

Complaint

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IN THE MATTER OF  
COUNTRY TWEEDS, INC., ET AL.

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

*Docket 8085. Complaint Aug. 24, 1960—Decision, Nov. 29, 1962*

Order requiring a New York City manufacturer of ladies' coats, to cease misrepresenting the quality of the cashmere fabric in many coats by such practices as distorting a testing company's test report on the comparative qualities of the "Best Quality Cashmere Produced to Date", which it had used until the time of a business quarrel with the manufacturer, and "Country Tweeds El Elegant" cashmere which it had used since that time; and to cease furnishing its dealers with means to misrepresent its coats by giving them the altered report.

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 Country Tweeds, Inc., a corporation, and Marcus Weisman, 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 Country Tweeds, 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 250 West 39th Street in the city of New York, State of New York.

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

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution, among other things, of ladies' cashmere coats 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 product, 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

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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 early in 1958 submitted to United States Testing Company, Inc., a private commercial laboratory, for analysis and report, two pieces of cashmere fabric, one identified by respondents as "Best Quality Cashmere Produced to Date" and the other as "Country Tweeds El Elegant Cashmere." The testing company subjected both pieces to an abrasion test to ascertain resistance to wear, a breaking load test to determine the strength of the warp and filling yarns, and a dry cleaning test to show its effect on the appearance of the fabric. In its report to respondents on each of the aforesaid tests, which consisted of several pages, the testing company used the same descriptions to identify the fabric samples as the respondents had used when submitting the materials, thus the report showed the test results of respondents' cashmere compared to test results of the alleged "Best Quality Cashmere Produced to Date".

PAR. 5. Respondents thereafter altered the report of the testing company by deleting certain portions and by adding new statements. Parts of the testing company's report consisting of its letterhead, client designation, subject, number, and date, and the signatures of the two officers of the testing company who had signed the report, were reproduced on respondent's version of the testing company's report thus giving it the appearance of an authentic report. The body of the report was changed. The testing company's report of the abrasion test, besides other information, contained the following statement:

We list below the number of cycles necessary to produce the above mentioned degree of wear.

<i>Best Quality Cashmere Produced to Date</i>	<i>Country Tweeds El Elegant</i>
<u>673</u>	<u>715</u>

*Comment:* Test results indicate no significant difference in abrasive resistance between the two submitted samples. It is noted that there is no significant difference in "roughing up" in the intermediate stages of wear.

In the altered report produced by respondents the foregoing quoted statement was excised and the following paragraph was substituted:

*Abrasion Test:* COUNTRY TWEEDS El Elegant 100% Cashmere lasts 6.3% longer than Best Quality Cashmere produced to date.

The testing company's report of the breaking load test was as follows:

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## Average Breaking Load (Pounds)

<i>Best Quality Cashmere Produced to Date</i>		<i>Country Tweeds El Elegant</i>	
Warp	Filling	Warp	Filling
29.6	14.5	28.5	22.7

This portion of the testing company's report was deleted and respondents' version was substituted which was as follows:

*Breaking Load Test:* Country Tweeds El Elegant 100% Cashmere proves 56.5% stronger than Best Quality Cashmere produced to date.

PAR. 6. Respondents furnished copies of the said altered report to the dealers of its products throughout the United States, and it was used by some of said dealers in advertising respondents' products purchased by them.

Through the use of said altered report respondents represented, and furnished its dealers the means and instrumentality by and through which they were enabled to and did represent:

(1) That the cashmere fabric involved in the test with respondents' El Elegant fabric was the best quality cashmere fabric produced up to the date of the test and that United States Testing Company, Inc., had so found prior to the test.

(2) That respondents' cashmere fabric was the best quality on the market at the time of the test.

(3) That respondents' altered version of the testing company's report was authentic and represented a true and complete reproduction of the results of said test.

PAR. 7. Said statements and representations were false, misleading and deceptive. In truth and in fact:

(1) The cashmere fabric involved in the test with respondents' El Elegant fabric was not the best quality cashmere fabric produced up to the date of the test, and the United States Testing Company, Inc., had not so found prior to the test.

(2) Respondents' cashmere fabric was not the best quality cashmere on the market at the time of the test.

(3) Respondents' altered report was not authentic and did not represent a true or complete reproduction of the results of said test. Among other things, it omitted the numerical test results of the abrasion and breaking load test; the method of tests; and the testing company's comments regarding the abrasion test, all of which were necessary to correctly interpret the test results. In addition, instead of the numerical results of the abrasion and breaking load tests shown in the original report, respondents expressed the comparative results in terms of percentages which, coupled with the fact that certain

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information was omitted, distorted the actual results in favor of respondents' fabric.

PAR. 8. In the conduct of their business, at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of cashmere coats of the same general kind and nature as those sold by respondents.

PAR. 9. The use by the respondents of the aforesaid false, misleading and deceptive statements, 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 have caused consumers to purchase substantial quantities of respondents' garments because of said 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. 10. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors, and constituted and now constitute, unfair and deceptive acts and practices, and unfair methods of competition, in commerce, within the intent and meaning of the Federal Trade Commission Act.

*Mr. Charles W. O'Connell* supporting the complaint.

*Barshay & Frankel*, by *Mr. Nathan Frankel* of New York, N.Y., for respondents.

## INITIAL DECISION BY MAURICE S. BUSH, HEARING EXAMINER

The complaint in this matter issued on August 24, 1960, charges the above-named respondents, manufacturers of cashmere ladies' coats, with altering a test report received from an independent fabric testing company and using the test report as altered to make certain false, misleading, and deceptive representations in violation of the Federal Trade Commission Act.<sup>1</sup> The complaint further charges that the respondents furnished copies of altered report to its dealers by means of which the dealers were enabled and did make the same false, misleading and deceptive representation in violation of the Act. Both the original test report and the altered test report deal with two pieces of cashmere fabric identified as "Best Quality Cashmere Produced To

<sup>1</sup> Section 5 (a) (1), here pertinent, reads: "Unfair methods of competition in commerce, and unfair or deceptive acts or practices in commerce, are hereby declared unlawful."

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Date" and "Country Tweeds El Elegant Cashmere", respectively. These terms were supplied to the testing company by respondents. The piece identified as "Country Tweeds El Elegant Cashmere" was a sample of the fabric used by respondents in the manufacture of coats from the year 1958 to the present time. The piece identified as "Best Quality Cashmere To Date" was a sample of a fabric formerly used by respondents in the manufacture of ladies' cashmere coats. (Although the complaint does not expressly allege that the last mentioned fabric was not used by respondents in the manufacture of ladies' cashmere coats at the times herein material, such an allegation clearly appears by implication from the complaint and the record as established at the hearing herein bears out this implied allegation as an admitted fact.)

The complaint charges that the aforementioned false, misleading and deceptive representations were as follows: (1) That the cashmere identified by respondents as the "Best Quality Cashmere Produced To Date" was the best quality cashmere fabric produced up to the date of the test and that the testing company had so found prior to the test; (2) That respondents' "Country Tweeds El Elegant Cashmere" was the best quality on the market at the time of the test; and (3) That respondents' altered version of the testing company's report was authentic and represented a true and complete reproduction of the results of said test.

Respondents in their answer admit<sup>2</sup> that they made the three representations set forth above but take issue with counsel supporting the complaint that the said representations were false, misleading and deceptive and in violation of the provisions of the Act. The central issues in this proceeding are thus these: (1) Are the said representations false, misleading and deceptive? (2) If so, do these

<sup>2</sup> "PARAGRAPH FOURTH" of the answer reads in part: "they [respondents] admit that copies of said altered report were sent to dealers of the corporate respondent's products; they admit that through the use of the altered and paraphrased report, a representation was made that the altered version of the testing company's report was authentically verbatim and that the quality of the corporate respondent's cashmere fabric was superior to any other cashmere fabric previously produced, and that the testing company has so found." These statements of admissions are deemed admissions that respondents made the representations shown above as (2) and (3). The failure of the answer to specifically answer the allegation of the complaint ("PARAGRAPH SIX (1)") that respondents also made the representation shown as (1) above is deemed an admission that such representation was made. In this connection other allegations in respondents' answer (see "PARAGRAPH FIVE") are pertinent which read as follows: "They [respondents] \* \* \* allege that the corporate respondent's cashmere fabric was the best quality cashmere fabric produced up to the date of the test; that the United States Testing Company, Inc. had in effect found; [sic—it is obvious that the foregoing semi-colon was an unintentional punctuation at the point where it appears as it breaks a thought or sentence into two.] that the corporate respondent's cashmere fabric was the best quality cashmere on the market at the time of the test \* \* \*".

representations 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?

Except for the affirmative defense hereinafter noted, all other issues raised by the pleadings are minor in nature and have been resolved by the evidence in the record.

The answer also raises an affirmative issue of jurisdiction in that it alleges that the Federal Trade Commission lacks jurisdiction to entertain the instant proceeding on the grounds that the practices described in the complaint were discontinued prior to the issuance of the complaint; that others have committed the same practices, that respondents' participation in the said practices was inadvertent and not the result of design, and that "no reasonable basis exists for any conclusion that respondents, or either of them, might in the future renew practices set forth in the complaint".

Hearing was held at New York, New York on various dates over a period of ten days between August 16 and November 9, 1961. Thereafter proposed findings of fact, conclusions of law, original and reply briefs were filed by the parties. These have been carefully reviewed and considered and such proposed findings and conclusions which are not herein adopted, either in the form proposed or in substance are rejected as not supported by the record or as involving immaterial matters. The facts hereinafter set forth are based on the entire record.

#### FINDINGS OF FACT

Respondent, Country Tweeds, Inc., hereinafter called Country Tweeds, 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 250 West 39th Street, New York, New York. The other respondent, Marcus Weisman, of the same address, is an officer of the corporate respondent which he founded some twenty years ago. He formulates, directs and controls the acts, practices and policies of the corporate respondent, including those hereinafter set forth.

Country Tweeds is a manufacturer of ladies' outerwear coats, with sales in recent years in excess of \$5,000,000. It manufactures ladies' coats made of cashmere or a combination of wool and other materials. In 1958 about 50 percent of its production was of ladies' coats made of cashmere. In 1957 and 1958, it manufactured and sold between 35,000 and 40,000 ladies' coats made exclusively of cashmere and lesser quantities in 1959 and 1960. Country Tweed cashmere coats are made

to retail between \$135 and \$155. In the course and conduct of their business, respondents for many years have shipped or caused to be shipped the coats they manufacture from their plant in the State of New York to purchasers located in various other States. At all time herein material, respondents have maintained a substantial course of trade in ladies' coats in commerce, as "commerce" is defined in the Federal Trade Commission Act.

In the year 1957 and in the years prior thereto, Country Tweeds manufactured its ladies' cashmere coats out of a cashmere fabric made by Einiger Mills, Inc., hereinafter called Einiger, the largest and best known manufacturer of cashmere fabrics. As a result of a business quarrel, Country Tweeds terminated its cashmere fabric purchases from Einiger some time in 1957. Commencing in 1958 and in all subsequent years, Country Tweeds made its cashmere coats out of cashmere fabric supplied to it by Cashmere Fabrics, Ltd., hereinafter called Cashmere Fabrics. The latter does not own or operate any manufacturing plants but purchases the raw cashmere fiber and sub-contracts for its spinning, dyeing, and weaving with other firms engaged in such manufacturing activities. In 1958 and 1959, the coats manufactured by Country Tweeds out of cashmere fabrics supplied to it by Cashmere Fabrics were sold under the brand name of "Country Tweeds El Elegant". In 1958, Cashmere Fabrics derived 80 percent of its sales from Country Tweeds and in 1960 this volume had increased to 90 percent.

On or about February 4, 1958, respondents submitted to the United States Testing Company, Inc., a private commercial laboratory, for analysis and report, two pieces of cashmere fabric. One of these pieces was manufactured by Einiger but the manufacturer was not disclosed to the testing company. As heretofore noted, Country Tweeds in 1958 was no longer using cashmere fabric manufactured by Einiger. Country Tweeds in submitting the Einiger piece to the testing company denominated and identified it as "The Best Quality Cashmere Produced to Date", but without the use of quotation marks as shown here. The other piece was manufactured under the auspices of Cashmere Fabrics but its manufacturer was similarly not disclosed to the testing company. As heretofore noted, Country Tweeds in 1958 and subsequent years was using cashmere fabrics received from Cashmere Fabrics. Country Tweeds in submitting the Cashmere Fabrics piece to the testing company denominated and identified it as "Country Tweeds El Elegant". The written memorandum or request submitting the two pieces for testing contains the following instruction: "For comparison test in non-technical terms." The memoran-

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dum requested that the two pieces be subjected (1) to an abrasion test to ascertain resistance to wear, (2) a breaking load test to determine the strength of the warp and filling yarns, and (3) a dry cleaning test to show its effect on the appearance of fabric.

Upon completion of the comparative tests, the testing company submitted a report thereon to Country Tweeds dated February 10, 1958, on its regular letterhead bearing the printed inscription "United States Testing Company, Inc., Hoboken, N.J.". The letterhead also had the following printed matter at the bottom thereof: "Our letters and reports are for the exclusive use of the client to whom they are addressed, and their communication to any others, or the use of the name of United States Testing Company, Inc., must receive our prior written approval. \* \* \*"

The testing company's test report reads in pertinent part as follows:

Subject: Two samples of fabric sampled and identified by Client as below.  
Order No. 4424 dated 2/4/58.

## Abrasion Test

Abrasion tests were conducted using the United States Testing Co., Inc. Abrasion (Wear) Test Machine. Specimens clamped to a movable carriage were constantly in contact with a lever arm covered with 320 Aloxite cloth exerting a pressure of approximately 33 ounces.

The fabrics were abraded in the warp and filling directions until an examination of the tested specimens disclosed the nap or pile to be almost completely worn from the fabric face.

We list below the number of cycles necessary to produce the above mentioned degree of wear.

<i>Best Quality Cashmere Produced to Date</i>	<i>Country Tweeds El Elegant</i>
673	715

COMMENT: Test results indicate no significant difference in abrasive resistance between the two submitted samples. It is noted that there is no significant difference in "roughing up" in the intermediate stages of wear.

Tested specimens returned.

## Average Breaking Load (Pounds)

<i>Best Quality Cashmere Produced to Date</i>		<i>Country Tweeds El Elegant</i>	
Warp	Filling	Warp	Filling
29.6	14.5	28.5	22.7

This test was conducted in accordance with Method 5100 of Federal Specification CCC-T-191b. (Standard Condition.)

## Dry Cleaning Test

The samples were worked for 25 minutes in a laboratory dry cleaning apparatus containing 987 parts Perchloroethylene 5 parts dry cleaning soap, 4 parts tertiary butyl alcohol and 4 parts distilled water.

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They were given three, 5 minute rinses in plain Perchloroethylene, hydro-extracted and allowed to dry at prevailing atmospheric conditions on horizontal ventilated screens.

Comparisons of the dry cleaned samples with original material revealed the following:

*"Country Tweeds, El Elegant" Cashmere*

This sample exhibited no noticeable alteration in appearance after dry cleaning.

*Best Quality Cashmere produced to date*

This sample exhibited noticeable wrinkling and slight fiber disturbance after dry cleaning.

Shortly after receiving the test report, the respondents without the authority of the testing company made certain changes and alterations in the report. The changed or altered report, being on a reproduction of the testing company's letterhead and bearing reproductions of the signatures of the two officers who had signed the original report, had the appearance of being an exact copy or facsimile of the original report from the testing company. The altered report referred to the two pieces which the testing company had tested by the identifications given to them by respondents, as heretofore noted, to wit: "Best Quality Cashmere Produced To Date" and "Country Tweeds El Elegant". In this latter respect, the altered report was identical with the original report.

The complete text of the altered test report reads as follows:

Subject: Two samples of fabric sampled and identified by Client as below.  
Order No. 4424 dated 2/4/58.

*Abrasion Test:* COUNTRY TWEEDS' El Elegant 100% Cashmere lasts 6.4% longer than Best Quality Cashmere produced to date.

*Breaking Load Test:* COUNTRY TWEEDS' El Elegant 100% Cashmere proves 54.5% stronger than Best Quality Cashmere produced to date.

*Dry Cleaning Test:*

*"Country Tweeds' El Elegant Cashmere":*

This sample exhibited no noticeable alteration in appearance after dry cleaning.

*"Best Quality Cashmere Produced to date":*

This sample exhibited noticeable wrinkling and slight fiber disturbance after dry cleaning.

The altered report does not contain the warning shown on the original test report to the effect that the report was for the exclusive use of the client to whom addressed and was not to be communicated to others without the prior written approval of the testing company.

Thereafter the respondents furnished copies of the altered report shown above to the dealers of its products throughout the country by means of a five-page booklet advertising the El Elegant coats in which the altered report was reproduced on one of the pages under the

heading "HERE IS PROOF OF THE QUALITY OF EL ELEGANT CASHMERE". The altered report was used by some of respondent's customers in reproductions or otherwise as more specifically shown below in advertising respondents' El Elegant cashmere coats.

In addition to the said five-page booklet, respondents also caused to be printed a three-page pamphlet containing further advertising material on its El Elegant cashmere coats. From all evidence of record, it is found that this pamphlet was likewise mailed to all of respondents' customers during respondents' selling season on such coats in 1958. The pamphlet on one of its pages sets forth a series of questions and answers. One of these asks and answers a question as follows: "Q. How do I know El Elegant Cashmere is my best buy? A. Recent test by U.S. Testing, the world's largest independent testing laboratory, proclaimed El Elegant cashmere the finest money can buy."

Country Tweeds in 1958 also advertised its El Elegant cashmere coats in *Vogue*, a nationally distributed women's magazine, but there is no indication or suggestion in the record that there was any reference in the *Vogue* advertisement to the aforementioned test made by the United States Testing Company, Inc.

