents, alone or with certain unnamed record distributors, have negotiated for and disbursed "payola", i.e., 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 respondents are financially interested, on the express or implied understanding that the disk jockeys will conceal, withhold or camouflage the fact of such payment from the listening public.

After the issuance of the complaint, respondents, their counsel, and counsel supporting the complaint entered into an agreement containing consent order to cease and desist, which was approved by the Director, Acting Associate Director and Acting Assistant Director of the Commission's Bureau of Litigation, and thereafter transmitted to the Hearing Examiner for consideration.

The agreement states that respondent Cadet Distributing Company, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of Michigan, with its office and principal place of business located at 3766 Woodward Avenue, Detroit, Michigan, and that respondents Harry Levin, Hyme Levin and Isadore Levin are officers of the corporate respondent and formulate, direct and control the acts and practices of the corporate respondent, their address being the same as that of the corporate respondent.

The agreement provides, among other things, that 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; that 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; 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 the complaint may be used in construing the terms of the order agreed upon, which may be altered, modified or set aside in the manner provided for other orders; 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; and that the order set forth in the agreement and hereinafter included in this decision shall have the same force and effect as if entered after a full hearing.

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 desist entered in accordance with the agreement.

The Hearing Examiner has determined that the aforesaid agreement containing the consent order to cease and desist provides for an appropriate disposition of this proceeding in the public interest, and such agreement is hereby accepted. Therefore,

It is ordered, That respondents Cadet Distributing Company, Inc., a corporation, and its officers, and Harry Levin, Hyme Levin, and Isadore Levin, individually and as officers 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 defined 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 any of them, have a financial interest of any nature:

2. Giving or offering to give, without requiring public disclosure, any sum of 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 any 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 4th day of October, 1960, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Cadet Distributing Company, Inc., a corporation, and Harry Levin, Hyme Levin, and Isadore Levin, 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.

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IN THE MATTER OF

IPSWICH HOSIERY COMPANY, INC.

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

Docket 7715. Complaint, Jan. 5, 1960—Decision, Oct. 12, 1960

Consent order requiring a distributor of women's hosiery in Manchester, N.H., to cease violating Sec. 2(d) of the Clayton Act by paying certain of its jobber customers for advertising but not their competitors, such as payments of \$450, \$500, and \$900 made in the years 1957, 1958, and 1959 to one Houston, Tex., purchaser.

COMPLAINT

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

PARAGRAPH 1. Respondent, Ipswich Hosiery Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Hampshire, with its principal office and place of business located at 540 North Commercial Street, Manchester, New Hampshire.

PAR. 2. Respondent is now and has been engaged in the sale and distribution of women's hosiery which it sells directly to retailer customers and to wholesalers and jobbers located throughout the United States. Respondent's total sales for the year 1958 were in excess of two million dollars.

PAR. 3. In the course and conduct of its business, respondent has engaged and is now engaging in commerce, as "commerce" is defined in the Clayton Act, as amended. Respondent causes the products which it sells to be transported from the State of New Hampshire to customers located in other states throughout the United States and in the District of Columbia.

PAR. 4. In the course and conduct of its business in commerce, respondent paid, or contracted for the payment of, something of value to or for the benefit of some of its customers as compensation or in consideration for services and facilities furnished by or through such customers in connection with their offering for sale or sale of products sold to them by said respondent, and such payments were not made available on proportionally equal terms to all

customers competing in the sale and distribution of respondent's products.

PAR. 5. For example, respondent contracted to pay and did pay to J. Weingarten, Inc., of Houston, Texas, during the year 1957, \$450; during the year 1958, \$500; during the year 1959, \$900, as compensation or as allowances for advertising or other service or facility furnished by or through J. Weingarten, Inc., in connection with its offering for sale or sale of products sold to it by respondent. Such compensation or allowances were not offered or otherwise made available on proportionally equal terms to all other customers competing with J. Weingarten, Inc. in the sale and distribution of respondent's products.

PAR. 6. The acts and practices of respondent, as alleged above, violate subsection (d) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

Mr. Fredric T. Suss and *Mr. Timothy J. Cronin, Jr.*, for the Commission.

Mr. Coleman T. Bahn, of Boston, Mass., and *Steptoe & Johnson*, by *Mr. I. Martin Leavitt*, of Washington, D.C., for respondent.