Joske's of Texas, a customer-dealer of respondents, with retail store at San Antonio, Texas, ran a three-quarter page newspaper advertisement in the July 20, 1958, issue of the *San Antonio Express and News* featuring respondent's El Elegant cashmere coats with the opening words "THIS IS THE ONE! Exclusive El Elegant Cashmere by Country tweeds. (sic)," following which the advertisement carried a facsimile in box form of the altered test report. Although the letter-size altered report is reduced in the advertisement to a space two inches by three inches in size, it is plainly legible and the name of the United States Testing Company, Inc., in the caption of the facsimile, is especially conspicuous. Respondents paid one-half of the cost of the described newspaper advertisement but Joske thereafter refrained from again using the facsimile of the purported test report in advertisements because of the misgivings as to its authenticity.

On July 24, 1958, Streets, another customer-dealer of respondents engaged in the retail sale of ladies' wear, with store at Tulsa, Oklahoma, ran an advertisement in the *Tulsa Tribune* featuring Country Tweeds El Elegant cashmere coats in which the statement was made that the cashmere in the El Elegant coats was "proven the country's finest by the United States Testing Company". The

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testing company on August 8, 1958, notified Streets that "No correspondence or test reports were found in our files to confirm the claims made in your ad", requested the name and address of the coat manufacturer who supplied Streets with the alleged information, and asked for Street's "cooperation in the interest of sound advertising."

Streets under date of August 12, 1958, replied to the testing company as follows: "\* \* \* Enclosed as enclosure<sup>3</sup> number one is a copy of a letter from your company to Country Tweeds. This letter states that Country Tweeds Cashmere lasts 6.3% longer and is 56.5% stronger than best quality Cashmere produced to February 10, 1958."

Respondent distributed the altered test report to its dealers only in the year 1958 and has discontinued the practise of such distribution and use of the altered test report in all years subsequent to 1958.

The aforementioned United States Testing Company, Inc., employing more than 500 persons and the largest testing company of diversified products in the country, issues between 75,000 and 100,000 test reports a year of which 60 percent are on fabrics of many different kinds. It has never had occasion to conduct tests for the purpose of determining the best quality cashmere ever made up to February 10, 1958, the date of its test report herein for respondents, and is not aware of any studies which involved such research. In its aforementioned original test report to respondents, the testing company did not represent or make any statement to the effect that it had found through the process of testing that the cashmere fabric therein identified as "Best Quality Cashmere Produced To Date" was actually the best cashmere fabric previously produced. Similarly the testing company did not in its said original test report make any finding or statement to the effect that respondents' El Elegant cashmere fabric was the best quality cashmere fabric produced to the date of the test. The test it made for respondents as reflected in the original test report was in accordance with respondents' request for a limited test for which it made a charge of \$85. The testing company would have charged respondents \$500 for a full scale test on the two involved pieces of cashmere fabric made in accordance with recognized standards in the testing business, had it received such a request from respondents.

Lord & Taylor is a well known ladies' department store in New York, New York. At the times herein material, the store carried three price ranges of ladies' cashmere coats, each on a separate floor. In its "Budget Department", it handled a line of cashmere coats de-

<sup>3</sup> The enclosure was a copy of the altered report.

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signed to sell at about \$120. In its most expensive coat department, it featured cashmere coats of very fine tailoring and with silk linings at prices around \$350, with prices even higher on cashmere coats trimmed with expensive furs. For its middle class line and its most popular seller, it handled cashmere coats selling between \$135 and \$155. As a result of unsatisfactory past experience with cashmere produced by heterogeneous mills, Lord & Taylor has in recent years favored manufacturers of ladies' cashmere coats which manufacture their coats out of cashmere fabrics produced by such well and favorably known mills as Forstman, Stroock, and Einiger. In its middle range price group, the store handled the cashmere coats manufactured by respondents and Merin Brothers, among others, but not all of these simultaneously in any one year. The store in the years 1957 through 1960 stocked respondents' cashmere coats which in the years 1958 and 1959 were sold under the manufacturer's label of "El Elegant". Its experience showed that the cashmere fabric used by respondents in their coats was "very inconsistent" in that the quality of the fabric in the coats not infrequently varied from shipment to shipment. This was particularly true of the cashmere fabric in respondents' El Elegant coats of which the supplier was the aforementioned Cashmere Fabrics but was also to a lesser degree true of coats manufactured by respondents in the years prior to 1958 out of cashmere fabrics produced by Einiger. The store nevertheless considered the El Elegant coat a "fine coat for the money" and enjoyed good sales thereon in the years 1958 and 1959. It found respondents greatly concerned with retaining the good will of the store as a customer and most cooperative in replacing any coats in which the fabric was not up to standard.

It has heretofore been noted that the complaint charges and the answer admits that the respondents by means of the altered test report represented to their dealers and enabled their dealers in turn by means of the same instrumentality to likewise represent in their advertisements that the cashmere fabric referred to in the altered report as the "Best Quality Cashmere Produced to Date" in accordance with the identification thereof supplied by respondents was the best quality cashmere produced up to the date of the test and that the United States Testing Company, Inc., had so found prior to the test. Wholly aside from the admission of such representation contained in respondents' answer, it is found from the evidentiary facts set forth above that the said representation was made by respondents and some of their dealers as a representation of fact by means of the altered report. It is further found from the same evidence that this representation is false, misleading and deceptive.

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As noted, the complaint also charges and the answer admits that the respondents by means of the altered test report represented to their dealers and enabled their dealers in turn by means of the same instrumentality to likewise represent in their advertisement (a) that the respondents' "Country Tweeds El Elegant Cashmere" was the best quality on the market at the time of the test and (b) that respondents' altered version of the testing company's report was authentic and represented a true and complete reproduction of the results of said test. Wholly aside from the admissions of said representations contained in respondents' answer, it is found from the evidentiary facts set forth above that the said representations were made by respondents and some of their dealers as representations of fact by means of the altered report. It is further found on the same evidence that these representations are false, misleading and deceptive.

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

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

In summary, it is found that all material allegations of the complaint have been sustained by evidence of record in the proceeding.

#### DISCUSSION AND CONCLUSIONS

Respondents' charge of lack of jurisdiction on the part of the Federal Trade Commission to entertain the present proceeding, as in the case of all jurisdictional challenges, must necessarily be given first consideration. In their joint answer, respondents assert that the Commission is "without jurisdiction" in this matter on the grounds that the challenged acts and practices commenced in 1958 have been discontinued in all subsequent years and that respondents have no intention of ever renewing such acts and practices.<sup>4</sup>

<sup>4</sup> For the purpose of considering the jurisdictional question, it will be assumed *arguendo* that respondents have no intent to renew the questioned acts and practices although there does not appear to be any testimony in the record to this effect and no finding of fact has been made herein to that effect.

The charge of lack of jurisdiction is wholly without merit. It is significant that respondents in arguing the matter on brief have abandoned the phrase "without jurisdiction" in favor of the term "without authority". They cite as authority for their argument the case of *New Standard Publishing Co., Inc. v. Federal Trade Commission*, 194 F. 2d 181 [5 S. & D. 376] (4th Cir. 1952). That case involved such a peculiar and isolated set of facts that the action of the Court of Appeals therein can have no possible bearing on the instant matter.

The *New Standard Publishing Co.* [47 F.T.C. 1350] case involved a cease and desist order of the Commission entered more than 12 years after the commencement of the proceeding before the Commission, more than 6 years after the last evidence was taken, and 9 years after the involved petitioner had ceased handling a certain publication which was the basis of the deceptive and unfair trade practices charged therein. Under these circumstances, the Court of Appeals, on petitioner's motion, vacated the Commission's cease and desist order but it is obvious from even a cursory reading of the opinion in the case that the Court had great difficulty in finding a theory to support its order. It is suffice to state here that the Court's order vacating the Commission's cease and desist order was not made on the ground that the Commission lacked jurisdiction to enter its order; in fact the Court does not even use the word "jurisdiction" in the opinion.

The Court does not likewise anywhere expressly state that the Commission was "without authority" to enter the cease and desist order involved in the case. On the contrary, it reserved to the Commission the right to take "additional evidence that its [the cease and desist order] entry and enforcement is appropriate under present circumstances." Accordingly, the court although it vacated the Commission's cease and desist order did so "without prejudice, however, to the entry of such order as may be appropriate under present circumstances, should the commission see fit to pursue the matter further."

The instant case does not in any way involve the excessive delay present in *New Standard Publishing Co.* case. Bearing in mind the time that must necessarily elapse between the commission of an illegal act and the time such acts come to the attention of the Commission, the time it takes to investigate a case, the time it takes for the Commission's legal staff to familiarize itself with investigational files and prepare a complaint, and the heavy backlog of cases the Commission has, the lapse of the two year period in the instant case between the

commission of the challenged acts and the issuance of the complaint appears reasonable.

Thus the *New Standard Publishing Co.* case does not support respondents' contention that a discontinuance of an illegal practice before the issuance of a complaint deprives the Commission of jurisdiction to enter a cease and desist order to prohibit the recurrence of the illegal practice.

On the contrary, the non-jurisdictional effect of a discontinuance is shown to be firmly established law in *Marlene's Inc. v. Federal Trade Commission*, 216 F. 2d 556 [5 S. & D. 694] (7th Cir. 1954), where the Court stated: "That discontinuance of an unlawful practice, of itself, does not necessarily preclude the issuance of a cease and desist order is so well settled as to preclude further argument."

The above concludes our discussion of the jurisdictional issue raised by the answer. However, in the interest of staying with the subject of "discontinuance of an illegal practice" until the remaining aspects of the subject is terminated although the consideration thereof would normally belong to the end of the discussion of the challenged practices, we turn next to a discussion of the non-jurisdictional effects of such discontinuances on the type of order to be entered by the Commission. The rule in such situations is that "\* \* \* the Commission has broad discretion to determine whether such an order [cease and desist] is needed to prevent resumption of the [unlawful] practice." *Deer v. Federal Trade Commission*, 152 F. 2d 65 [4 S. & D. 437] (2d Cir. 1945). (Material in brackets supplied.)

In the instant matter, it is concluded that the involved unlawful practices, although discontinued, are of such exacerbated character that the public should be given the maximum protection within the authority of the Commission to prevent their recurrence through the issuance of an appropriate cease and desist order.

The unlawful practices here involved are, as seen, three in number. The first of these to be discussed will be the charge of the complaint that respondents made through the use of the described altered test report, and by its means furnished its dealers with instrumentality to make, the false, misleading and deceptive representations "That respondents' altered version of the testing company's report was authentic and represented a true and complete reproduction of the results of said test." Respondents, although admitting that the representations were made, deny that they are false, misleading and deceptive on the ground that "\* \* \* that the portions complained of were a true, authentic and fair summary of the original."

A comparison of the altered test report with the original test report

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shows certain deletions from the original report and substitutions therefor in the altered report.

The portion of the original test report under the heading "Abrasion Test" reads in full as follows:

## Abrasion Test

Abrasion tests were conducted using the United States Testing Co., Inc. Abrasion (Wear) Test Machine. Specimens clamped to a movable carriage were constantly in contact with a lever arm covered with 320 Aloxite cloth exerting a pressure of approximately 33 ounces.

The fabrics were abraded in the warp and filling directions until an examination of the tested specimens disclosed the nap or pile to be almost completely worn from the fabric face.

We list below the number of cycles necessary to produce the above mentioned degree of wear.

<i>Best Quality Cashmere</i> <u>Produced to Date</u>	<i>Country Tweeds</i> <u>El Elegant</u>
673	715

COMMENT: Test results indicate no significant difference in abrasive resistance between the two submitted samples. It is noted that there is no significant difference in "roughing up" in the intermediate stages of wear.

Tested specimens returned.

All of the above was omitted from the altered test report and in its place the following was substituted:

*Abrasion Test:* COUNTRY TWEEDS' El Elegant 100% Cashmere lasts 6.3% longer than Best Quality Cashmere produced to date.

The portion of the original report under the heading "Average Breaking Load (Pounds)" reads in full as follows:

Average Breaking Load (Pounds)			
<i>Best Quality Cashmere</i> <u>Produced to Date</u>		<i>Country Tweeds</i> <u>El Elegant</u>	
Warp	Filling	Warp	Filling
29.6	14.5	28.5	22.7

This test was conducted in accordance with Method 5100 of Federal Specification CCC-T-191b.

All of the above was omitted from the altered test report and in its place the following was substituted:

*Breaking Load Test:* COUNTRY TWEEDS' El Elegant 100% Cashmere proves 56.5% stronger than Best Quality Cashmere produced to date.

It is our opinion that the above-mentioned omissions in the altered test report of statements found in the original test report and the substitution of other statements therefor in the altered report distort the original findings of the testing company so materially as to make it

appear, contrary to any fair reading of the original test report, that the testing company was recommending respondents' "El Elegant Cashmere" as against the cashmere identified as the "Best Quality Cashmere Produced to Date". It is accordingly our conclusion that such distortions by respondent in the altered test report of the original findings of the testing company constitute *per se*, without the aid of any extrinsic evidence, false, misleading and deceptive statements and misrepresentations as charged in the complaint. The unlawful practice here considered, standing alone, would be in itself sufficient justification for the order entered below.

The other two unlawful practices charged by the complaint are related and will be considered together. These are that the respondents and its dealers through the use of the altered report made the following statements and representations and that they are false, misleading and deceptive:

"(1) That the cashmere fabric involved in the test with respondents' El Elegant fabric was the best quality cashmere fabric produced up to the date of the test and that United States Testing Company, Inc., had so found prior to the test.

"(2) That respondents' cashmere fabric was the best quality on the market at the time of the test."

The fact that the above statements and misrepresentations were made is, as shown, admitted in respondents' joint answer but wholly aside from such admissions it has been found above that the evidence of record establishes that such statements and representations were made as statements and representations of fact. Respondents, however, deny that these statements and representations are false, misleading and deceptive on the ground that the said statements and representations were merely respondent's *bona fide* "representations of opinion" as against representations of fact.

More particularly respondents' contention, and the background facts required for understanding the contention, may be summarized as follows. It will be recalled that respondents in the years prior to 1958 had manufactured their cashmere coats out of cashmere fabric produced by Einiger and that in 1958 and subsequent years they manufactured their cashmere coats out of cashmere supplied by Cashmere Fabrics. In early 1958 respondents submitted to the testing company a piece of the Einiger cashmere fabric under the designation "Best Quality Cashmere To Date" and a piece of cashmere fabric produced by Cashmere Fabrics under the designation "El Elegant Country Tweeds", together with a memorandum requesting a comparative test of the two pieces. The testing company in its comparative test report

on the two pieces of fabric used the same designations in referring to them as the respondents had given to them. The same designations were carried over without change into the altered report which was distributed by respondents to all of its dealers throughout the United States and used by some of these dealers in their local advertisements of respondents' El Elegant cashmere coats.

It is respondents' basic argument that the designation "Best Quality Cashmere To Date" which they had given the Einiger piece in their request to the testing company for a comparative test thereon with the "El Elegant" piece was merely an expression of their own opinion of the Einiger cashmere fabric and that the use of such designation in both the original unaltered test report and in the altered test report was similarly merely an expression of respondents' opinion and not a representation of actual fact and that, therefore, the phrase "Best Quality Fabric To Date", being merely a representation of respondents' opinion, cannot be deemed a false, misleading and deceptive representation of fact as alleged in the complaint.

There are at least two difficulties with respondents' contention. In discussing the first of these, we will assume *arguendo* that respondents, in transmitting the Einiger piece to the testing company under the label of the "Best Quality Cashmere To Date" for a comparative test with the "El Elegant" piece, were merely expressing their private, personal opinion that the Einiger fabric was the best quality fabric produced to the date of the requested test. We see no harm with having the respondents label the Einiger piece with any designation they chose in transmitting it to the testing company, *provided*, however, that such designation, especially if it might be considered misleading to respondents' dealers and the general public, is confined to private communications between respondents and the testing company.

The vice arises when a label intended as an opinion as to quality but expressed as a flat statement of fact is released for publication. Under such circumstances, the label *per se* upon publication becomes misleading. Thus, no matter how innocently intended as a private opinion, the designation "Best Quality Cashmere To Date", upon release on the letterhead of the testing company (actually unauthorized) to respondents' dealers and the general public, assumed immediately the character of a false, misleading and deceptive representation. This tendency of the words "Best Quality Cashmere To Date" to mislead and deceive becomes especially pronounced when the testing company, as in the instant case has a name, United

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States Testing Company, Inc., which in itself is suggestive of being an agency of the Federal government.

Under these circumstances, it is our conclusion not only that the dealers and general public would be misled and deceived by the altered test report in believing that the testing company had found the piece identified as the "Best Quality Cashmere Fabric To Date" as actually being the best cashmere fabric produced to date, but that the public by reason of the same deception, constituting a false premise, would also be misled and deceived into believing that the testing company had found the "El Elegant" cashmere fabric to be better than any other cashmere fabric on the market. The capacity of the altered test report with its described designations to mislead and deceive is especially evident from the fact that even some of respondents' dealers, who are far more expert on judging fabrics than the average consumer, were also misled into believing that the testing company had actually certified the "El Elegant" cashmere fabric as being the best on the market, notwithstanding the testing company's opening statement in the altered report which also appears in the original unaltered test report, to wit: "Subject: Two samples of fabric sampled and identified by Client as below."

The above concludes our discussion of one of the difficulties inherent in respondents' contention that the descriptive reference in the altered report to the "Best Quality Cashmere To Date" was merely a representation of respondents' private opinion. The other difficulty with the contention is that the record does not bear it out. The joint answer does not anywhere contain an allegation that the representations of fact charged in the complaint<sup>5</sup> were merely representations of respondents' private opinions. On the contrary, our analysis of the joint answer discloses that respondents in their answer admitted that they made these representations of fact. Furthermore, a piece of advertisement which respondents sent out to their dealers during the selling season of 1958 is strong indication that respondents intended the representations here under consideration to be representations of fact rather than of opinion. The advertisement in question, it will be recalled, reads: "Q. How do I know El Elegant Cashmere is my best buy? A. Recent test by U.S. Testing, world's largest independent testing laboratory, proclaimed El Elegant Cashmere the finest money can buy."