INITIAL DECISION BY WALTER R. JOHNSON, HEARING EXAMINER

In the complaint dated January 5, 1960, the respondent is charged with violating the provisions of subsection (d) of section 2 of the Clayton Act, as amended.

On August 2, 1960, the respondent and its attorneys entered into an agreement with counsel in support of the complaint for a consent order.

Under the foregoing agreement, the respondent admits 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 respondent 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 respondent that it has 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 Ipswich Hosiery Company, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of New Hampshire, with its principal office and place of business located at 540 North Commercial Street, Manchester, New Hampshire.

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

ORDER

It is ordered, That Ipswich Hosiery Company, Inc., a corporation, its officers, employees, agents or representatives, directly or through any corporate or other device, in or in connection with the sale in commerce, as "commerce" is defined in the Clayton Act, as amended, of hosiery products, do forthwith cease and desist from:

Making or contracting to make, to or for the benefit of J. Weingarten, Inc., or any other customer, any payment of anything of value as compensation or in consideration for advertising or other services or facilities furnished by or through such customer, in connection with the handling, offering for resale, or resale of the respondent's hosiery products, unless such payment is made available on proportionally equal terms to all other customers competing in the distribution or resale of such products.

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 12th day of October, 1960, become the decision of the Commission; and, accordingly:

It is ordered, That respondent herein 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
CONTACT LENS SPECIALISTS, INC., ET AL.

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

Docket 7948. Complaint, June 16, 1960—Decision, Oct. 12, 1960

Consent order requiring Boston sellers to cease representing falsely in advertising that all persons could wear their contact lenses and without discomfort; that eyeglasses could be discarded; that the lenses would correct all defects in vision; and that they differed from other lenses.

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 Contact Lens Specialists, Inc., a corporation, and Leonard G. Wolfson, 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 Contact Lens Specialists, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts, with its office and principal place of business located at 77 Summer Street, Boston, Massachusetts. Individual respondent Leonard G. Wolfson is an officer of said corporation. He formulates, directs and controls the policies of the corporate respondent. His address is the same as that of the corporate respondent.

PAR. 2. The respondents are now, and for some years last past have been, engaged in the advertising, offering for sale, and sale of corneal contact lenses. Contact lenses are designed to correct errors and deficiencies in the vision of the wearer, and are devices as "device" is defined in the Federal Trade Commission Act.

PAR. 3. In the course and conduct of their aforesaid business, respondents have disseminated, and have caused the dissemination of, advertisements concerning the said devices by the United States mails, and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, including, but not limited to, advertisements inserted in newspapers of general circulation and by means of circulars and pamphlets, for the purpose of inducing, and which were likely to induce, directly or indirectly, the purchase of

said devices; and have disseminated, and caused the dissemination of, advertisements concerning their said devices by various means, including but not limited to the aforesaid media, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said devices, in commerce, as "commerce" is defined in the Federal Trade Commission Act.

Among and typical of the statements contained in advertisements disseminated and caused to be disseminated, as aforesaid, are the following:

"I wish I could see without glasses." She *can* see without glasses—and see *better*! So can you—and you—and you! Thousands of contact lens wearers enjoy better vision—without glasses—thanks to the amazing Ever-Flo Process.

EVER-FLO PROCESS—makes contacts "as comfortable as all outdoors."

EVER-FLO PROCESS—A must for eye comfort and health.

Hey! you with the eyeglasses! See better with complete comfort—and safety—without glasses!

EVER-FLO PROCESS makes all day wearing of Contact Lenses the usual thing. Not a contact lens but an exclusive registered process for fitting our vented—circle grooved—contoured—all types of contact lenses.

The EVER-FLO PROCESS modifies and individualizes the contact lens * * * eliminates all interference by the lens with normal eye functions. Eyelid and Tear action continue normally as nature intended. The only way to be sure is to have us fit you with vented, * * * or circle-grooved—or contoured contact lenses by the EVER-FLO PROCESS.

PAR. 4. By and through the statements made in said advertisements, disseminated and caused to be disseminated as aforesaid, respondents represented, directly or by implication, that:

1. All persons in need of visual correction can successfully wear respondents' contact lenses.
2. There is no discomfort from wearing respondents' contact lenses.
3. Eyeglasses can be discarded upon the purchase of respondents' contact lenses.
4. Respondents' contact lenses will correct all defects in vision.
5. Respondents' contact lenses are different than other contact lenses in that they permit tears to bathe the cornea of the eye.

PAR. 5. The advertisements containing the aforesaid statements were, and are, misleading in material respects and constituted, and now constitute, "false advertisements", as that term is defined in the Federal Trade Commission Act. In truth and in fact:

1. A significant number of persons cannot successfully wear respondents' contact lenses.
2. Practically all persons will experience some discomfort after starting to wear respondents' contact lenses. In a significant num-

ber of cases discomfort will be prolonged and in some cases will never be overcome.

3. Eyeglasses cannot always be discarded upon the purchase of respondents' contact lenses.

4. Respondents' contact lenses will not correct all defects in vision.

5. Contact lenses other than respondents' permit tears to bathe the cornea of the eye.

PAR. 6. Respondents state in their advertising matter, as aforesaid, that there is no discomfort in wearing their contact lenses. In addition, they state—"EVER-FLO PROCESS makes all day wearing of Contact Lenses the usual thing." Said advertisements are misleading in a material respect in that they fail to reveal facts material in the light of such representations, that is, that no person can wear their said lenses all day without discomfort until he or she has become fully adjusted thereto.

PAR. 7. The dissemination by the respondents of the false advertisements, as aforesaid, constituted unfair and deceptive acts and practices, in commerce, within the intent and meaning of the Federal Trade Commission Act.

Mr. Garland S. Ferguson supporting the complaint.

Miller & Miller, of Boston, Mass., for respondents.

INITIAL DECISION OF JOHN LEWIS, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on June 16, 1960, charging them with the use of unfair and deceptive acts and practices in commerce, in violation of the Federal Trade Commission Act, by falsely advertising certain contact lenses manufactured and sold by them. After being served with said complaint, respondents appeared by counsel and entered into an agreement dated August 12, 1960, containing a consent order to cease and desist purporting to dispose of all of this proceeding as to all parties. Said agreement, which has been signed by respondents, by counsel for said respondents and by counsel supporting the complaint, and approved by the Director, Acting Associate Director and Acting 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 facts alleged in the complaint and agreed that the record may be taken as if findings of jurisdictional facts had been 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 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.

The order which has been agreed upon provides that the complaint shall be dismissed as to respondent Leonard G. Wolfson as an officer of the corporate respondent. The basis for such a disposition as to said respondent is set forth in an affidavit by him which has been submitted together with, and as part of, the above-mentioned agreement containing consent order. Said affidavit, which was subscribed and sworn to on August 2, 1960, recites that respondent Leonard G. Wolfson severed all connection as an officer and director of the corporate respondent on January 19, 1960, and has completely divorced himself from the direct or indirect control of the business and advertising of said respondent, to the extent he ever had any connection therewith.

This proceeding having now come on for final consideration on the complaint and the aforesaid agreement containing consent order, together with the affidavit of Leonard G. Wolfson which has been made a part of said agreement, 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 Section 3.21 and 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings, and the hearing examiner, accordingly, makes the following jurisdictional findings and order:

1. Corporate respondent Contact Lens Specialists, Inc., is a corporation existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts with its office and principal place of business located at 77 Summer Street, Boston, Massachusetts. Leonard G. Wolfson, an individual, was formerly an officer of the corporate respondent, and was so named in the com-

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plaint. His address is now 54 Amherst Road, Newton, Massachusetts.

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 this proceeding is in the interest of the public.

ORDER

It is ordered, That respondents Contact Lens Specialists, Inc., a corporation, and its officers, and Leonard G. Wolfson, individually and as a former officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of their contact lenses, do forthwith cease and desist, directly or indirectly, 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:

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

(b) There is no discomfort from wearing respondents' contact lenses.

(c) A person can wear said contact lenses all day without discomfort unless it is clearly revealed that this is possible only after such person has become fully adjusted thereto.

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

(e) Respondents' contact lenses will correct all defects in vision.

(f) Respondents' contact lenses are different than other contact lenses in that they permit tears to bathe the cornea of the eye of the wearer; or are different in any other respect, unless such is the fact.

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 said products, 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 reveal the facts set out in paragraph 1(c) above.

It is further ordered, That the complaint be, and the same hereby is, dismissed as to Leonard G. Wolfson as an officer of said corporation.