<sup>5</sup> For the convenience of the reader, these representations as charged in the complaint are repeated below: "(1) That the cashmere fabric involved in the test with respondents' El Elegant fabric was the best quality cashmere fabric produced up to the date of the test and that the United States Testing Company, Inc., has so found prior to the test. (2) That respondents' cashmere fabric was the best quality on the market at the time of the test."

The record contains a considerable amount of expert testimony on the relative merits of the Einiger cashmere fabric (i.e., identified in altered report as the "Best Quality Cashmere Produced To Date"), the El Elegant cashmere fabric and various other cashmere fabrics by other manufacturers. No cognizance has been taken of this expert testimony in the findings of fact herein as we are of the opinion that such testimony is not necessary or even relevant for the proper disposition of the issues in the case. One of the allegations in the complaint charges respondents with representing "(3) That respondents' altered version of the testing company's report was authentic and represented a true and complete reproduction of the results of said test." As heretofore shown, the answer admits this charge but takes issue with the further charge in the complaint that the representation is false, misleading and deceptive. Respondents sought to utilize some of the aforementioned expert testimony to show that the representation here under consideration was not misleading, false, and deceptive. Our prior analysis has shown that the altered report omitted certain statements found in the original test report and substituted other statements therefor in the altered report. In another portion of the answer the respondents admit "that through the use of the altered and paraphrased report, a representation was made \* \* \* that the quality of corporate respondent's cashmere fabric was superior to any other cashmere fabric previously produced and that the testing company had so found." The original test report under the subject of "Abrasion Test" had this to say about the two pieces of cashmere fabric identified therein as "Best Quality Cashmere Produced To Date" and "Country Tweeds El Elegant", respectively, to wit: "*COMMENT*: Test results indicate no significant difference in abrasive resistance between the two submitted samples. \* \* \*"

This comment, among others, was omitted from the altered report. It is thus self-demonstrative that no expert testimony on the relative merits of various cashmere fabrics is required to show that the aforementioned admitted representation was false, misleading and deceptive. As heretofore indicated, it is our opinion that this false, misleading and deceptive representation is sufficient in itself to justify the order entered below.

The other allegations of the complaint on which expert testimony was received are the related charges that respondents "*through the use of said altered report*" made still other additional representations heretofore set forth but here repeated for the convenience of the reader, to wit: "(1) That the cashmere fabric [i.e., the Einiger fabric

identified by respondents under the designation "Best Quality Cashmere To Date"] involved in the test with respondents' El Elegant fabric was the best quality cashmere fabric produced to the date of the test and that the United States Testing Company, Inc., had so found prior to the test. (2) That respondents' cashmere fabric was the best quality on the market at the time of the test." (Italics supplied.)

As heretofore shown, respondents' by their failure in their answer to deny the representation shown as (1) above are deemed to have admitted that such representation was made through the use of the altered report. Our findings of fact herein show that the testing company had never engaged in any studies for the purpose of determining what cashmere fabric was the best cashmere fabric produced "to date", that it had not made any findings in its original test report that the fabric identified therein as the "Best Quality Cashmere Fabric Produced To Date" was actually such, and that it had not made any finding in its original test report that the El Elegant fabric was the best quality cashmere fabric on the market at the time of the test. From this it necessarily follows that the representations shown in (1) above are false, misleading and deceptive. It is thus self-evident that expert testimony on the relative merit of various cashmere fabrics also would add nothing to the inquiry here discussed.

Even if we choose to ignore the admission in the answer of the representations shown in (1) above and accept *arguendo* the contention in respondents' brief that its said representation was merely an expression of respondents' private opinion on the Einiger fabric (i.e., "Best Quality Fabric Produced To Date"), it is evident that the testimony of expert witnesses on the relative merit of various cashmere fabrics herein would be irrelevant because as respondents state in their brief (page 24) their said opinion was based, not on the opinions of others, but on respondent Weisman's "experience and prior purchase of millions of dollars of Einiger's fabric".

Similarly, the expert testimony in the record is not needed with respect to respondents' representation shown in (2) above. As heretofore noted, this representation is conceded by respondents since they admit in their answer "that through the use of the altered and paraphrased report, a representation was made \* \* \* that the quality of corporate respondent's cashmere fabric was superior to any other cashmere fabric previously produced and that the testing company had so found." The original unaltered report shows that the testing company had not made therein any test findings which would in any way support or justify respondents' representation through the use

of the altered report "that the quality of corporate respondent's cashmere fabric was superior to any other cashmere fabric previously produced." The answer not only admits that respondent had made this representation through the use of the altered report but also alleges as noted above that representation had been made "that the testing company had so found". Our findings of fact herein show that the original unaltered report is devoid of any such finding by the testing company. Thus the original unaltered report conclusively establishes that the representations shown in (2) above are false, misleading and deceptive. It is thus again self-demonstrative that the expert testimony herein on the relative merits of various cashmere fabrics could not have any possible bearing on the issue discussed in this paragraph.

It may be stated in summary that no findings of fact have been made on the expert testimony in the record on the relative merits of various cashmere fabrics produced in the years prior to 1959 because, as shown in our analysis, such testimony is irrelevant and immaterial to the issues in the proceeding. In *Zenith Radio Corp. v. Federal Trade Commission*, 143 F. (2d) 29 (7th Cir. 1944), it was held: "The Commission had a right to look at the advertisements in question, consider the relevant evidence in the record that would aid it in interpreting the advertisements, and then decide for itself whether the practices engaged in by the petitioner were unfair or deceptive, as charged in the complaint." See also *Charles of The Ritz Dist. Corp. v. Federal Trade Commission*, 143 F. (2d) 676 (2d Cir. 1944); *Exposition Press, Inc., et al. v. Federal Trade Commission*, 295 F. (2d) 869, (2d Cir. 1961).

The final matter for consideration is the scope of the order to be entered in this matter. Counsel supporting the complaint requests an order covering not only the types of unlawful practices here involved but one also prohibiting respondents from "representing in any manner the quality of their [respondents'] cashmere fabrics or any other fabric." Respondents, on the other hand, in the event of an adverse decision, request a cease and desist order limited to the types of violation involved in the proceeding.

The portion of the proposed order of counsel supporting the complaint here being discussed prohibits, in pertinent part, respondents from representing, directly or by implication, the following:

[A] That a comparative test of the fabric in respondents' cashmere coats with another cashmere fabric, shows that respondents' fabric is the best quality cashmere fabric produced or on the market when the test does not so show; or [B] or misrepresenting in any manner the quality of their cashmere fabrics or any other fabric. (The bracketed capital letters are supplied.)

In our opinion the parts of the above proposed order marked [A] and [B], when each is considered separately under the views hereinafter expressed, are both too narrow and too broad. Part [A] is too narrow in that it is confined to prohibitions against the misuse of "comparative" tests of fabrics and does not prohibit the misuse of tests of every kind and description, including the non-comparative type of test, as required in the interest of giving the public the maximum protection possible against misrepresentation by distortions of a test. It is also too narrow because it is confined to cashmere coats whereas it should cover coats made out of any type of fabric and also because it is confined to coats whereas it should cover any merchandise offered for sale, sold, or distributed by respondents.

Part [B], on the other hand, is too broad in that it covers in sweeping general terms every possible type of misrepresentation and is thus wholly unrelated to the type of misrepresentations here involved through the use of a test. It is possible that in some cases the factual situation may make such a broad order desirable and necessary for the protection of the public in addition to the narrower specific order directed against a particular kind of unlawful practice but that does not appear to be the case here.

Respondents have been engaged in the manufacture of ladies' coats for many years. Their coats are nationally advertised in a fashionable women's magazine. They are handled by the better department stores and ladies' apparel specialty stores in the country. They are of good quality. One of the leading ladies' apparel department stores in New York City regarded respondents' El Elegant cashmere coats as "a fine coat for the money". Their retail price of \$135 is large enough to generally assure good quality fabric, good styling and good tailoring. With the presence of these factors, the probability of the more usual or typical kinds of misrepresentation appears remote.

The misrepresentations here involved were largely directed to respondents' dealers and seem to have been motivated by respondents' panicky fear of losing their customer-dealers because of the shift in the source of respondents' supply of cashmere fabric from the well known and respected mill of Einiger to an obscure broker (supplier since 1958 of the fabric identified as El Elegant), apparently in the interest of obtaining the fabric at less than standard mill prices. Hence the involved misrepresentations by distortion of a test made by a well known testing laboratory for the purpose of trying to prove that the new El Elegant cashmere fabric was better than the Einiger cashmere. These misrepresentations which appear to have backfired almost immediately were never resumed after the year of their launch-

ing in 1958. The cease and desist order entered below will give further assurance that the reprehensible practice will never again be resumed.

But a broader order for the reasons indicated is not required herein in the interest of the public and would unnecessarily subject respondents to the possibility of heavy fines for inadvertent or unwitting violations of the Act. The provisions of the Federal Trade Commission Act were not intended to be retributive or punitive in nature. The Commission in a recent proceeding, involving as in the instant matter a violation of Section 5 of the Act, indicated a preference for "a more narrow and specific prohibition" to a "broad and indefinite command." *Colgate Palmolive Company*, No. 7736, FTC, Dec. 29, 1961. A similar preference is indicated here.

From the findings of the evidentiary facts as heretofore set forth, the examiner reaches the following ultimate findings of fact and law:

1. That the Federal Trade Commission has jurisdiction of the subject-matter of this proceeding and of the respondents hereinabove named.

2. That the complaint states a cause of action against said respondents under the Federal Trade Commission Act.

3. That this proceeding is in the interest of the public.

4. That the acts and practices of respondents, as set forth above, 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.

#### ORDER

*It is ordered*, That respondents Country Tweeds, Inc., a corporation, and its officers, and Marcus Weisman, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of ladies' cashmere coats, or any other merchandise, composed of fabrics of any kind, or products made therefrom, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication:

(a) That a comparative test of the fabric in respondents' cashmere coats with another cashmere fabric, shows that respondents' fabric is the best quality cashmere fabric produced or on the market when the test does not so show.

(b) That an altered report of a test, comparative or otherwise, is a true and complete copy or reproduction of the report of such test.

2. Misrepresenting in any manner by means of a test, comparative or otherwise, the quality of any merchandise offered for sale, sold, or distributed by respondents or the quality of the fabric in such merchandise.

3. Misrepresenting the results of a test, comparative or otherwise, by altering the report of the test.

4. Furnishing means and instrumentalities to others whereby they may mislead the public as to any of the matters and things set out above.

#### OPINION OF THE COMMISSION

By Anderson, *Commissioner*:

Respondents were charged with violation of Section 5 of the Federal Trade Commission Act by engaging in unfair and deceptive acts and practices in connection with the sale and distribution of their products. This matter is now before us on respondents' exceptions to the initial decision sustaining the allegations of the complaint as well as on the exceptions of counsel supporting the complaint to the breadth of the order entered below.

Respondent Country Tweeds, Inc., is a manufacturer of ladies' coats and this proceeding is concerned with representations made by respondents in connection with their distribution of garments made of cashmere fabric purchased by Country Tweeds from other concerns. In 1957, and preceding years, respondents purchased their cashmere fabric requirements from Einiger Mills, Inc., a textile manufacturer. Thereafter, at some time in 1957, Country Tweeds switched from Einiger and bought the cashmere fabrics it needed from Cashmere Fabrics, Ltd. The latter was not a manufacturer but subcontracted with various other firms for the processing required to turn the raw fiber into finished fabric. Respondents sold the coats made from cloth supplied by Cashmere Fabrics, Ltd., under the brand name "Country Tweeds El Elegant". The hearing examiner also found in this connection, and the finding is not disputed, that in 1958, 80% of Cashmere Fabric's total sales were to Country Tweeds and by 1960, the percentage had increased to 90%.

The complaint charges in substance that respondents placed the means of misrepresenting their products in the hands of their distributors by furnishing these dealers with a deceptively altered report of a test by the United States Testing Company, Inc. The record

shows that the test involved a comparison of two cashmere fabrics: the first produced by Einiger Mills, the other, El Elegant cashmere, purchased from Cashmere Fabrics, Ltd.

The complaint further alleges that respondents submitted to the United States Testing Company the two pieces of fabric respectively designated as "Best Quality Cashmere produced to date",<sup>1</sup> and as "Country Tweeds El Elegant Cashmere", and that the testing company subjected these materials to an abrasion, a breaking load and a dry cleaning test. The complaint notes the testing company in its report to respondents adhered to respondents' identification of the fabrics tested, namely, "Best Quality Cashmere produced to date" and "Country Tweeds El Elegant Cashmere".

The complaint charges that respondents altered the body of the testing company's report by deleting certain portions thereof and adding new statements, but that they nevertheless reproduced on the altered version the testing company's letterhead, client designation, subject, number, and date, as well as the signatures of the testing company's officials in order to give the altered version of the report the appearance of authenticity.

The complaint sets forth verbatim, as follows, the omissions, changes, and product designation in the altered report in connection with the abrasion and breaking load tests constituting the alleged misrepresentations:

. . . The body of the report was changed. The testing company's report of the abrasion test, besides other information, contained the following statement:

We list below the number of cycles necessary to produce the above mentioned degree of wear.

<i>Best Quality Cashmere Produced to Date</i>	<i>Country Tweeds El Elegant</i>
<u>673</u>	<u>715</u>

*Comment:* Test results indicate no significant difference in abrasive resistance between the two submitted samples. It is noted that there is no significant difference in "roughing up" in the intermediate stages of wear.

In the altered report produced by respondents the foregoing quoted statement was excised and the following paragraph was substituted:

*Abrasion Test:* Country Tweeds El Elegant 100% Cashmere last 6.3% longer than Best Quality Cashmere produced to date.

The testing company's report of the breaking load test was as follows:

Average Breaking Load (Pounds)			
<i>Best Quality Cashmere Produced to Date</i>	<i>Country Tweeds El Elegant</i>		
Warp	Filling	Warp	Filling
29.6	14.5	28.5	22.7

<sup>1</sup> The Einiger fabric.

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This portion of the testing company's report was deleted and respondents' version was substituted which was as follows:

*Breaking Load Test:* Country Tweeds El Elegant 100% Cashmere proves 56.5% stronger than Best Quality Cashmere produced to date.

The complaint alleges that through the use of the altered report respondents falsely represented and enabled their dealers to represent that:

1. The cashmere fabric involved in the test with respondents' El Elegant cashmere was the best quality cashmere fabric produced up to the date of the test and that United States Testing Company, Inc., had so found prior to the test.

2. That respondents' cashmere fabric was the best quality on the market at the time of the test.

3. That respondents' altered version of the testing company's report was authentic and represented a true and complete reproduction of the results of said test.

Respondents do not dispute that they altered the United States Testing Company's report in the manner set forth in the complaint. They do, however, contend that the complaint wrongly alleges, and that the hearing examiner erroneously found, that respondents, by circulating the altered report, made the misrepresentations charged. In fact, among the multiple exceptions taken to the initial decision, respondents strenuously urge that the altered version of the report is a truthful summary of the original.<sup>2</sup>

We find it difficult to credit that respondents, in all seriousness, assert that the altered version was a truthful summary of the testing company's original report. Nowhere on respondent's version is there any indication that it is a condensation of another document. A simple comparison of the statements of the United States Testing Company's report with those in respondents' hybrid document compels the finding that respondents' license in making the omissions and changes already noted in the case of the abrasion and breaking load tests so distorted the test results that for all practical purposes respondents' version inevitably had the tendency to create an impression as to the significance of the test results sharply at variance with the statements previously made by the testing company. Respondents' argument that the alterations in issue here consist merely of stating results in mathematically correct percentages rather than the number

<sup>2</sup> In view of respondents' stout assertion that the report as altered was a truthful representation of the original, we are constrained, at the risk of being facetious, to note the analogy of this situation in which we are faced with the phenomenon arising out of the amalgamation of the heading and conclusion of one document with a body not incorporated in the original, to the classroom incident, where a learned professor, confronted by several of his students with a bug incorporating the wings of one insect, the body of another and the head of a third, identified this marvel, in response to their question, as a "humbug".

of cycles (abrasion test) or pounds (breaking load test) is wholly without merit. The percentages, although mathematically correct, by virtue of respondents' omissions, were placed in a wholly different context than the figures from which they were derived. Respondents' percentages were, therefore, necessarily misleading and inevitably distorted the test results in favor of the product then currently sold by Country Tweeds.

We find, therefore, that the complaint's allegation that respondents falsely represented their altered version as an authentic, true, and complete reproduction of the United States Testing Company's report is amply supported by the record.

As heretofore noted, the complaint also charges that respondents falsely represented that the fabric compared to Country Tweeds El Elegant cashmere was the best quality cashmere produced up to the date of the test and that the United States Testing Company had so found prior to the test, as well as that respondents misrepresented their product as the best quality cashmere on the market at the time of the test.

The hearing examiner held these allegations sustained by the record on the ground that the original report was devoid of any finding supporting these representations and for the additional reason that the testing company had never made any studies to determine what cashmere fabric was the best produced "to date". He refused to consider the expert testimony on the relative merits of various cashmere fabrics as irrelevant, concluding that these representations were necessarily false since the testing company's findings were unrelated to the question of which cashmere was the best quality prior to or at the time of the test.