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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 12th day of October, 1960, become the decision of the Commission; and, accordingly:

It is ordered, That respondent Contact Lens Specialists, Inc., a corporation and Leonard G. Wolfson, individually, 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

ELLIOTT KAPCHAN DOING BUSINESS AS
DR. E. KAPCHAN & ASSOCIATES, OPTOMETRISTS, ETC.

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

Docket 7953. Complaint, June 16, 1960—Decision, Oct. 12, 1960

Consent order requiring sellers of corneal contact lenses in Alameda, Calif., to cease representing falsely in advertising that their lenses could be worn successfully by all persons, and worn all day without discomfort; that the lenses would stay in place under all conditions; and that upon purchase thereof, eyeglasses could be discarded.

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 Elliott Kapchan, individually and trading and doing business as Dr. E. Kapchan and Dr. J. Jackson, Optometrists, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Elliott Kapchan is an individual trading and doing business under the name of Dr. E. Kapchan and Dr. J. Jackson, Optometrists, with his office and principal place of business located at 2331 Santa Clara Avenue, Alameda, California.

PAR. 2. Respondent is now and for some time last past has been engaged in, the advertising, offering for sale and sale of corneal contact lenses. Corneal contact lenses are devices designed to correct

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errors and deficiencies in the vision of the wearer, and are devices as "device" is defined in the Federal Trade Commission Act.

PAR. 3. In the course and conduct of his aforesaid business respondent has disseminated and has caused the dissemination of advertisements concerning the said devices by the United States mails and by various other means in commerce as "commerce" is defined in the Federal Trade Commission Act, including, but not limited to, advertisements inserted in newspapers of general circulation and by means of circulars and pamphlets, for the purpose of inducing, and which were likely to induce, directly or indirectly, the purchase of said devices; and has disseminated, and caused the dissemination of advertisements concerning his said devices by various means, including but not limited to the aforesaid media, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said devices, in commerce as "commerce" is defined in the Federal Trade Commission Act.

Among and typical of the statements and representations contained in advertisements disseminated and caused to be disseminated, as aforesaid, are the following:

Now enjoy all-day wear with Comfort Improved Vision Invisibility. You'll get so much more out of life without glasses! The safety The comfort, the new freedom you enjoy with Contacts—will convince you never to wear glasses again.

* * * * *
Our Guaranteed Trial Wearing Program Insures: Comfort, Improved vision, Invisibility through All-Day WEAR. * * *

* * * * *
Now all day comfort!

* * * * *
No tiring weight, no glass to break, no falling off.
Contact lenses small as a cigarette tip—wear them all day. Now available in single lens or bifocals. Everything's better WITHOUT GLASSES! Reading, Sports, Dancing, Working.

PAR. 4. By and through the statements made in said advertisements disseminated and caused to be disseminated as aforesaid, respondent represented, directly or by implication that:

1. All persons in need of visual correction can successfully wear respondent's contact lenses.
2. There is no discomfort in wearing respondent's contact lenses.
3. Respondent's contact lenses can be worn all day with complete comfort.
4. Eye glasses can be discarded upon the purchase of respondent's contact lenses.
5. That respondent's contact lenses will stay in place under all conditions.

PAR. 5. The advertisements containing the aforesaid statements and representations are misleading in material respects and constitute "false advertisements," as that term is defined in the Federal Trade Commission Act. In truth and in fact:

1. A significant number of persons cannot successfully wear respondent's contact lenses.
2. Practically all persons will experience some discomfort when first wearing respondent's contact lenses. In a significant number of cases such discomfort will be prolonged and in some cases will never be overcome.
3. Many persons cannot wear respondent's contact lenses all day with complete comfort until he or she has become fully adjusted thereto.
4. Eyeglasses can not always be discarded upon the purchase of respondent's contact lenses.
5. Respondent's contact lenses will not stay in place under certain conditions.

PAR. 6. The dissemination by respondent of the aforesaid false advertisements constitutes unfair and deceptive acts and practices, in commerce, within the intent and meaning of the Federal Trade Commission Act.

Mr. Garland S. Ferguson for the Commission.

Mr. Albert E. Levy, of San Francisco, Calif., 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, on June 16, 1960, charging the above-named respondent with having violated the provisions of the Federal Trade Commission Act in certain procedures.