Respondents contend in effect that there has been a failure of proof and that these allegations of the complaint have not been sustained since the hearing examiner failed to make a finding on the merits of the different cashmere fabrics. Because of the examiner's refusal to consider the expert testimony on this point and his resultant failure to make a finding thereon, we agree that he had no basis for making the ultimate finding that respondents' representations that the Eini-gar fabric was the best on the market up to the date of the test and that respondents' cashmere was the best quality on the market at the time of the test were false.

However, an examination of the two documents suffices for a determination of whether respondents represented that the testing company, prior to the test, had found that the fabric compared to El

Elegant cashmere was the best quality produced up to that time,<sup>3</sup> and, if so, whether that representation was false.

Respondents claim that on its face the altered report did not create a representation that the testing company had found that the Einiger fabric was the best quality cashmere produced in the period preceding the test. They invite our attention to the heading in both the altered and original reports, stating that the two samples had been identified by the client,<sup>4</sup> as well as to the fact that "Best Quality Cashmere" was capitalized in both versions. Respondents argue that consequently the only reasonable interpretation of the test reports they circulated is that they, as a client of the testing company, either arbitrarily or as a matter of honest opinion, designated one of the fabrics as "Best Quality Cashmere produced to date" and that under no conceivable construction could this language be interpreted as implying that the testing company itself had determined that the Einiger fabric was the best quality produced up to the time of the test.

It is conceivable that some individuals, upon prolonged and careful scrutiny of the reports' subject heading, spelling, etc., might conclude that the designation "Best Quality Cashmere produced to date" had originated with respondents rather than the testing company. We are persuaded, however, that the net impression created by the description in issue here in the context of the altered report as a whole is necessarily that it stemmed from a qualitative judgment by the testing company on the basis of an objective test of the fabric's properties.

It is, of course, immaterial that a phrase considered separately may technically be construed so as not to constitute a misrepresentation.<sup>5</sup> In deciding whether an advertisement or other statement is deceptive, we must look to the over-all impression it is likely to make on the buying public,<sup>6</sup> and in those instances where statements are susceptible of either a misleading or a truthful interpretation they must be construed against the person making them.<sup>7</sup> In our interpretation of the representations here, we must, of course, be guided by the maxim that impressions are the primary target of the ad writer.<sup>8</sup> The only

<sup>3</sup> In making this determination, we do not find it necessary to rely on the admissions in the respondents' answer. We, therefore, need not consider the examiner's rulings and findings on such admissions or respondents' exceptions to the findings and evidentiary rulings thereon.

<sup>4</sup> "Two samples of fabric sampled and identified by Client as below. Order No. 4424 dated 2/4/58."

<sup>5</sup> *Kalwajtyz v. Federal Trade Commission*, 237 F. 2d 654 (7th Cir. 1956), cert. denied 352 U.S. 1025 [6 S. & D. 72] (1957).

<sup>6</sup> *Murray Space Shoe Corporation, et al. v. Federal Trade Commission*, 304 F. 2d 270 [7 S. & D. 480] (2d Cir. 1962).

<sup>7</sup> Id. See also *United States v. 95 Barrels of Vinegar*, 265 U.S. 438 (1924).

<sup>8</sup> *Stanley Laboratories, Inc., et al. v. Federal Trade Commission*, 138 F. 2d 388, 392 [3 S. & D. 596] (9th Cir. 1943).

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motivation which may reasonably be ascribed to respondents' actions in circulating their version of the report is, of course, that they desired to attribute to the testing company a finding as to the quality of the Einiger fabric which the testing company had never made.

Respondents' own statement at the time they circulated their version of the test report indicates expressly that this is the impression they intended to create, for a brochure they furnished Country Tweeds' dealers makes the following statement in question and answer form:

Q. How do I know El Elegant cashmere is my best buy?

A. Recent tests by U.S. Testing, the world's largest independent testing laboratory, proclaimed El Elegant cashmere the finest money could buy.

This representation can only be interpreted as meaning that the United States Testing Company had found El Elegant the finest cashmere money could buy because the testing company found El Elegant superior to a cashmere fabric the testing concern had previously determined to be the best quality up to the date of the test. Any other construction of respondents' statements concerning the test results is inconceivable and obviously this was the interpretation of Country Tweeds' customer-dealer in Tulsa, Oklahoma, which advertised El Elegant cashmere coats as "proven the country's finest by the United States Testing Company".

Respondents' argument that there was no deception in the use of the altered report because the description "Best Quality Cashmere produced to date" appeared in the United States Testing Company's original report deserves only short shrift. As respondents state, the complaint does not allege that respondents have misrepresented their products through the medium of the original report. This allegation is not made for the simple reason that respondents did not make public the original report, and the deception, of course, could result only through the medium of the document actually circulated, viz., the altered report. Had respondents circulated the original report without change, they would thereby also have misrepresented the testing company's actual findings as to the quality of the Einiger fabric, because of their designation of the latter as "Best Quality Cashmere produced to date". By altering the test report and exaggerating the rather minor differences revealed by the original report as to the quality of the fabrics compared, respondents accentuated the misrepresentation they had previously carefully planted in the original report and thereby created a context in which the phrase "Best Quality Cashmere produced to date" had an even greater tendency to create a false

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impression as to the testing company's actual findings than this description had in its original setting.

The argument is also made that this proceeding should be dismissed because it is not in the public interest for the Commission to concern itself with matters of opinion, harmless blurbs or representations only remotely referring to the quality of products. Respondents, however, have misrepresented and distorted the findings of a testing company; the description "Best Quality Cashmere" in that context does not imply that this was a mere representation of respondents' opinion but, rather, represents that this was a finding made on the basis of objective data by the testing company. Nor is this a private controversy between the testing company and respondents. The practice employed by respondents in misrepresenting and distorting test results to enhance the saleability of their products is an unfair trade practice which it is the duty of the Commission to prohibit.

The next question that presents itself is the adequacy of the order entered below to protect the public from further deception in connection with the distribution and sale of respondents' products. Counsel supporting the complaint has taken exception to the examiner's order as inadequate on the ground that it prohibits only the means of deception, namely, the use of distorted test reports but not the practice of misrepresentation. He advocates that the order be broadened by the addition of the following prohibition:

Misrepresenting in any manner the quality of their cashmere fabrics or any other fabric.

Respondents, in effect, counter with the argument that at best the violation of law found and charged is limited to the misquotation of a testimonial and that the prohibition proposed by counsel supporting the complaint goes beyond prohibiting similar or related practices and, in effect, would enjoin respondents from violating the law.

In determining the proper scope of the order, we, of course, must take into consideration the charges of the complaint and the violations of law proven; only in this manner can we fashion a proper remedy to prevent repetition of the unfair trade practices previously committed as well as the commission of unfair and deceptive acts related to the illegal acts substantiated by this record.

We agree that one of the central allegations of the complaint is the charge that respondents misrepresented the report of the United States Testing Company, an act which is, in a sense, analogous to the misquotation of a testimonial. The complaint,

however, is not limited to that charge alone, and the allegations make it clear that a misrepresentation as to the facts of the quality of respondents' cashmere is inherent in the distortion of the testing company's report. Respondents clearly went beyond the mere misquotation of the test results when they directly misrepresented the quality of their products with a statement that the El Elegant cashmere proved "56.5% stronger" than Best Quality Cashmere produced to date. In taking this figure out of context, they, in effect, attributed to their cashmere a strength which it did not possess. This percentage, derived from a figure relating to only one portion of the breaking load test, does not pertain to the over-all strength of one fabric as compared to another as respondents represented in this distortion; for all practical purposes, therefore, it has no basis in fact. The falsity of this statement as to the quality of the El Elegant cashmere is apparent on the face of the complaint and fully documented by the record.<sup>9</sup>

This direct misrepresentation as to the strength of respondents' cashmere fabric is obviously related to and interwoven with respondents' misrepresentation of the test results and, therefore, goes beyond the mere misquotation of a testimonial or endorsement. To protect the public from further deception we are, therefore, compelled to prohibit respondents from misrepresenting the quality of their fabric irrespective of whether such deceptive claims result from the misquotation of a test or other testimonial. In view of the flagrantly fraudulent nature of respondents' deception, we do not agree with the examiner that an order limited to representations arising in connection with their use of tests, comparative or otherwise, will adequately insure that respondents will refrain in the future from misrepresenting the quality of their fabrics.

In framing remedial measures to prevent the recurrence of unfair trade practices, we are not required to confine the order to a narrow prohibition of the illegal practices in the precise forms in which they have existed in the past<sup>10</sup> as long as the remedy imposed is reasonably related to the unlawful practices found to exist.<sup>11</sup> The additional prohibition sought by counsel supporting the complaint meets this criterion and we will, therefore, amend the hearing examiner's order by requiring respondents to refrain from misrepre-

<sup>9</sup> In determining the proper remedy it is, therefore, not necessary to determine whether respondents' representation that their cashmere was the best on the market at the time of the test was, in fact, false.

<sup>10</sup> *Federal Trade Commission v. Ruberoid Co.*, 343 U.S. 470 [5 S.&D. 388], (1952).

<sup>11</sup> *Federal Trade Commission v. National Lead Company, et al.*, 352 U.S. 419 [6 S.&D. 193] (1957).

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senting in any manner the cashmere or other fabrics in their merchandise.

The exceptions of counsel supporting the complaint to the initial decision are granted while those of respondents, except as heretofore noted, are denied. The initial decision as modified by our order will be adopted as the decision of the Commission.

ORDER MODIFYING INITIAL DECISION AND PROVIDING FOR THE FILING OF OBJECTIONS TO PROPOSED FINAL ORDER AND REPLY\*

This matter having been heard by the Commission upon the exceptions of respondents and counsel supporting the complaint to the initial decision and upon briefs and oral argument in support thereof and in opposition thereto, and the Commission having ruled on said exceptions and having determined that the findings and order to cease and desist in the initial decision should be supplemented to conform to the views expressed in the accompanying opinion:

*It is ordered*, That the findings in the initial decision be modified by striking therefrom that section beginning on page 1261 with the words "It has heretofore been noted" and ending on page 1262 with the words "these representations are false, misleading and deceptive" and substituting therefor the following findings of fact:

Respondents have falsely and deceptively represented that the United States Testing Company, Inc., found, prior to a comparative test of their El Elegant cashmere with another fabric (the Einiger cashmere), that the second fabric was the best quality cashmere produced up to the date of the test.

Respondents, in distorting the findings of the United States Testing Company, have directly and factually misrepresented the quality of their El Elegant cashmere by ascribing, without any qualification, to it a strength 56.5% greater than another fabric (the Einiger cashmere). El Elegant cashmere was not "56.5% stronger" than the other fabric, and the percentage cited by respondents has no basis in fact since it was derived from only a portion of the breaking load test and does not relate to the overall strength of one fabric compared to another, as respondents represented.

Respondents also falsely represented that their altered version of the testing company's report was authentic and represented a true and complete reproduction of the results of said test.

Through the altered report respondents furnished their dealers the means and instrumentality of misrepresenting Country

\* Issued September 21, 1962.

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Tweeds' cashmere coats, and those dealers of respondents who utilized the altered report in their advertising necessarily misrepresented the quality of respondents' products.

*It is further ordered*, That the initial decision be modified by striking therefrom the fourth paragraph on page 1262 thereof, beginning with the words "In summary" and ending with the words "in the proceeding."

*It is further ordered*, That the "DISCUSSION AND CONCLUSIONS" of the initial decision be modified by striking therefrom that section beginning on page 1269 with the words "The record contains" and ending on page 1271 with the words "*Exposition Press, Inc., et al. v. Federal Trade Commission*, 295 F. (2d) 869 (2d Cir. 1961)" and that section beginning on page 1271 with the words "The portion of the proposed order" and ending on page 1273 with the words "A similar preference is indicated herein."

*It is further ordered*, That respondents may, within twenty (20) days after service upon them of this order, file with the Commission their objections to the changes in the order to cease and desist contained in the initial decision, as shown by the following proposed order of the Commission, together with a statement of the reasons in support of their objections and a proposed alternative form of order appropriate to the Commission's decision.\*

*It is further ordered*, That counsel in support of the complaint may, within ten (10) days after service upon him of respondents' memorandum or brief, file a reply thereto.

## FINAL ORDER

Respondents having filed under § 4.22(c) of the Commission's Rules of Practice exceptions to the proposed order, reasons in support thereof and a proposed alternative form of order, and counsel supporting the complaint having filed a reply in opposition thereto; and

The Commission having determined that respondents' exceptions to the proposed final order are without merit and that said order should be entered as the final order of the Commission:

*It is ordered*, That respondents' exceptions to the proposed final order be, and they hereby are, denied.

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

*It is ordered*, That respondents, Country Tweeds, Inc., a corporation, and its officers, and Marcus Weisman, individually and as an

\*Proposed order is omitted since it was later issued as the Final Order.

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officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of ladies' cashmere coats or any other merchandise, composed of fabrics of any kind, or products made therefrom, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing directly or by implication:
  - a. That a comparative test of a fabric in respondents' merchandise with another fabric shows that respondents' fabric is the best quality produced or on the market when the test does not so show.
  - b. That an altered report of a test, comparative or otherwise, is a true and complete copy or reproduction of the report of such test.
2. Misrepresenting in any manner, by means of a test, comparative or otherwise, the quality of any merchandise offered for sale, sold or distributed by respondents or the quality of the fabric in such merchandise.
3. Misrepresenting the results of a test, comparative or otherwise, involving fabrics in their merchandise by altering the report of the test.
4. Misrepresenting in any manner the quality of cashmere or other fabric in their merchandise.
5. Furnishing means and instrumentalities to others whereby they may mislead the public as to any of the matters and things set out above.

*It is further ordered,* That the initial decision as modified by the Commission's order issued September 21, 1962, and as modified herein, be, and it hereby is, adopted as the decision of the Commission.

*It is further ordered,* That respondents, Country Tweeds, Inc., and Marcus Weisman, 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 set forth herein.

By the Commission, Commissioner Higginbotham not participating.

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## IN THE MATTER OF

## BRUCE OF CALIFORNIA ET AL.

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

*Docket C-270. Complaint, Nov. 29, 1962—Decision, Nov. 29, 1962*

Consent order requiring Oakland, Calif., furriers to cease violating the Fur Products Labeling Act by labeling as "natural," fur which was in fact artificially colored; failing, on labels and invoices, to show the true animal name of fur and the country of origin of imported furs and to disclose when fur products contained artificially colored fur; failing to identify the manufacturer, etc., on labels, and to describe as "natural" on invoices, fur products which were not artificially colored; invoicing fur products falsely with respect to the names of animals producing furs; advertising falsely by radio that all their furs were labeled to show the true name of the animal producing them and the correct country of origin of imports; failing to maintain adequate records as a basis for price and value claims; and failing in other respects to comply with requirements of the Act.

## 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 Bruce of California, a corporation, and Bruce Evander, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Fur Products Labeling Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Bruce of California is a corporation organized, existing and doing business under and by virtue of the laws of the State of California with its office and principal place of business located at 521 Fourteenth Street, Oakland 12, Calif.

Respondent Bruce Evander is an officer of the said corporate respondent and controls, directs and formulates the acts, practices and policies of the said corporate respondent. His office and principal place of business is the same as that of the said corporate respondent.

The corporate respondent and the individual respondent manufacture, wholesale and retail fur products.

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

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

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

1. To show the true animal name of the fur used in the fur product.
2. To disclose that fur products contain or are composed of bleached, dyed or otherwise artificially colored fur when in truth and in fact such fur products contain bleached, dyed or otherwise artificially colored fur.
3. To show the name or other identification issued and registered by the Commission of one or more of the persons who manufactured such fur product for introduction into commerce, introduced it into commerce, sold it in commerce, advertised or offered it for sale, in commerce, or transported or distributed it in commerce.
4. To show the country of origin of the imported furs contained in the fur product.

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) 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.

(b) Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was not set forth in the required sequence, in violation of Rule 30 of said Rules and Regulations.

PAR. 6. Certain of said fur products were falsely and deceptively invoiced by the respondents in that they were not invoiced as required by Section 5(b)(1) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder.

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

1. To show the true animal name of the fur used in the fur product.
2. To disclose that fur products contain or are composed of bleached, dyed or otherwise artificially colored fur when in truth and in fact such fur products contain bleached, dyed or otherwise artificially colored fur.
3. To show the country of origin of the imported furs contained in the fur product.

PAR. 7. Certain of said fur products were falsely and deceptively invoiced in that they were not invoiced in accordance with the Rules and Regulations promulgated thereunder in the following respects:

(a) Fur products were not described as natural when such fur products were not pointed, bleached, dyed, tip-dyed, or otherwise artificially colored, in violation of Rule 19(g) of said Rules and Regulations.

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

PAR. 8. Certain of said fur products were falsely and deceptively invoiced or otherwise falsely and deceptively identified with respect to the name or names of the animal or animals that produced the fur, in violation of Section 5(b)(2) of the Fur Products Labeling Act.

PAR. 9. Certain of said fur products were falsely or deceptively advertised in that certain fur products were not advertised as required under the provisions of Section 5(a) of the Fur Products Labeling Act and in the manner and form prescribed by the Rules and Regulations promulgated thereunder.

Said advertisements were intended to aid, promote and assist, directly or indirectly, in the sale and offering for sale of said fur products.

Among and included in the advertisements as aforesaid, but not limited thereto, were advertisements of respondents which were

broadcast over radio station KNBC, a radio station located in the city of San Francisco, State of California, and having wide coverage in said State and various other States of the United States.

Among such false and deceptive advertisements of fur products, but not limited thereto, were advertisements containing the statement "All furs sold by Bruce of California are labeled to show their true name description and country of origin, in conformance with Government Regulations" thereby representing directly or by implication that the fur products in the stock of the respondents were labeled with the true name of the animal that produced the fur and the correct country of origin of the imported furs contained in the fur products, when in truth and in fact certain of the labels attached to the fur products in the stock of the respondents failed to contain the true name of the animal that produced the fur or the correct name of the country of origin of the imported furs contained in fur products, in violation of Section 5(a)(5) of the Fur Products Labeling Act.

PAR. 10. In advertising fur products for sale as aforesaid respondents made claims and representations respecting prices and values of fur products. Said representations were of the types covered by subsections (a), (b), (c) and (d) of Rule 44 of the Rules and Regulations promulgated under the Fur Products Labeling Act. Respondents in making such claims and representations failed to maintain full and adequate records disclosing the facts upon which such claims and representations were based, in violation of Rule 44(e) of said Rules and Regulations.

PAR. 11. Respondents have sold, advertised, offered for sale and processed fur products which have been shipped and received in commerce, and have misbranded said fur products by substituting for the labels affixed to such fur products, by manufacturers or distributors pursuant to Section 4 of the Fur Products Labeling Act, labels which did not conform to the requirements of said Section 4, in violation of Section 3(e) of said Act.

PAR. 12. 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.

#### DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act and the Fur Products Labeling Act, and the respondents having been served with notice of

said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

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

The Commission, having considered the agreement, hereby accepts same, issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent, Bruce of California, is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 521 14th Street, in the city of Oakland, State of California.

Respondent Bruce Evander is an officer of said corporation and his address is the same as that of said corporation.

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

#### ORDER

*It is ordered,* That respondents Bruce of California, a corporation, and its officers, and Bruce Evander, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, manufacture for introduction, 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, 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:

1. Misbranding fur products by:

A. Representing directly or by implication on labels that the fur contained in fur products is natural when the fur contained in such fur products is pointed, bleached, dyed, tipped, or otherwise artificially colored.

B. 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.

C. 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 mingled with nonrequired information.

D. Failing to set forth the information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder in the sequence required by Rule 30 of the aforesaid Rules and Regulations.

2. Falsely or deceptively invoicing fur products by:

A. Failing to furnish invoices to purchasers of fur products showing in words and figures plainly legible all the information required to be disclosed by each of the subsections of Section 5(b)(1) of the Fur Products Labeling Act.

B. Falsely and deceptively invoicing fur products or otherwise falsely and deceptively identifying such fur products with respect to the name or names of the animal or animals that produced the fur from which such product was manufactured.

C. Failing to describe fur products as natural when such fur products are not pointed, bleached, dyed, tip-dyed or otherwise artificially colored.

D. Failing to set forth the item number or mark assigned to a fur product.

3. 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 represents that fur products are labeled, invoiced, and advertised in accordance with the requirements of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder, when such fur products are not labeled, invoiced, and advertised in accordance with the requirements of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder.

4. Making claims and representations of the types covered by subsections (a), (b), (c) and (d) of Rule 44 of the Rules and Regulations promulgated under the Fur Products Labeling Act unless there are maintained by respondents full and adequate

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records disclosing the facts upon which such claims and representations are based.

*It is further ordered,* That respondents Bruce of California, a corporation, and its officers, and Bruce Evander, 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 selling, offering for sale, or processing fur products which have been shipped or received in commerce, do forthwith cease and desist from misbranding fur products by substituting for the labels affixed to such fur products pursuant to Section 4 of the Fur Products Labeling Act labels which do not conform to the requirements of the aforesaid Act and the Rules and Regulations promulgated thereunder.

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

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IN THE MATTER OF

PHILIP ROSENTHAL ET AL. TRADING AS  
PHILIP ROSENTHAL COMPANY

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

*Docket C-271. Complaint, Nov. 29, 1962—Decision, Nov. 29, 1962*

Consent order requiring New York City manufacturers to cease violating the Flammable Fabrics Act by selling in commerce scarfs which were so highly flammable as to be dangerous when worn.

## COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Flammable Fabrics Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission having reason to believe that Philip Rosenthal and Sidney Rick, individually and as copartners, trading as Philip Rosenthal Company, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Flammable Fabrics Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondents Philip Rosenthal and Sidney Rick are individuals and copartners trading as Philip Rosenthal Company and have their office and principal place of business at 140 West 36th Street, New York, N.Y.

PAR. 2. Respondents, subsequent to July 1, 1954, the effective date of the Flammable Fabrics Act, have manufactured for sale, sold and offered for sale, in commerce; have imported into the United States; and have introduced, delivered for introduction, transported and caused to be transported, in commerce; and have transported and caused to be transported, for the purpose of sale or delivery after sale in commerce; as "commerce" is defined in the Flammable Fabrics Act, articles of wearing apparel, as that term is defined therein, which articles of wearing apparel were, under Section 4 of the Flammable Fabrics Act, as amended, so highly flammable as to be dangerous when worn by individuals. Among the articles of wearing apparel mentioned above were scarfs.

PAR. 3. Respondents, subsequent to July 1, 1954, the effective date of the Flammable Fabrics Act, have sold and offered for sale, in commerce, have imported into the United States; and have introduced, delivered for introduction, transported, and caused to be transported, in commerce; and have transported and caused to be transported, after sale in commerce; as "commerce" is defined in the Flammable Fabrics Act, fabric, as that term is defined therein, which fabric was, under Section 4 of the Flammable Fabrics Act, as amended, so highly flammable as to be dangerous when worn by individuals.

PAR. 4. Respondents, subsequent to July 1, 1954, the effective date of the Flammable Fabrics Act, have manufactured for sale, sold, and offered for sale, articles of wearing apparel made of fabric which was, under Section 4 of the Flammable Fabrics Act, as amended, so highly flammable as to be dangerous when worn by individuals, and which fabric had been shipped or received in commerce, as the terms "article of wearing apparel", "fabric", and "commerce" are defined in the Flammable Fabrics Act.

Among the articles of wearing apparel mentioned above were scarfs.

PAR. 5. The aforesaid acts and practices of respondents were and are in violation of the Flammable Fabrics Act and the Rules and Regulations promulgated thereunder, and as such constitute unfair methods of competition and unfair and deceptive acts and practices in commerce, within the intent and meaning of the Federal Trade Commission Act.

#### DECISION AND ORDER

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

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

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

The Commission, having considered the agreement, hereby accepts same, issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondents Philip Rosenthal and Sidney Rick are individuals and copartners trading as Philip Rosenthal Company with their office and principal place of business located at 140 West 36th Street, New York, N.Y.

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

ORDER

*It is ordered*, That respondents Philip Rosenthal and Sidney Rick, individually and as copartners trading as Philip Rosenthal Company, or under any other name, and respondents' representatives, agents and employees, directly or through any corporate or other device, do forthwith cease and desist from:

1. (a) Importing into the United States; or
- (b) Manufacturing for sale, selling, offering for sale, introducing, delivering for introduction, transporting or causing to be transported, in commerce, as "commerce" is defined in the Flammable Fabrics Act; or
- (c) Transporting or causing to be transported, for the purpose of sale or delivery after sale in commerce;

any article of wearing apparel which, under the provisions of Section 4 of the Flammable Fabrics Act, as amended, is so highly flammable as to be dangerous when worn by individuals.

2. Manufacturing for sale, selling, or offering for sale any article of wearing apparel made of fabric, which fabric has been

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shipped or received in commerce, and which under Section 4 of the Flammable Fabrics Act, as amended, is so highly flammable as to be dangerous when worn by individuals.

3. (a) Importing into the United States; or

(b) Selling, offering for sale, introducing, delivering for introduction, transporting, or causing to be transported, in commerce, as "commerce" is defined in the Flammable Fabrics Act; or

(c) Transporting or causing to be transported, for the purpose of sale or delivery after sale in commerce;

any fabric, which, under the provisions of Section 4 of the said Flammable Fabrics Act, as amended, is so highly flammable as to be dangerous when worn by individuals.

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

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IN THE MATTER OF

WAYNE L. BOWMAN CO., INC.

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

*Docket C-272. Complaint, Nov. 29, 1962—Decision, Nov. 29, 1962*

Consent order requiring a Chattanooga, Tenn., wholesaler of citrus fruit and produce to cease violating Sec. 2(c) of the Clayton Act by receiving allowances in lieu of brokerage on purchases of citrus fruit from Florida packers for its own account for resale, usually at the rate of 10 cents per 1% bushel box or a lower price reflecting said commission.

COMPLAINT

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

PARAGRAPH 1. Respondent Wayne L. Bowman Co., Inc., is a corporation organized, existing and doing business under and by virtue

of the laws of the State of Tennessee, with its office and principal place of business located at 1204 Chestnut Street, Chattanooga, Tenn.

PAR. 2. Respondent is now and for the past several years has been engaged in business primarily as a wholesale distributor, buying, selling and distributing citrus fruit and produce, hereinafter sometimes referred to as food products. Respondent purchases such food products from a large number of suppliers located in many sections of the United States. The annual volume of business done by respondent in the purchase and sale of food products is substantial.

PAR. 3. In the course and conduct of its business for the past several years, respondent has purchased and distributed, and is now purchasing and distributing, food products, in commerce, as "commerce" is defined in the aforesaid Clayton Act, as amended, from suppliers or sellers located in several States of the United States other than the State of Tennessee, in which respondent is located. Respondent transports or causes such products, when purchased, to be transported from the places of business or packing plants of its suppliers located in various other States of the United States to respondent who is located in the State of Tennessee, or to respondent's customers located in said state, or elsewhere. Thus, there has been at all times mentioned herein a continuous course of trade in commerce in the purchase of said food products across state lines between respondent and its respective suppliers of such food products.

PAR. 4. In the course and conduct of its business for the past several years, but more particularly since January 1, 1960, respondent has been and is now making substantial purchases of food products for its own account for resale from some of its suppliers, and on a large number of these purchases respondent has received and accepted, and is now receiving and accepting, from said suppliers a commission, brokerage, or other compensation or an allowance or discount in lieu thereof, in connection therewith. For example, respondent makes substantial purchases of citrus fruit from a number of packers or suppliers located in the State of Florida and receives on said purchases a brokerage or commission, or a discount in lieu thereof, usually at the rate of ten (10) cents per  $1\frac{3}{8}$  bushel box, or equivalent. In many instances respondent receives a lower price from the suppliers which reflects said commission or brokerage.

PAR. 5. The acts and practices of respondent in receiving and accepting a brokerage or a commission, or an allowance or discount in lieu thereof, on its own purchases, as above alleged and described, are in violation of subsection (c) of Section 2 of the Clayton Act, as amended (U.S.C. Title 15, Sec. 13).

Decision and Order

61 F.T.C.

## DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondent named in the caption hereof with violation of subsection (c) of Section 2 of the Clayton Act, as amended, and the respondent having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

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

The Commission, having considered the agreement, hereby accepts same, issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Wayne L. Bowman Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Tennessee, with its office and principal place of business located at 1204 Chestnut Street, Chattanooga, Tenn.

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

## ORDER

*It is ordered,* That respondent Wayne L. Bowman Co., Inc., a corporation, and its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the purchase of citrus fruit or produce in commerce, as "commerce" is defined in the Clayton Act, as amended, do forthwith cease and desist from:

Receiving or accepting, directly or indirectly, from any seller, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, upon or in connection with any purchase of citrus fruit or produce for respondent's own account, or where respondent is the agent, representative, or other intermediary acting for or in behalf, or is subject to the direct or indirect control, of any buyer.

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

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a report in writing setting forth in detail the manner and form in which it has complied with this order.

IN THE MATTER OF  
ABBY-KENT CO., INC., ET AL.

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

*Docket C-273. Complaint, Nov. 29, 1962—Decision, Nov. 29, 1962*

Consent order requiring New York City manufacturers to cease violating the Flammable Fabrics Act by selling in commerce ladies' dresses which were so highly flammable as to be dangerous when worn.

## COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Flammable Fabrics Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Abby-Kent Co., Inc., a corporation, Eugene F. Coracci and Harry Grossman, individually and as officers of said corporation, and Irving Pollack, individually hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Flammable Fabrics 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 Abby-Kent Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York. Individual respondents Eugene F. Coracci, and Harry Grossman, are officers of the corporate respondent and formulate, direct and control the acts, practices and policies of the corporate respondent. Individual respondent Irving Pollack also formulated, directed and controlled the acts, practices, and policies of the corporate respondent until September 28, 1962. The corporate respondent and individual respondents Eugene F. Coracci and Harry Grossman are manufacturers of articles of wearing apparel including ladies' dresses, and have their office and principal place of business at 1400 Broadway, New York, N.Y. Individual respondent Irving Pollack was so engaged until September 28, 1962, at the same address.

PAR. 2. Subsequent to July 1, 1954, the effective date of the Flammable Fabrics Act, respondents have manufactured for sale, sold and

offered for sale in commerce; have imported into the United States; and have introduced, delivered for introduction, transported and caused to be transported, in commerce; and have transported and caused to be transported for the purpose of sale or delivery after sale in commerce; as "commerce" is defined in the Flammable Fabrics Act, articles of wearing apparel, as the term "article of wearing apparel" is defined therein, which articles of wearing apparel were under the provisions of Section 4 of the Flammable Fabrics Act, as amended, so highly flammable as to be dangerous when worn by individuals.

Among such articles of wearing apparel mentioned above were ladies' dresses.

PAR. 3. Respondents, subsequent to July 1, 1954, the effective date of the Flammable Fabrics Act, have manufactured for sale, sold and offered for sale, articles of wearing apparel made of fabric which was, under Section 4 of the Act, as amended, so highly flammable as to be dangerous when worn by individuals, and which fabric, had been shipped and received in commerce, as the terms "article of wearing apparel", "fabric" and "commerce" are defined in the Flammable Fabrics Act.

Among such articles of wearing apparel mentioned above were ladies' dresses.

PAR. 4. Subsequent to July 1, 1954, the effective date of the Flammable Fabrics Act, respondents by falsely representing in writing that they had a continuing guaranty with the Federal Trade Commission, have furnished their customers with false guaranties with respect to the articles of wearing apparel, mentioned in paragraphs 2 and 3 above, to the effect that reasonable and representative tests made under the procedures provided in Section 4 of the Flammable Fabrics Act, as amended, and the Rules and Regulations promulgated thereunder, showed that said articles of wearing apparel, in the form delivered by the respondents, were not so highly flammable under the provisions of the Flammable Fabrics Act as to be dangerous when worn by individuals, in violation of Rule 10(d) of the Rules and Regulations under the said Act and Section 8(b) of such Act.

PAR. 5. The acts and practices of respondents herein alleged were and are in violation of the Flammable Fabrics Act and of the Rules and Regulations promulgated thereunder and as such constitute unfair and deceptive acts and practices within the intent and meaning of the Federal Trade Commission Act.

#### DECISION AND ORDER

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

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

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

The Commission, having considered the agreement, hereby accepts same, issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings and enters the following order:

1. Respondent, Abby-Kent Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 1400 Broadway, in the city of New York, State of New York.

Respondents Eugene F. Coracci and Harry Grossman are officers of said corporation, and their address is the same as that of said corporation. Respondent Irving Pollack also formulated, directed and controlled the policies, acts and practices of said corporation until September 28, 1962, and at the same address as that of said corporation.

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

ORDER

*It is ordered*, That respondent Abby-Kent Co., Inc., a corporation, and its officers, and Eugene F. Coracci and Harry Grossman, individually and as officers of said corporation, and Irving Pollack, individually, and respondents' representatives, agents and employees, directly or through any corporate or other device, do forthwith cease and desist from:

1. (a) Importing into the United States; or
- (b) Manufacturing for sale, selling, offering for sale, introducing, delivering for introduction, transporting or causing to be transported, in commerce, as "commerce" is defined in the Flammable Fabrics Act; or
- (c) Transporting or causing to be transported, for the purpose of sale or delivery after sale in commerce;

any article of wearing apparel which, under the provisions of Section 4 of the Flammable Fabrics Act, as amended, is so highly flammable as to be dangerous when worn by individuals.

2. Manufacturing for sale, selling or offering for sale any article of wearing apparel made of fabric, which fabric has been shipped or received in commerce, and which, under Section 4 of the Flammable Fabrics Act, as amended, is so highly flammable as to be dangerous when worn by individuals.

3. Furnishing to any person a guaranty with respect to any article of wearing apparel or fabric which respondents, or any of them, have reason to believe may be introduced, sold or transported in commerce, which guaranty represents, contrary to fact, that reasonable and representative tests made under the procedures provided in Section 4 of the Flammable Fabrics Act, as amended, and the Rules and Regulations promulgated thereunder, show and will show that the article of wearing apparel, or the fabric used or contained therein covered by the guaranty, is not, in the form delivered or to be delivered by the guarantor, so highly flammable under the provisions of the Flammable Fabrics Act as to be dangerous when worn by individuals, provided, however, that this prohibition shall not be applicable to a guaranty furnished on the basis of, and in reliance upon, a guaranty to the same effect received by respondents in good faith signed by and containing the name and address of the person by whom the article of wearing apparel or fabric was manufactured or from whom it was received.

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

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IN THE MATTER OF

MARTHA MILLS, INC., ET AL.

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

*Docket C-274. Complaint, Nov. 29, 1962—Decision, Nov. 29, 1962*

Consent order requiring New York City distributors of textile fiber products to cease violating the Textile Fiber Products Identification Act by falsely invoicing as "65% rayon, 35% silk", fabrics which contained substantially

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## Complaint

less silk than so represented, and by failing to disclose on labels the true generic names and percentages of fibers present and the country of origin of imported products.

## COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Textile Fiber Products Identification Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission having reason to believe that Martha Mills, Inc., a corporation, and Harry Goldstein, Archie Kaplan, and Neil Pansey, 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 Textile Fiber Products Identification Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

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

Individual respondents Harry Goldstein, Archie Kaplan, and Neil Pansey are officers of the corporate respondent and formulate, direct and control the acts, practices and policies of the corporate respondent, including the acts and practices complained of herein.

Respondents are converters and jobbers of textile fabrics with their office and principal place of business located at 101 West 37th Street, New York, N.Y.