On August 12, 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 supporting the complaint, under date of August 7, 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. Elliott Kapchan is an individual presently trading and doing business as Dr. E. Kapchan & Associates, Optometrists, and as E. Kapchan, O. D. & Associates. He has also traded and done business as Dr. E. Kapchan and Dr. J. Jackson, Optometrists, and was so named in the complaint. His office and principal place of business is located at 2331 Santa Clara Avenue, Alameda, California.

2. 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. 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 they 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 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," the latter is hereby approved, accepted and ordered filed, the same not to become a part of the record herein, however, unless and until it becomes a part of the decision of the Commission. 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 each of the parties hereto; that the complaint states a legal cause for complaint under the Federal Trade Commission Act, 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 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 Elliott Kapchan, an individual trading and doing business as Dr. E. Kapchan & Associates, Optometrists, and as E. Kapchan, O. D. & Associates, or under any other name or names, his representatives, agents and employees, directly or through any corporate or other device, in connection with the sale of contact lenses do forthwith cease and desist from directly or indirectly:

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:

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

(b) There is no discomfort in wearing respondent's contact lenses;

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

(d) Eyeglasses can always be discarded upon the purchase of respondent's contact lenses;

(e) That respondent's contact lenses will stay in place under all conditions.

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 lenses, 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 shall, on the 12th day of October 1960, become the decision of the Commission; and, accordingly:

It is ordered, That respondent Elliott Kapchan, an individual trading and doing business as Dr. E. Kapchan & Associates, Optometrists, and as E. Kapchan, O. D. & Associates, shall, within

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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

MAXINE'S, INC., ET AL.

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

Docket 7989. Complaint, June 24, 1960—Decision, Oct. 12, 1960

Consent order requiring Pittsburgh furriers to cease violating the Fur Products Labeling Act by labeling which falsely identified the animals producing certain furs and failed to set forth the term "Dyed Broadtail Lamb" where required; by advertising which failed to disclose the names of animals producing the fur in certain products or the country of origin of imported furs; and by failing in other respects to comply with labeling and invoicing requirements.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Maxine's, Inc., a corporation, and Louis J. Azen and Alan Azen, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Fur Products Labeling Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Maxine's, Inc., is a corporation organized, 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 514 Wood Street, Pittsburgh, Pennsylvania. Louis J. Azen is president and Alan Azen is secretary and treasurer of the said corporate respondent. These individuals formulate, control and direct the acts, practices and policies of the said corporate respondent. Their office and principal place of business is the same as that of the said corporate respondent.

PAR. 2. Subsequent to the effective date of the Fur Products Labeling Act on August 9, 1952, respondents have been and are now engaged in the introduction into commerce and in the sale, ad-

vertising, and offering for sale, in commerce, and in the transportation and distribution, in commerce, of fur products; and have sold, advertised, offered for sale, transported and distributed fur products which have been made in whole or in part of fur which had been shipped and received in commerce, as the terms "commerce", "fur" and "fur product" are defined in the Fur Products Labeling Act.

PAR. 3. Certain of said fur products were misbranded in that they were falsely and deceptively labeled or otherwise falsely and deceptively identified with respect to the name or names of the animal or animals that produced the fur from which said fur products had been manufactured, in violation of Section 4(1) of the Fur Products Labeling Act.

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

PAR. 5. Certain of said fur products were misbranded in violation of the Fur Products Labeling Act in that they were not labeled in accordance with the Rules and Regulations promulgated thereunder in the following respects:

(a) The term Dyed Broadtail Lamb was not set forth in the manner required where an election was made to use that term instead of Dyed Lamb in violation of Rule 8 of the said Rules and Regulations.

(b) Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was mingled with non-required information, in violation of Rule 29(a) of said Rules and Regulations.

(c) Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was set forth in handwriting on labels, in violation of Rule 29(b) of said Rules and Regulations.

(d) Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was not set forth separately on labels with respect to each section of fur products composed of two or more sections containing different animal furs, in violation of Rule 36 of said Rules and Regulations.

(e) Required item numbers were not set forth on labels, in violation of Rule 40 of said Rules and Regulations.

PAR. 6. Certain of said fur products were falsely and deceptively invoiced by respondents in that they were not invoiced as required

by Section 5(b)(1) of the Fur Products Labeling Act, and in the manner and form prescribed by the Rules and Regulations promulgated thereunder.