PAR. 2. Subsequent to the effective date of the Textile Fiber Products Identification Act on March 3, 1960, respondents have and are now engaged in the introduction, delivery for introduction, sale, advertising, and offering for sale, in commerce and in the transportation or causing to be transported in commerce, and the importation into the United States of textile fiber products; and have sold, offered for sale, advertised, delivered, transported and caused to be transported, textile fiber products which have been advertised or offered for sale, in commerce; and have sold, offered for sale, advertised, delivered, transported and caused to be transported, after shipment in commerce, textile fiber products either in their original state or contained in other textile fiber products, as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act.

PAR. 3. Certain of said textile fiber products were misbranded by respondents within the intent and meaning of Section 4(a) of the Textile Fiber Products Identification Act and the Rules and Regula-

tions promulgated thereunder, in that they were falsely and deceptively stamped, tagged, labeled, invoiced, advertised or otherwise identified as to the name or amount of the constituent fibers contained therein.

Among such textile fiber products, but not limited thereto, were fabrics invoiced by respondents as "65% rayon, 35% silk", whereas, in truth and in fact, such fabrics contained substantially less silk than represented.

PAR. 4. Certain of said textile fiber products were further misbranded by respondents in that they were not stamped, tagged, or labeled as required under the provisions of Section 4(b) of the Textile Fiber Products Identification Act, and in the manner and form as prescribed by the Rules and Regulations promulgated under said Act.

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

- (a) To disclose the true generic names of the fibers present; and
- (b) To disclose the true percentage of the fibers present by weight; and
- (c) To disclose the name of the country from which such textile fiber products were imported.

PAR. 5. Respondents furnished false guaranties under Section 10(b) of the Textile Fiber Products Identification Act with respect to certain of their textile fiber products by falsely representing that they had a continuing guaranty on file with the Federal Trade Commission, in violation of Rule 38(d) of the Rules and Regulations promulgated under the Textile Fiber Products Identification Act and of Section 10(b) of said Act.

PAR. 6. The acts and practices of respondents as set forth above, were, and are, in violation of the Textile Fiber Products Identification Act and the Rules and Regulations, promulgated thereunder, and constituted, and now constitute, unfair 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 their business, respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale, and distribution of textile fabrics, in commerce, and now cause, and for some time last past have caused, their products, including textile fabrics, when sold, to be shipped from their place of business in the State of New York to purchasers thereof in various other States of the United States and maintain, and at all times mentioned herein have maintained, a substantial course of trade of said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 8. In the course and conduct of their business in soliciting the sale of and in selling textile fabrics, respondents do business under the name Martha Mills, Inc., and use said name on letterheads, invoices, labels and tags, and in various advertisements of their products.

PAR. 9. Through the use of the word "Mills" as part of respondents' corporate name, respondents represent that they own or operate mills or factories in which the textile products sold by them are manufactured.

PAR. 10. In truth and in fact respondents do not own, operate or control the mills or factories where the textile fabrics sold by them are manufactured, but in some instances, buy finished fabrics from others, and in other instances, purchase raw materials or unfinished fabrics from others and pay independent contractors to manufacture or finish such fabrics. The aforesaid representations are therefore false, misleading and deceptive.

PAR. 11. There is a preference on the part of many dealers to buy products, including textile fabrics, directly from factories or mills, believing that by doing so lower prices and other advantages thereby accrue to them.

PAR. 12. In the conduct of their business, at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of textile products of the same general kind and nature as those sold by respondents.

PAR. 13. 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 dealers and other purchasers into the erroneous and mistaken belief that said statements and representations were, and are, true, and into the purchase of substantial quantities of respondents' products by reason of said erroneous and mistaken belief.

PAR. 14. The aforesaid acts and practices of respondents as alleged in paragraphs 7 through 12 were, and are, to the prejudice and injury of the public and of respondents' competitors, and constituted, and now constitute unfair methods of competition and unfair and deceptive acts and practices in commerce in violation of Section 5(a)(1) of the Federal Trade Commission Act.

#### DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act and the Textile Fiber Products Identification Act, and the respondents having been served with notice of said determination and with a copy of the complaint the

Commission intended to issue, together with a proposed form of order; and

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

The Commission, having considered the agreement, hereby accepts same, issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent, Martha Mills, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 101 West 37th Street, in the city of New York, State of New York.

Respondents Harry Goldstein, Archie Kaplan, and Neil Pansey are officers of said corporation and their address is the same as that of said corporation.

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

ORDER

*It is ordered,* That respondents Martha Mills, Inc., a corporation, and its officers, and Harry Goldstein, Archie Kaplan, and Neil Pansey, 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, delivery for introduction, sale, advertising, or offering for sale, in commerce, or the transportation or causing to be transported in commerce, or the importation into the United States, of any textile fiber product; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, of any textile fiber product which has been advertised or offered for sale in commerce; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, after shipment in commerce, of any textile fiber product, whether in its original state or contained in other textile fiber products, as the terms "commerce", and "textile fiber product" are defined in the Textile Fiber Products Identification Act, do forthwith cease and desist from:

## A. Misbranding textile fiber products by:

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

2. Failing to affix labels to such products showing each element of information required to be disclosed by Section 4(b) of the Textile Fiber Products Identification Act.

B. Furnishing false guaranties that textile fiber products are not misbranded or falsely invoiced under the provisions of the Textile Fiber Products Identification Act.

*It is further ordered*, That respondents Martha Mills, Inc., a corporation, and its officers, and Harry Goldstein, Archie Kaplan, and Neil Pansey, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of textile fabrics or any other products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from directly or indirectly, using the word "Mills", or any other word or term of similar import or meaning, in or as a part of respondents' corporate or trade name, or representing in any other manner that respondents perform the functions of a mill or otherwise manufacture or process the textile products sold by them, unless and until respondents own and operate, or directly and absolutely control the mill wherein said textile fabrics are manufactured.

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

## IN THE MATTER OF

JACK MALLON ET AL., TRADING AS  
ACCURATE LEATHER & NOVELTY COMPANY

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

*Docket C-275. Complaint, Nov. 30, 1962—Decision, Nov. 30, 1962*

Consent order requiring Chicago manufacturers of leather and plastic articles to cease stamping the words "genuine leather" on wallets and billfolds made almost entirely of nonleather material engrained and colored to simulate leather.

Complaint

61 F.T.C.

## 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 Jack Mallon and Bernard Mallon, copartners, trading and doing business as Accurate Leather & Novelty Company, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondents Jack Mallon and Bernard Mallon are copartners trading and doing business as Accurate Leather & Novelty Company with their principal place of business located at 5838 West Chicago Avenue, Chicago, Ill. Said respondents cooperate and act together in carrying out the acts and practices hereinafter set forth.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the manufacture, sale and distribution of wallets, billfolds, purses and other leather and plastic articles to jobbers 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 Illinois to purchasers thereof located in various other States of the United States, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Respondents, for the purpose of inducing the purchase of certain of their wallets and billfolds, have engaged in the practice of misrepresenting the material of which said products are made or composed and also have failed to disclose the facts relative thereto by marking or stamping on certain of their wallets and billfolds the words "genuine leather" thereby representing, directly and by implication, that said wallets and billfolds are made wholly of leather.

In truth and in fact, said wallets and billfolds are made almost entirely of nonleather material which is engrained, finished and colored so as to have the appearance of leather. Respondents make no disclosure of such fact on or in connection with their said wallets and billfolds.

There is a preference among the purchasing public for wallets and billfolds made of leather as compared with wallets and billfolds made

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of simulated or imitation leather, a fact of which the Commission takes official notice.

PAR. 5. By the aforesaid practice, respondents place in the hands of others the means and instrumentalities by and through which they may mislead the public as to the quality and composition of their said wallets and billfolds.

PAR. 6. In the conduct of their business at all times mentioned herein, respondents have been in substantial competition in commerce with corporations, firms and individuals in the sale of merchandise of the same general kind and nature as those 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 said erroneous and mistaken belief.

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

## DECISION AND ORDER

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

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

The Commission, having considered the agreement, hereby accepts same, issues its complaint in the form contemplated by said agree-

ment, makes the following jurisdictional findings, and enters the following order:

1. Respondents Jack Mallon and Bernard Mallon are copartners trading and doing business as Accurate Leather & Novelty Company with their principal place of business located at 5838 West Chicago Avenue, in the city of Chicago, State of Illinois.

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 Jack Mallon and Bernard Mallon, copartners, trading and doing business as Accurate Leather & Novelty Company or under any other name or names, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of wallets and billfolds or any other product, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the words "genuine leather" or any other words of similar import or meaning in connection with products which contain parts made of materials other than leather and which simulate or imitate leather without making the disclosure required by Paragraph 2 hereof, or otherwise misrepresenting the kind or quality of the materials of which their products are composed.

2. Offering for sale or selling products which contain parts made of materials other than leather and which simulate or imitate leather unless such parts are identified and the materials of which they are composed are clearly and conspicuously disclosed on a mark, tag or label which is attached to such products or affixed thereon in such manner that it cannot be readily removed, and of such nature as to remain on the product until it reaches the ultimate consumer.

3. Furnishing any means or instrumentality to others whereby they may mislead or deceive the public as to any of the matters or things prohibited in Paragraphs 1 and 2 hereof.

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

## Complaint

## IN THE MATTER OF

## WIESENTHAL &amp; SCHNEIDERMAN, INC., ET AL.

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

*Docket C-276. Complaint, Nov. 30, 1962—Decision, Nov. 30, 1962*

Consent order requiring a New York City manufacturing furrier to cease violating the Fur Products Labeling Act by failing, on invoices, to show the names of animals producing furs, to describe as "natural" furs which were not artificially colored, and to comply in other respects with invoicing requirements; and furnishing false guaranties by falsely representing that they had a continuing guaranty on file with the Commission.

## 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 Wiesenthal & Schneiderman, Inc., a corporation, and Joseph Schneiderman, and Jerry Wiesenthal, individually and as officers of the said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Fur Products Labeling Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Wiesenthal & Schneiderman, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its office and principal place of business located at 245 West 29th Street, New York, N.Y.

Individual respondents Joseph Schneiderman and Jerry Wiesenthal are officers of the said corporate respondent and control, direct and formulate 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.

Respondents are manufacturers of fur products.

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, ad-

vertised, 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 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.

Among such falsely and deceptively invoiced fur products, but not limited thereto, were fur products covered by invoices which failed to show the name or names of the animal or animals that produced the fur.

PAR. 4. Certain of said fur products were falsely and deceptively invoiced in violation of the Fur Products Labeling Act in that they were not invoiced in accordance with the Rules and Regulations promulgated thereunder in the following respects:

(a) Information required under Section 5(b)(1) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was set forth in abbreviated form, in violation of Rule 4 of said Rules and Regulations.

(b) Fur products which were not pointed, bleached, dyed, tip-dyed or otherwise artificially colored were not described as natural, in violation of Rule 19(g) of said Rules and Regulations.

PAR. 5. Respondents furnished false guaranties under Section 10(b) of the Fur Products Labeling Act with respect to certain of their fur products by falsely representing in writing that they had a continuing guaranty on file with the Federal Trade Commission when respondents in furnishing such guaranties had reason to believe that the fur products so falsely guaranteed would be introduced, sold, transported and distributed in commerce, in violation of Rule 48(c) of the Fur Products Labeling Act and Section 10(b) of said Act.

PAR. 6. 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.

#### DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act and the Fur Products

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

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

The Commission, having considered the agreement, hereby accepts same, issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Wiesenthal & Schneiderman, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its office and principal place of business located at 245 West 29th Street, New York, N.Y.

Respondents Joseph Schneiderman and Jerry Wiesenthal are officers of said corporation and their address is the same as that of said corporation.

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

ORDER

*It is ordered*, That Wiesenthal & Schneiderman, Inc., a corporation and its officers, and Joseph Schneiderman and Jerry Wiesenthal, individually and as officers of the said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, manufacture for introduction, 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, 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:

1. Falsely or deceptively invoicing fur products by:

A. Failing to furnish invoices to purchasers of fur products showing in words and figures plainly legible all the

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information required to be disclosed by each of the subsections of Section 5(b) (1) of the Fur Products Labeling Act.

B. Setting forth information required under Section 5(b) (1) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder in abbreviated form.

C. Failing to describe fur products as natural when such fur products are not pointed, bleached, dyed, tip-dyed or otherwise artificially colored.

2. Furnishing a false guaranty that any fur product is not misbranded, or falsely invoiced, or advertised, when there is reason to believe that such fur product may be introduced, sold, transported or distributed in commerce.

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

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IN THE MATTER OF

UNITED STATES TESTING COMPANY, INC.

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

*Docket C-277. Complaint, Nov. 30, 1962—Decision, Nov. 30, 1962*

Consent order requiring a Hoboken, N.J., corporation engaged in operating laboratories in various States and in the testing of products for manufacturers and merchandisers, to cease representing falsely that it was connected with the U.S. Government and that the tests were made or approved by that Government, through use of the words "United States" on the "Seal of Quality", its corporate name, and the seal of the United States Testing Company, use of which it permitted for a consideration in advertisements of products on television and radio broadcasts and in magazines, newspapers, and other advertising material distributed to the public.

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 United States Testing Company, Inc., hereinafter referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public

interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent United States Testing Company, 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 1415 Park Avenue, Hoboken, N.J.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the solicitation of accounts for their business and in the conduct of tests of materials, products and commodities for manufacturers and merchandisers, who advertise, sell and distribute such tested articles in commerce to the purchasing public.

PAR. 3. In the course and conduct of its business, as aforesaid, from its principal place of business located in Hoboken, New Jersey, respondent has maintained and operated, and is now maintaining and operating business offices and laboratories in various States of the United States, other than the State of New Jersey. In connection with the control and operation of its business, respondent is now and has been transmitting and receiving through the United States mail, advertising matter, reports, letters, contracts, checks, money orders and other written instruments which are sent and received between respondent's principal place of business in the State of New Jersey and respondent's places of business and laboratories located in States other than the State of New Jersey, and between the respondent and corporations, firms and individuals located in various other States of the United States; and thereby has engaged in extensive commercial intercourse in commerce and has maintained at all times mentioned herein a constant, substantial trade in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of its business, as aforesaid, respondent, for a consideration, has issued its "Seal of Quality" and has permitted the use of said "Seal of Quality", its corporate name "United States Testing Company" and the Seal of the United States Testing Company, Inc., in the advertisements of the materials, products or commodities of certain manufacturers and merchandisers on nationwide and local television and radio broadcasts, in magazines of national circulation, in newspapers of general circulation and in various pamphlets and other advertising material, distributed directly to or available to the general public. Typical, but not all inclusive of such advertising are the following:

- |                                    |   |
|------------------------------------|---|
| Seal of U.S.<br>Testing<br>Company | 1. OFFICIAL REPORT FROM U.S. TESTING COMPANY<br>ON 1962 CHEVROLET, FORD AND PLYMOUTH . . .<br>2. Parliament is tested for uniformity, month after month by<br>the United States Testing Company . . . |
|------------------------------------|---|

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## 3. FOR DIAMOND PERFECTION

This Seal is { Seal  
of } Your Protection  
Quality }

Isn't it better to buy the best? What could be better than a PERFECT diamond? The center diamond of every "Eternally Yours" engagement ring has been tested and CERTIFIED PERFECT by the United States Testing Co. The great seal of The United States Testing Co. on the ring tags of "Eternally Yours" diamonds is your assurance of top quality. Only "Eternally Yours" diamonds are authorized to bear this seal.

PAR. 5. Through the use of the words "United States" in its trade name "United States Testing Company", accompanied either by its "Seal of Quality" or the Seal of the United States Testing Company, respondent has placed, and is now placing, in the hands of others means and instrumentalities by and through which they may mislead the public into the belief that respondent is connected with, or is an agency, branch or instrumentality of, the United States Government and that the said tests were made or approved by the United States Government.

PAR. 6. In truth and in fact, respondent is in no way connected with any branch, arm, agency or instrumentality of the United States Government in any capacity, nor is such testing, as aforesaid, made or approved in any manner by the United States Government. The aforesaid representations were, therefore, false, misleading and deceptive.

PAR. 7. In the conduct of its business at all times mentioned herein, respondent has been in substantial competition, in commerce, with corporations, firms and individuals engaged in the same business of testing, approving and permitting the use of their name in the advertising of products as the respondent.

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

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 methods of competition in commerce and unfair and deceptive

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acts and practices in commerce, in violation of Section 5(a)(1) of the Federal Trade Commission Act.

## DECISION AND ORDER

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

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

The Commission, having considered the agreement, hereby accepts same, issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent, United States Testing Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 1415 Park Avenue, in the city of Hoboken, State of New Jersey.

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

## ORDER

*It is ordered*, That the United States Testing Company, Inc., a corporation, and its officers, and said respondent's agents, representatives and employees, directly or through any corporate or other device, in the conduct of testing materials, products or commodities, of manufacturers or merchandisers or others, and furnishing reports of such tests, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Furnishing any report of any such test under any corporate name, or with any seal or insignia containing the words "United States" to any person, firm or corporation for use in advertising

to the general public the materials, products or commodities tested by respondent, or in any manner designating, describing or referring to respondent's business as, or otherwise representing, directly or by implication, in any such report that respondent is, an agency, branch or instrumentality of the United States Government, or that its business is in any way connected with the United States Government.

2. Placing in the hands of others for use in advertising any means or instrumentalities, by and through which the general public may be misled into the belief that the respondent is connected with or is an agency, branch or instrumentality of the United States Government, or that such tests of said materials, products or commodities were made or approved by the United States Government.

*It is further ordered,* That the United States Testing Company, Inc., a corporation, and its officers, and said respondent's agents, representatives and employees shall, affirmatively and in good faith, include in any report to, or in any contract, agreement or understanding with any person, firm or corporation, for whom respondent shall test said materials, products and commodities, an express provision that under no circumstances may the respondent's corporate name, seal or any insignia, containing the words "United States", be used in advertising said materials, products or commodities to the general public.

*It is further ordered,* That the respondent United States Testing Company, Inc., a corporation, and its officers, and said respondent's agents, representatives and employees, shall, within sixty days after service upon it of this order, have notified all persons, firms and corporations with which respondent is presently under contract to test materials, products and commodities and to submit reports of such tests, or which are presently authorized by respondent to use, in advertising, reports of tests, previously made, that from the date of such notice, said persons, firms and corporations shall not use the corporate name of the respondent, its seal or any insignia, containing the words "United States" in the advertising of said materials, products or commodities to the general public.

*It is further ordered,* That the 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 this order.

## Complaint

IN THE MATTER OF

## ALEXANDER MINER SALES CORP.\*

CONSENT ORDERS, ETC., IN REGARD TO THE ALLEGED VIOLATION OF  
SEC. 2(d) OF THE CLAYTON ACT*Docket 8102. Complaint Aug. 25, 1960\*\*—Decision, Dec. 5, 1962*

Consent orders requiring eight toy manufacturers in various States to cease violating Sec. 2(d) of the Clayton Act by granting promotional payments for the advertising of their products to certain wholesale customer publishers of toy catalogs—which were distributed by such wholesalers to their retailer outlets for redistribution to consumers—without offering payments on proportionally equal terms to all their other distributor customers competing with those so favored.

## COMPLAINT

The Federal Trade Commission, having reason to believe that the respondents named in the caption hereof, and hereinafter more particularly designated and described, have violated and are now violating 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 Alexander Miner Sales Corp., Docket 8102, is a corporation organized and doing business under the laws of the State of New York, with its principal office and place of business located at 430 Southern Boulevard, Bronx, New York.

Respondent The A. C. Gilbert Company, Docket 8104, is a corporation organized and doing business under the laws of the State of Maryland, with its principal office and place of business located at Erector Square, New Haven 6, Conn.

Respondent Aurora Plastics Corp., Docket 8225, is a corporation organized and doing business under the laws of the State of New York, with its principal office and place of business located at 44 Cherry Valley Road, West Hempstead, Long Island, N.Y.

Respondent Multiple Products Corporation, Docket 8229, is a corporation organized and doing business under the laws of the State of New York, with its principal office and place of business located at 55 West 13th Street, New York, N. Y.

\*and the following related cases: The A. C. Gilbert Company, Docket 8104; Aurora Plastics Corp., Docket 8225; Multiple Products Corporation, Docket 8229; Horsman Dolls, Inc., Docket 8241; Tonka Toys, Incorporated, Docket 8242; Radio Steel & Mfg. Co., Docket 8244; Hamilton Steel Products, Inc., Docket 8257.

\*\*Complaints are combined.

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Respondent Horsman Dolls, Inc., Docket 8241, is a corporation organized and doing business under the laws of the State of New Jersey, with its principal office and place of business located at 200 Fifth Avenue, New York, N. Y.

Respondent Tonka Toys, Incorporated, Docket 8242, is a corporation organized and doing business under the laws of the State of Minnesota, with its principal office and place of business located at Mound, Minn.

Respondent Radio Steel & Mfg. Co., Docket 8244, is a corporation organized and doing business under the laws of the State of Illinois, with its principal office and place of business located at 6515 West Grand Avenue, Chicago 35, Ill.

Respondent Hamilton Steel Products, Inc., Docket 8257, is a corporation organized and doing business under the laws of the State of Illinois, with its principal office and place of business located at 1845 West 74th Street, Chicago 36, Ill.

PAR. 2. Respondents have been engaged, and are presently engaged, in the the business of manufacturing and distributing toys. These products are sold and distributed by respondents to wholesalers, department stores and chain stores located in various parts of the nation. Sales for each respondent for the year 1959 were approximately as follows:

	<i>Sales, 1959</i>
Alexander Miner Sales Corp.....	\$2, 500, 000
The A. C. Gilbert Company.....	13, 500, 000
Aurora Plastics Corp.....	5, 000, 000
Multiple Products Corporation.....	3, 500, 000
Horsman Dolls, Inc.....	6, 000, 000
Tonka Toys Incorporated.....	5, 450, 000
Radio Steel & Mfg. Co.....	7, 200, 000
Hamilton Steel Products, Inc.....	4, 360, 000

PAR. 3. Respondents have sold and distributed, and now sell and distribute, their products in substantial quantities in commerce, as "commerce" is defined in the amended Clayton Act, to competing customers located throughout various States of the United States, and in the District of Columbia.

PAR. 4. In the course and conduct of their business in commerce, respondents paid, or contracted for the payment of something of value to or for the benefit of some of their customers as compensation or in consideration for services or facilities furnished, or contracted to be furnished, by or through such customers in connection with the handling, sale, or offering for sale of products sold to them by respondents. Such payments or allowances were not offered or made available on

proportionally equal terms to all other customers of respondents competing with said favored customers in the distribution of respondents' products.

PAR. 5. As an example of the practices alleged herein, respondents have granted, and are presently granting, promotional payments or allowances for the promoting and advertising of their products to certain wholesale customers who publish toy catalogues either in combination with each other through wholesaler associations and groups, or in an individual capacity. The payments or allowances are granted by respondents to said wholesale customers in connection with their advertising respondents' products in their toy catalogues. These catalogues are sold and distributed by said favored wholesale customers to retail outlets for redistribution to the consuming public.

The aforesaid promotional payments or allowances were not offered or granted on proportionally equal terms to all other customers of respondents who compete with said favored customers in the distribution of respondents' products. These unfavored customers include wholesalers who are not members of any toy wholesaler associations or groups. Some of the favored customers of each respondent are as follows:

*Alexander Miner Sales Corp., Docket 8102:* Members of ATD Catalogs, Inc., New York, New York, an association composed of toy wholesalers which publishes a toy catalogue. In 1959, the promotional payments or allowances granted to the members of said wholesaler association by respondent approximated \$1,635.

*The A. C. Gilbert Company, Docket 8104:* Members of ATD Catalogs, Inc. In 1959, the promotional payments or allowances granted to the members of said wholesaler association by respondent approximated \$4,500.

*Aurora Plastics Corp., Docket 8225:* Members of Santa's Official Toy Prevue, Inc., Philadelphia, Pennsylvania, an association composed of toy wholesalers which publishes a toy catalog. In 1959, respondent paid members of Santa's Official Toy Prevue, Inc., approximately \$550 for promoting and advertising its products.

Another example of respondent's practices which violate Section 2(d) of the amended Clayton Act is its granting of television advertising payments or allowances to certain customers which were not offered or made available on proportionally equal terms to all other competing customers. Respondent paid Pensick and Gordon, Inc., Los Angeles, California, a toy wholesaler, substantial sums of money for promoting and advertising its products on television. During 1960, respondent's payments to said favored customer exceeded \$4,000

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for such promotion. These payments were not offered or made available on proportionally equal terms to all other customers competing with Pensick and Gordon, Inc.

*Multiple Products Corporation, Docket 8229*: Members of the following:

Associations or Groups:	<i>Approx. Payments Granted in 1959</i>
Santa's Official Toy Prevue, Inc.....	\$550
ATD Catalogs, Inc.....	1,650
Individualized Catalogues, Inc.....	750

Another example of respondent's practices which violate Section 2(d) of the amended Clayton Act is its granting of television advertising payments or allowances to certain customers which were not made available on proportionally equal terms to all other competing customers. Included among such favored customers were the following:

Customer:	<i>Approx. Payments Granted in 1959</i>
Pensick & Gordon, Inc.....	\$1,680
Lachman-Rose Co.....	840
Harold Hahn.....	2,640

Said payments were not offered or made available on proportionally equal terms to all other customers competing with these favored customers:

*Horsman Dolls, Inc., Docket 8241*: Members of the following:

Wholesaler Associations or Groups:	<i>Approx. Promotional Payments Received in 1959</i>
Billy & Ruth Promotion, Inc.....	\$2,880
Individualized Catalogues, Inc.....	5,650
ATD Catalogs, Inc.....	3,845

*Tonka Toys, Incorporated, Docket 8242*: Members of the following:

Wholesaler Associations or Groups:	<i>Approx. Promotional Payments Received in 1959</i>
Billy & Ruth Promotion, Inc.....	\$2,640
Individualized Catalogues, Inc.....	4,500
ATD Catalogs, Inc.....	3,930
Santa's Official Toy Prevue, Inc.....	550

*Radio Steel & Mfg. Co., Docket 8244*: Members of the following:

Wholesaler Associations or Groups:	<i>Approx. Promotional Payments Received in 1959</i>
Billy & Ruth Promotion, Inc.....	\$1,170
Individualized Catalogues, Inc.....	2,000
ATD Catalogs, Inc.....	915

*Hamilton Steel Products, Inc., Docket 8257*: Members of Santa's Playthings, Inc., New York, New York, an association composed of toy wholesalers which publishes a toy catalog. In 1959, the promotional payments or allowances granted to the members of said association by respondent approximated \$800.

PAR. 6. The acts and practices of respondent, as alleged above, are in violation of the provisions of subsection (d) of Section 2 of the amended Clayton Act.

*Mr. Jerome Garfinkel* for the Commission.

*Mr. Martin A. Rothenberg*, New York, N.Y., for the respondent.

INITIAL DECISION AS TO RESPONDENT ALEXANDER MINER SALES CORP.  
BY HARRY R. HINKES, HEARING EXAMINER

The Federal Trade Commission issued its complaint in the above-entitled matter on August 25, 1960, charging the respondent with having violated Section 2(d) of the Clayton Act, as amended (U.S.C. Title 15, Sec. 13), in the sale of toys.

Thereafter, on October 30, 1961, respondent, its attorney, and counsel supporting the complaint herein entered into an agreement containing a consent order to cease and desist.

Under that agreement the respondent admits all the jurisdictional facts alleged in the complaint. The agreement provides that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and agreement; that the inclusion of findings of fact and conclusions of law in the decision disposing of this matter is waived, together with any further procedural steps before the hearing examiner and the Commission; that the order hereinafter set forth may be entered in disposition of the proceeding, such order to have the same force and effect as if entered after a full hearing, the respondents specifically waiving any and all rights to challenge or contest the validity of such order; that the order may be altered 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 the respondents that they have violated the law as alleged in the complaint.

The agreement further provides that the decision of the Commission in this proceeding shall not issue prior to the issuance of final orders by the Commission in Docket Nos. 7978 and 7979, and that if any cease and desist order in Docket Nos. 7972, 7974, 7975, 7976, 7977, 7978, 7979, 8101, 8103, 8104, 8224, 8225, 8226, 8227, 8228, 8229, 8230, 8241, 8242, 8243, 8244, 8245, 8254, 8256, 8257, or 8258 is more limited

in scope than the order provided for in this agreement, the Bureau of Restraint of Trade will join in a motion by respondent to the Commission requesting that respondent's order be modified in accordance with a more limited cease and desist order. Moreover, in the event the order of the Commission in Dockets 7978 or 7979, as the result of action by the Commission or final order by the courts, is more favorable in any respect than the order provided for in this agreement, then the Bureau of Restraint of Trade will join in a motion by respondent to the Commission requesting that the order herein be made to conform to the order of the Commission or the final order of the courts in Dockets 7978 or 7979. It is agreed, however, that the cease and desist order provided for in this agreement shall remain in effect unless modified by the Commission.

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 Alexander Miner Sales Corp. is a corporation 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 200 Fifth Avenue, New York 10, New York, (erroneously cited in the complaint as 430 Southern Boulevard, Bronx, New York).
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

*It is ordered,* That respondent Alexander Miner Sales Corp., a corporation, its officers, directors, agents, representatives or employees, directly or through any corporate or other device, in or in connection with the offering for sale, sale or distribution of toy, game or hobby products in commerce, as "commerce" is defined in the amended Clayton Act, do forthwith cease and desist from:

Paying or contracting for the payment of anything of value to, or for the benefit of, any customer of respondent as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the handling, processing, sale or offering for sale of any toy, game or hobby product manufactured, sold, or offered for sale by respondent, unless such payment or consideration is made available on proportionally equal terms to all other customers competing in the distribution of such toy, game or hobby product.

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Decision and Order

## DECISION AND ORDER\*

These matters having come on to be heard by the Commission each upon a record consisting of a complaint charging the respondent with violation of subsection (d) of Section 2 of the Clayton Act, as amended, an agreement containing a consent order to cease and desist entered into between each respondent and counsel supporting the complaint and a motion by counsel for each respondent, joined by counsel supporting the complaint, relating to the form of order herein;\*\* and

The Commission having considered the agreements, which also contain an admission by respondents of all the jurisdictional facts alleged in the complaint, a statement that the signing of said agreements is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in the complaint, and waivers and provisions as required by the Commission's Rules, and which agreements further provide that the decision of the Commission in this proceeding shall not issue prior to the issuance of final orders by the Commission in the matters of *Transogram Company, Inc.*, and *Ideal Toy Corporation*, Docket Nos. 7978 and 7979; and

It further appearing that the agreements contemplate that should the Commission issue any cease and desist order in the aforesaid matters more limited in scope than the order provided for in the agreements, the Bureau of Restraint of Trade would join in motions by the respondents requesting the Commission to conform the order in these proceedings to such more limited order; and

The Commission having, on September 19, 1962, issued final orders in Docket No. 7978 and Docket No. 7979 more limited in scope than the order contained in said agreements and having determined that it should grant respondents' motions and as authorized and requested thereby conform the order to cease and desist to issue herein to said orders, the Commission hereby grants respondents' motions and accepts the agreements, makes the following jurisdictional findings, and enters the following order:

1. (a) Respondent Alexander Miner Sales Corp. is a corporation 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 200 Fifth Avenue, New York 10, New York (erroneously cited in the complaint as 430 Southern Blvd., Bronx, New York).

\*As to all eight respondents named in the combined complaints.

\*\*The record in Docket 8102 includes an initial decision by the hearing examiner accepting the consent agreement. As to that proceeding, this decision and order of the Commission accepts the examiner's decision and modifies the order entered as indicated herein.

(b) Respondent The A. C. Gilbert Company is a corporation existing and doing business under and by virtue of the laws of the State of Maryland, with its principal office and place of business located at Erector Square, New Haven 6, Connecticut.

(c) Respondent Aurora Plastics Corp. is a corporation 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 44 Cherry Valley Road, West Hempstead, New York.

(d) Respondent Multiple Products Corporation, is a corporation 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 55 West 13th Street, New York, New York.

(e) Respondent Horsman Dolls, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of New Jersey, with its principal office and place of business located at Columbia, South Carolina (erroneously cited in the complaint as 200 Fifth Avenue, New York, New York).

(f) Respondent Tonka Toys, Incorporated, is a corporation existing and doing business under and by virtue of the laws of the State of Minnesota, with its principal office and place of business located at City of Mound, State of Minnesota.

(g) Respondent Radio Steel & Mfg. Co. is a corporation existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 6515 West Grand Avenue, Chicago 35, Illinois.

(h) Respondent Hamilton Steel Products, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 1845 West 74th Street, Chicago 36, Illinois.

2. The Federal Trade Commission has jurisdiction of the subject matter of these proceedings and of each respondent.

#### ORDER

*It is ordered,* That each respondent named in the above-captioned proceedings, and its officers, directors, employees, agents, and representatives, directly or through any corporate or other device, in, or in connection with, the offering for sale, sale, or distribution in commerce, as "commerce" is defined in the Clayton Act, as amended, of any toy, game, or hobby products, do forthwith cease and desist from:

Paying or contracting for the payment of anything of value to or for the benefit of any customer of such respondent as compensation or in consideration for any services or facilities con-

## Complaint

sisting of advertising or other publicity, furnished by or through such customer, in a toy catalogue, handbill, circular, or any other printed publication serving the purpose of a buying guide, distributed, directly or through any corporate or other device, by such customer, in connection with the processing, handling, sale, or offering for sale of any toy, game, or hobby products manufactured, sold, or offered for sale by such respondent, unless such payment or consideration is made available on proportionally equal terms to all other customers competing in the distribution of such products.

*It is further ordered*, That each respondent named in the above-captioned proceedings 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

## SILENT MAID COMPANY, INC., ET AL.

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

*Docket C-278. Complaint, Dec. 5, 1962—Decision, Dec. 5, 1962*

Consent order requiring Flossmoor, Ill., sellers of garbage disposers, both to consumers and to dealers, to cease their practice of stating falsely in bold type in their sales contract and warranty certificate, used by them and their dealers, as well as by other misleading statements in the sales contract, that the disposers were unconditionally guaranteed, when the contract did not contain all the limitations of the guarantee and certain conditions were practically indiscernible due to a dark background and location; and to cease failing to comply with the terms of the guarantees.

## 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 Silent Maid Company, Inc., a corporation, and Frank A. Heakin, 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 as follows:

PARAGRAPH 1. Respondent Silent Maid Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Nevada, with its office and principal place of business located at 2545 Wallace Drive, Flossmoor, Ill. The individual respondent, Frank A. Heakin, is President of the corporate respondent and formulates, directs and controls the acts and practices of the corporate respondent including the acts and practices hereinafter set forth. His business address, which is also his address of residence, is the same as that of the corporate respondent.

PAR 2. Respondents are now, and for a number of years last past, have been engaged in the offering for sale and sale of electric powered appliances for installation in kitchen sinks to dispose of garbage by grinding and flushing, hereinafter known as garbage disposers. Respondents have engaged in such activity both by direct sale to members of the public and by sale to dealers who, in turn, sell to the consuming public. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their products, when sold, to be shipped from their place of business in the State of Illinois to purchasers thereof located in other states of the United States, and maintain, and at all times mentioned herein have maintained, a course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act. Their volume of trade in said commerce has been and is substantial.