PAR. 7. Certain of said fur products were falsely and deceptively advertised in violation of the Fur Products Labeling Act in that respondents caused the dissemination in commerce, as "commerce" is defined in said Act, of certain newspaper advertisements, concerning said products, which were not in accordance with the provisions of Section 5(a) of the said Act and the Rules and Regulations promulgated thereunder; and which advertisements were intended to aid, promote and assist, directly or indirectly, in the sale and offering for sale of said fur products.

PAR. 8. Among and included in the advertisements as aforesaid, but not limited thereto, were advertisements of respondents which appeared in issues of the Pittsburgh Sun Telegraph, Pittsburgh Press and Pittsburgh Post Gazette, newspapers published in the City of Pittsburgh, State of Pennsylvania, and having a wide circulation in said State and various other States of the United States.

By means of said advertisements and others of similar import and meaning, not specifically referred to herein, respondents falsely and deceptively advertised fur products in that said advertisements:

(a) Failed to disclose the name or names of the animal or animals that produced the fur contained in the fur product as set forth in the Fur Products Name Guide, in violation of Section 5(a)(1) of the Fur Products Labeling Act.

(b) Failed to disclose the name of the country of origin of the imported furs contained in the fur product, in violation of Section 5(a)(6) of the Fur Products Labeling Act.

PAR. 9. The aforesaid acts and practices of respondents, as herein alleged, are in violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder and constitute unfair and deceptive acts and practices in commerce under the Federal Trade Commission Act.

Mr. Charles W. O'Connell for the Commission.

No appearance for respondents.

INITIAL DECISION BY EARL J. KOLB, HEARING EXAMINER

The complaint in this proceeding issued June 24, 1960, charges respondents Maxine's, Inc., a Pennsylvania corporation, located at 514 Wood Street, Pittsburgh, Pennsylvania, and Louis J. Azen and Alan Azen, individually and as officers of said corporate respondent and located at the same address as said corporation, with the use of unfair and deceptive acts and practices, in commerce in violation of

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the provisions of the Federal Trade Commission Act, and the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder.

After the issuance of said 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 Maxine's, Inc., a corporation, and its officers, and Louis J. Azen and Alan Azen, 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 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 are 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. Falsely or deceptively labeling or otherwise falsely or deceptively identifying any such product as to the name or names of the animal or animals that produced the fur from which such product was manufactured.

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

3. Failing to set forth the term "Dyed Broadtail Lamb" where an election is made to use that term instead of dyed Lamb.

4. Setting forth on labels affixed to fur products information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder:

(a) Mingled with non-required information.

(b) In handwriting.

5. Failing to set forth separately on labels affixed to fur products composed of two or more sections containing different animal furs the information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder with respect to the fur comprising each section.

6. Failing to set forth on labels the item number or mark assigned to a fur product.

B. Falsely or deceptively invoicing fur products by:

1. Failing to furnish to purchasers of fur products an invoice showing all the information required to be disclosed by each of the subsections of Section 5(b)(1) of the Fur Products Labeling Act.

C. 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 fails to disclose:

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1. 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. The name of the country of origin of any imported furs contained in a 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 12th day of October 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

THETA ELECTRONICS, INC., ET AL.

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

Docket 7916. Complaint, June 3, 1960—Decision, Oct. 13, 1960

Consent order requiring a manufacturer in Greensburg, Pa., to cease selling television picture tubes with no notice on the tubes or on containers or invoices to show that they were reconditioned or rebuilt and contained previously used parts.

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 Theta Electronics, Inc., a corporation, and Hymen Berkowitz, 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 Theta Electronics, Inc. is a corporation organized, 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 123 Stark Avenue, Greensburg, Pennsylvania.

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

PAR. 2. Respondents are now, and for some time last past have been, engaged in the manufacture, offering for sale, sale and distribution of television picture tubes, some which are reconditioned and some of which are rebuilt containing used parts, to wholesalers, distributors and 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 products, 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 maintain, and at all times mentioned herein have maintained, a substantial course of trade in said product, in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Respondents do not disclose on the tubes or on the cartons in which they are packed or on invoices or in any other manner that said television picture tubes are reconditioned or rebuilt containing previously used parts.

PAR. 5. When television tubes are reconditioned or rebuilt containing previously used parts, in the absence of a disclosure to the contrary, such tubes are understood to be and are readily accepted by the public as new tubes.

PAR. 6. By failing to disclose the facts as set out in Paragraph Four, respondents place in the hands of uninformed or unscrupulous dealers means and instrumentalities whereby they may mislead and deceive the public as to the nature of their said television picture tubes.

PAR. 7. 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 engaged in the sale of television picture tubes.

PAR. 8. The failure of respondents to disclose on their television picture tubes, on the cartons in which they are packed, on invoices or in any other manner, that they are reconditioned or rebuilt containing used parts, has had and now has, the tendency and capacity to mislead members of the purchasing public into the erroneous and mistaken belief that their said picture tubes are new in their entirety, and into the purchase of substantial quantities of respondents' said tubes by reason of such erroneous and mistaken belief.

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

Mr. Michael J. Vitale for the Commission.

Mr. Joseph Martin Gelman, of Pittsburgh, Pa., for respondents.

INITIAL DECISION BY EDGAR A. BUTTLE, HEARING EXAMINER

On June 3, 1960, the Federal Trade Commission issued its complaint against the above-named respondents charging them with violating the provisions of the Federal Trade Commission Act in connection with the manufacture, offering for sale, sale and distribution of television picture tubes, some of which are rebuilt containing used parts. On August 9, 1960, the respondents and counsel supporting the complaint entered into an agreement containing a consent order to cease and desist in accordance with Section 3.25(a) of the Rules of Practice and Procedure of the Commission.

Under the foregoing agreement, the respondents admit the jurisdictional facts alleged in the complaint and agree among other things, that the cease and desist order there set forth may be entered without further notice and shall have the same force and effect as if entered after a full hearing. The agreement includes a waiver by the respondents of all rights to challenge or contest the validity of the order issuing in accordance therewith; and recites that the said 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 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 said agreement meets all the requirements of Section 3.25(b) of the Rules of Practice.

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

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part of the Commission's decision in accordance with Section 3.21 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 Theta Electronics, Inc., is a corporation organized, 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 123 Stark Avenue, Greensburg, Pennsylvania.

Respondent Hymen Berkowitz is an officer of said corporate respondent. He formulates, directs and controls the acts and practices of said corporate respondent. His address is the same as the corporate respondent.

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

ORDER

It is ordered, That respondents, Theta Electronics, Inc., a corporation, and its officers, and Hymen Berkowitz, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of television picture tubes which have been reactivated or reconditioned, or which contain used parts, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Failing to clearly disclose on the tubes, on the cartons in which they are packed, on invoices and in advertising, that said tubes are reactivated or reconditioned, or contain used parts, as the case may be.

2. Placing any means or instrumentality in the hands of others whereby they may mislead the public as to the nature and condition of their television picture tubes.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

The hearing examiner, on August 23, 1960, having filed an initial decision in this proceeding, wherein he accepted an agreement containing a consent order to cease and desist, theretofore executed by the respondents and counsel in support of the complaint, and issued an order in conformity with the agreement; and

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Pursuant to the provisions of § 3.21 of the Commission's Rules of Practice, said initial decision, on October 13, 1960, having become the decision of the Commission:

It is ordered, That the respondents, Theta Electronics, Inc., a corporation, and Hymen Berkowitz, individually and as an officer of said corporation, shall, within sixty (60) days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist contained in the afore-said initial decision.

IN THE MATTER OF

JOSEPH SCHNEIDERMAN ET AL. TRADING AS
S. SCHNEIDERMAN & SONS

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

Docket 7983. Complaint, June 24, 1960—Decision, Oct. 13, 1960

Consent order requiring manufacturing furriers in New York City to cease violating the Fur Products Labeling Act by listing fictitious prices on consignment invoices of fur products, intended to promote the sale of the products, and by failing to maintain adequate records as a basis for such pricing.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Joseph Schneiderman, Harry Schneiderman, and Louis Schneiderman, individually and as copartners, trading as S. Schneiderman & Sons, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Fur Products Labeling Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Joseph Schneiderman, Harry Schneiderman and Louis Schneiderman are individuals and copartners trading as S. Schneiderman & Sons with their office and principal place of business located at 150 West 30th Street, New York, New York.

PAR. 2. Subsequent to the effective date of the Fur Products Labeling Act on August 9, 1952, respondents have been and are

now engaged in the introduction into commerce, and in the manufacture for introduction into commerce, and in the sale, advertising, and offering for sale, in commerce, and in the transportation and distribution, in commerce, of fur products, and have manufactured for sale, sold, advertised, offered for sale, transported and distributed fur products which have been made in whole or in part of fur which had been shipped and received in commerce as the terms "commerce", "fur" and "fur product" are defined in the Fur Products Labeling Act.

PAR. 3. Certain of said fur products were falsely and deceptively invoiced in that the respondents set out on invoices certain prices of fur products which were in fact fictitious, in violation of Section 5(b)(2) of the Fur Products Labeling Act.

PAR. 4. Certain of said fur products were falsely and deceptively advertised in that the respondents on consignment invoices made representations and gave notices concerning said fur products, which representations and notices were not in accordance with the provisions of Section 5(a) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder; and which representations and notices were intended to aid, promote and assist, directly or indirectly, in the sale and offering for sale of said fur products.

By means of the said representations and notices contained in the consignment invoices to customers, and others of similar import and meaning not specifically referred to herein, respondents falsely and deceptively advertised their fur products in that respondents thereby made representations as to the prices of fur products which prices were in fact fictitious, in violation of Section 5(a)(5) of the Fur Products Labeling Act.

PAR. 5. Respondents, in making pricing and savings claims and representations, failed to maintain full and adequate records disclosing the facts upon which such claims and representations were purportedly based, in violation of Rule 44(e) of the Rules and Regulations under the Fur Products Labeling Act.

PAR. 6. The aforesaid acts and practices by respondents, as herein alleged, were and are in violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder and constitute unfair and deceptive acts and practices in commerce under the Federal Trade Commission Act.

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

Mr. Charles Goldberg, 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) on June 24, 1960, issued its complaint herein, charging the above-named respondents with having violated the provisions of both the Federal Trade Commission Act and the Fur Products Labeling Act, together with the Rules and Regulations promulgated thereunder, and the respondents were duly served with process.

On August 16, 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 respondents and counsel supporting the complaint, under date of August 1, 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. Respondents Joseph Schneiderman, Harry Schneiderman and Louis Schneiderman are individuals and copartners trading as S. Schneiderman & Sons with their office and principal place of business located at 150 West 30th Street, New York, N.Y.

2. 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.

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

4. 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.

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 respondents that they have 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 respondents. 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," the latter is hereby approved, accepted and ordered filed, the same not to become a part of the record herein, however, unless and until it becomes part of the decision of the Commission. 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 each of the respondents herein; that the complaint states a legal cause for complaint under the Federal Trade Commission Act and the Fur Products Labeling Act and the Rules and Regulations promulgated by the Commission under the latter Act, 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 as to all of the parties hereto; and that said order therefore should be, and hereby is, entered as follows:

It is ordered, That Joseph Schneiderman, Harry Schneiderman and Louis Schneiderman, individually and as copartners trading as S. Schneiderman & Sons, 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 sale, advertising, offering for sale, transportation or distribution, in commerce, of fur products; or in connection with the sale, manufacture for 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. Falsely or deceptively invoicing fur products by representing, directly or by implication, on invoices that the former, regular or usual price of any fur product is any amount which is in excess of

the price at which respondents have formerly, usually or customarily sold such products in the recent regular course of business;

B. Falsely or deceptively advertising fur products through the use of any advertisement, representations, 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 represents, directly or by implication that the former, regular or usual price of any fur product is any amount which is in excess of the price at which respondents have formerly, usually or customarily sold such product in the recent regular course of business;

C. Misrepresenting in any manner the savings available to purchasers of respondents' fur products;

D. Making pricing claims or representations respecting prices or values of fur products unless respondents maintain full and adequate records disclosing the facts upon which such claims and representations are based.

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 October 1960, 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.

IN THE MATTER OF

TONEMASTER MANUFACTURING COMPANY ET AL.

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

Docket 7301. Complaint, Nov. 14, 1958—Decision, Oct. 14, 1960

Order dismissing false advertising charges against two former officials of respondent corporation, seller of hearing aids, as to which the same charges were settled by a consent order dated May 9, 1959, 55 F.T.C. 1750.

Before *Mr. John B. Poindexter*, hearing examiner.

Mr. William A. Somers for the Commission.

No appearance for respondents.