PAR. 3. In the course and conduct of their business as aforesaid, and for the purpose of inducing the purchase of their garbage disposers in commerce, as "commerce" is defined in the Federal Trade Commission Act, respondents have prepared, printed and promulgated a form of sales contract and a form of warranty certificate, both for their own use in making sales to the public, and for the use of their dealers, in selling to the public garbage disposers purchased from the respondents. By statements appearing in bold type in both of the aforesaid documentary forms, respondents have represented, directly and indirectly, that their product is unconditionally guaranteed, which statements are false and misleading for the reason that the guarantee furnished by the respondent has numerous conditions and limitations. By other statements appearing in said sales contract, respondents represent that subject product is guaranteed; however, this representation is misleading because said sales contract does not contain all conditions and limitations included in the guarantee, and certain conditions and limitations that are stated thereon are so printed against a dark background in such a place upon the face of the contract as to be indiscernible without careful scrutiny.

PAR. 4. In a number of instances, neither the respondents nor the respondents' dealers have performed in accordance with the terms of guarantees thus furnished, delivered and given in commerce to members of the consuming public. By such practice, respondents, and respondents' dealers acting through the media of the above described documentary forms, have misled members of the public, who were induced to purchase garbage disposers in reliance upon such guarantees.

PAR. 5. By the aforesaid practices, respondents place in the hands of dealers means and instrumentalities by and through which they may mislead the public as to the nature and extent of their guarantees and the services provided thereunder.

PAR. 6. In the conduct of their business, at all times mentioned herein, respondents have been in substantial competition, in commerce, with the corporations, firms and individuals in the sale of products 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 that said guarantees are unconditional and will be fulfilled as given when such is not the case. As a result of respondents' aforesaid acts and practices, substantial quantities of respondents' products have been and are now being purchased 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.

#### DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Deceptive Practices proposed to present to the Commission for its consideration and which,

if issued by the Commission, would charge the respondents with violation of the Federal Trade Commission Act; and

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

The Commission, having reason to believe that the respondents have violated the Federal Trade Commission Act, and having determined that complaint should issue stating its charges in that respect, hereby issues its complaint, accepts said agreement, makes the following jurisdictional findings and enters the following order:

1. Respondent, Silent Maid Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Nevada, with its office and principal place of business located at 2545 Wallace Drive, Flossmoor, Ill.

Respondent Frank A. Heakin is an officer of said corporation and his address is the same as that of said corporation.

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

#### ORDER

*It is ordered*, That respondents Silent Maid Company, Inc., a corporation, and Frank A. Heakin, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in or in connection with the offering for sale, sale or distribution of garbage disposers or other merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

1. (a) Representing, directly or by implication, that their garbage disposers or other merchandise are guaranteed when there are any conditions or limitations in connection with such guarantee, unless such conditions and limitations are clearly and conspicuously set forth.

(b) Representing, directly or by implication, that their garbage disposers or other merchandise are unconditionally guaranteed when there are any conditions or limitations in connection with such guarantee.

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(c) Failing to comply with the terms of any guarantee given.

2. Furnishing any means or instrumentalities to others by and through which they may mislead the public as to any of the matters set forth in paragraph 1, above.

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

## IN THE MATTER OF

## KENRON AWNING &amp; WINDOW CORPORATION ET AL.

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

*Docket 8459. Complaint, Jan. 16, 1962—Order, Dec. 10, 1962*

Order dismissing, without decision on the merits and without prejudice to the Commission's right to summarily issue a new complaint covering the same facts, complaint charging two corporate manufacturers of aluminum storm windows and doors and fiberglass awnings, with common officers and places of business in Chicago and Brookfield, Wis., with misrepresenting prices, qualifications of salesmen, quality of product, guarantees, interest charges, etc.

## 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 Kenron Awning & Window Corporation and Kenron Awning & Window Corporation of Wisconsin, corporations, and Bernard H. Feld, Allan C. Hamann and Sidney L. Ordower, individually and as officers of said corporations, hereinafter referred to as respondents, have violated the provisions of the 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, Kenron Awning & Window Corporation, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at 3450 West Peterson Avenue, Chicago, Ill.

Respondent, Kenron Awning & Window Corporation of Wisconsin, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Wisconsin, with its office and principal place of business located at 4251 North 124th Street, Brookfield, Wis.

Respondent Bernard H. Feld, Allan C. Hamann and Sidney L. Ordower are officers of the corporate respondents. They cooperate and act together in formulating, directing and controlling the acts and practices of the corporate respondents, including the acts and practices hereinafter set forth. Their business address is 3450 West Peterson Avenue, Chicago, Ill.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the manufacture, offering for sale, sale and distribution of aluminum storm windows and doors and fiberglass awnings to the public and in the installation thereof.

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 and transported from their place of manufacture in the State of Illinois to purchasers thereof located in various other States of the United States, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their said business, as aforesaid, respondents employ salesmen or representatives who call upon prospective purchasers and solicit the purchase of their products. In the course of such solicitation, said salesmen or representatives have made many statements or representations, directly or by implication, to prospective purchasers of their product. Typical, but not all inclusive of said statements or representations, are the following:

1. That the respondents' products are sold at cost and that the products can be bought at a wholesale or dealer's price.
2. That of two prices quoted to the customer, the salesmen or representatives are able to sell at the lower price because they are executives or officials of the company and not salesmen and therefore have authority to reduce the price.
3. That the prospective customers are contacted during the "off season" or "slack season" and that the products are being sold at a reduced price in order to keep the respondents' factory working.
4. That salesmen are graduates of a home improvement academy, thereby implying that they are specially qualified to advise home owners concerning home improvements.

5. That the respondents have received many awards for the quality of their products.

6. That the products of the respondents are fully guaranteed and if there are any defects in the material or workmanship, such will be corrected free of charge.

7. That if a loan is secured from the bank recommended by the salesman or representative of the respondents the interest rate will be 11% a year.

PAR. 5. Said statements are false, misleading and deceptive. In truth and in fact:

1. The prices quoted for respondents' products are not cost or wholesale or dealer's prices but the usual and regular retail prices.

2. Respondents' salesmen and representatives are not executives or officials, but are ordinary salesmen working on a commission and with no special or unusual authority to reduce prices.

3. Sales of the respondents' products are made at all times of the year, and not in any "off season" or "slack season" without reduction in price for that reason.

4. Respondents' salesmen or representatives are not graduates of a home improvement academy and have no special training except in selling techniques as to respondents' particular products.

5. Respondents' products have not received any awards for merit.

6. Respondents do not guarantee their products, except to a very limited extent, and do not make any repairs or adjustment in accordance with the guarantee.

7. The interest rate charged by the bank recommended by the salesman or representative of the respondent is greatly in excess of 11% a year.

PAR. 6. In the conduct of their business, at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of products of the same general kind 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 said erroneous and mistaken belief.

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

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methods of competition in commerce and unfair and deceptive acts and practices in commerce, in violation of Section 5(a)(1) of the Federal Trade Commission Act.

## ORDER DISMISSING COMPLAINT

This matter having come on to be heard upon the parties' joint petition for permission to appeal from the hearing examiner's order denying their joint motion for certification to the Commission of the question whether the consent order procedure should be made available to the parties; and

It appearing that the extensive delays and controversies encountered in this proceeding stem from the language employed in the Commission's complaint and proposed order and that further delay and controversy can best be avoided by withdrawing said complaint and proposed order for the purpose of redrafting and eventual reservice pursuant to Part 3 of the Commission's Rules of Practice; and therefore

*It is ordered,* That the complaint in this matter be, and it hereby is, dismissed without decision on the merits and without prejudice to the Commission's right to summarily issue a new complaint covering the same or substantially similar alleged facts.

*It is further ordered,* That the Bureau of Deceptive Practices forthwith prepare and submit for Commission consideration a new complaint and proposed order appropriate to the circumstances.

By the Commission, Commissioner Elman concurring in the dismissal of the complaint.

## IN THE MATTER OF

## ELDER AND JOHNSTON COMPANY ET AL.

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

*Docket 8481. Complaint, Apr. 24, 1962—Decision, Dec. 11, 1962*

Order dismissing—following merger of respondent furrier with a corporation operating seven or eight retail department stores in Dayton, Ohio, and major organizational changes—complaint charging misbranding, false invoicing, and false advertising in violation of the Fur Products Labeling Act.

## COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act and by virtue of the authority

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vested in it by said Acts, the Federal Trade Commission having reason to believe that Elder and Johnston Company, a corporation, and Thomas Marshall, Robert Marshall and Phillip Pond, individually and as officers of Elder and Johnston Company, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Fur Products Labeling Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Elder and Johnston Company is a corporation, organized, existing and doing business by virtue of the laws of the State of Ohio, with its office and principal place of business located at 111 South Main Street, Dayton, Ohio.

Respondents Thomas Marshall, Robert Marshall, and Phillip Pond\* are president, vice president and secretary-treasurer, respectively, of Elder and Johnston Company. They formulate, control and direct the acts, practices and policies of said corporate respondent including the acts and practices complained of herein. Their office and place of business is the same as that of the 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, advertising, 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 not labeled as required under the provisions of Section 4(2) of the Fur Products Labeling Act and in the manner and form prescribed by the Rules and Regulations promulgated thereunder.

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

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

2. To show the name, or other identification issued and registered by the Commission, of one or more of the persons who manufactured such fur product for introduction into commerce, introduced it into com-

\*The correct name is Phillip R. Pond.

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merce, sold it in commerce, advertised or offered it for sale, in commerce, or transported or distributed it in commerce.

PAR. 4. 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) Information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was mingled with nonrequired information, in violation of Rule 29(a) of 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 not completely set out on one side of labels, 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 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.

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

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

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

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

(2) To show the country of origin of the imported furs used in the fur product.

PAR. 6. Certain of said fur products were falsely and deceptively invoiced in violation of the Fur Products Labeling Act in that they were not invoiced in accordance with the Rules and Regulations promulgated thereunder in the following respects:

(a) Information required under Section 5(b)(1) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was set forth in abbreviated form, in violation of Rule 4 of said Rules and Regulations.

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(b) The term "Dyed Mouton Lamb" was not set forth in the manner required, in violation of Rule 9 of said Rules and Regulations.

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

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 advertisement of respondents, which appear in issues of the Journal Herald and the Dayton Daily News, newspapers published in the city of Dayton, State of Ohio, 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 that fur products contained or were composed of bleached, dyed or otherwise artificially colored fur, when such was the fact, in violation of Section 5(a) (3) of the Fur Products Labeling Act.

(c) Failed to disclose that fur products were composed in whole or in substantial part of flanks, when such was the fact, in violation of Rule 20(a) of the Rules and Regulations promulgated under the Fur Products Labeling Act.

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

(e) Failed to set forth the term "Persian Lamb" in the manner required, in violation of Rule 8 of said Rules and Regulations.

(f) Failed to set forth the term "Dyed Mouton Lamb" in the manner required, in violation of Rule 9 of said Rules and Regulations.

(g) Failed to set forth the term "Dyed Broadtail-Processed Lamb"

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in the manner required, in violation of Rule 10 of said Rules and Regulations.

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 and unfair methods of competition in commerce under the Federal Trade Commission Act.

*Mr. Aaron R. Fodiman* for the Commission.

*Mr. Jerome Goldman*, of Cincinnati, Ohio, for respondents Elder and Johnston Company and Thomas Marshall.

## INITIAL DECISION BY WILMER L. TINLEY, HEARING EXAMINER

The Federal Trade Commission, on April 24, 1962, issued and subsequently served its complaint, charging the respondents named in the caption hereof with violations of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder by misbranding, false invoicing and false advertising of fur products. Answer to the complaint was filed on June 1, 1962, on behalf of the corporate respondent and Thomas Marshall. No answer to the complaint was filed by Robert Marshall. Motion to dismiss the complaint as to Philip R. Pond (erroneously named in the complaint as Phillip Pond), filed May 24, 1962, which was not opposed by counsel supporting the complaint, was granted by order of June 7, 1962.

A prehearing conference was held on August 17, 1962, and, as a result of information there developed, counsel supporting the complaint requested, and was allowed, time within which to move for amendment of the complaint or other appropriate action. On October 10, 1962, counsel supporting the complaint filed a motion for dismissal of the complaint as to all parties, and no opposition thereto has been filed.

The record herein consists of the complaint, answer thereto, transcript of the prehearing conference, motions and orders. Attached to the motion to dismiss are three affidavits and a letter, which also constitute a part of the record. Having considered the record herein, and being of the opinion that the motion to dismiss the complaint should be granted, the hearing examiner makes this initial decision pursuant to Section 4.6(e) of the Commission's Rules of Practice.

## FINDINGS OF FACT

1. Respondent Elder and Johnston Company was incorporated under the laws of the State of Ohio, and its office and principal place of business is located at 111 South Main Street, Dayton, Ohio. On

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January 29, 1962, Elder and Johnston Company and Beerman Stores, Inc., entered into a merger agreement whereby Elder and Johnston Company was the continuing corporation. On May 19, 1962, Elder and Johnston Company changed its name to The Elder-Beerman Stores Corp. At the time of the merger the shareholders of Beerman Stores, Inc., acquired substantial majority control of the corporation resulting from the merger.

2. Prior to the merger, respondent Elder and Johnston Company operated one large retail department store in Dayton, Ohio, with an annual sales volume of approximately \$10,000,000, and Beerman Stores, Inc., operated about seven or eight retail department stores in Dayton, Ohio, with a total annual sales volume of about \$12,000,000 to \$15,000,000. All of these stores are now operated by the corporation resulting from the merger. The charges herein relate only to the acts and practices of the single store previously operated by Elder and Johnston Company, and to the activities of the individual respondents in connection therewith.

3. Respondent Thomas Marshall, prior to the aforesaid merger, was the President and chief executive officer of respondent Elder and Johnston Company; and he is now President of The Elder-Beerman Stores Corp., but is not its chief executive officer. The chief executive officer of The Elder-Beerman Stores Corp. is Arthur Beerman, Chairman of the Board, who, prior to the merger, did not own any stock in, and was not otherwise connected with, respondent Elder and Johnston Company.

4. Respondent Robert Marshall, prior to the aforesaid merger, was a vice president of respondent Elder and Johnston Company, and was a director and substantial owner of voting stock in said corporation. He is not connected in any capacity with The Elder-Beerman Stores Corp., and has no voting stock in said Company.

5. Respondent Philip R. Pond (erroneously named in the complaint as Phillip Pond) was employed by the corporate respondent from December 1956 until November 1961, when he resigned to enter the Investment Counsel field. During that period he had no responsibility or authority with respect to advertising, merchandise labeling or salescheck writing by the corporate respondent; and he was not in a position to formulate, control or direct any of the acts, practices, or policies which may have contributed to any alleged violation of law involved in this proceeding. On June 7, 1962, the complaint was dismissed as to him.

6. After the aforesaid merger, and at the present time, over 80% of the voting stock of The Elder-Beerman Stores Corp. was and is

owned by Arthur Beerman and relatives, trusts, and corporations in which he or they are interested. Prior to said merger, and during the period in which it is contended that the violations alleged in the complaint herein occurred, neither Arthur Beerman nor any of his relatives or corporations in which he or they are interested had any stock at all in the corporate respondent. None of the officers of the corporate respondent prior to the aforesaid merger is now connected with The Elder-Beerman Stores Corp., except Thomas Marshall, who is its President, but not its chief executive officer.

7. It is asserted that the acts and practices upon which the violations of law alleged in the complaint are based occurred in 1960 and in January and February 1961, and counsel supporting the complaint does not propose to offer evidence of later violations. During that period, the fur department of the corporate respondent was operated by the company, but it is now being operated as a leased department by another company. There is no indication that any of the alleged violations occurred in the fur department of the corporate respondent during its operation as a leased department.

8. The persons who were buyers of, and in charge of advertising and selling, garments having fur trimmings during the period covered by the alleged violations are no longer with the company. They have been replaced by others who have been thoroughly acquainted with the requirements of the Fur Products Labeling Act and the Rules and Regulations thereunder, and who have been warned to comply therewith by company management.

9. During the time he was chief executive officer of the corporate respondent, individual respondent Thomas Marshall had no personal knowledge of the record keeping, labeling, and invoicing practices in the fur department or in the department in which coats with fur trimmings were sold. He had, however, given general instructions that all Federal laws and regulations with regard to fur products should be complied with, and was unaware of any failure in that respect.

10. During the time he was a vice president of the corporate respondent, individual respondent Robert Marshall did not attempt to supervise the fur department or the department handling coats with fur trimmings, other than to give instructions that the Fur Products Labeling Act and Rules and Regulations thereunder were to be complied with. He left it up to the department heads to take care of such details, and assumed that they were doing so.

11. Counsel supporting the complaint has no information and proposes to offer no evidence contrary to the foregoing facts, and refers

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to information available to him tending to support and corroborate those facts. Under these circumstances, he moves that the complaint be dismissed as to all parties.

## CONCLUSION

1. The foregoing facts disclose that there have been major changes in the organization, stock ownership, management, method of operation, and policies of the corporate respondent since the period during which, it is contended, the alleged unlawful acts and practices occurred. Counsel supporting the complaint has no information and proposes to offer no evidence with respect to violations of the Fur Products Labeling Act, or the Rules and Regulations promulgated thereunder, by the corporate respondent as presently organized, and operating under its present management, methods and policies.

2. The foregoing facts also disclose that the individual respondents were unaware of the alleged violations, that they did not knowingly participate in or contribute to them, and that they were responsible for them only by virtue of their respective positions in the management of the corporate respondent.

3. It is apparent, therefore, that there is no basis in the present record for a finding that the alleged violations occurred; and that there is no public interest in continuing this proceeding. The motion for dismissal of the complaint, filed on October 10, 1962, by counsel supporting the complaint, is fully supported by the record in this proceeding.

## ORDER

*It is ordered*, That the complaint herein be, and it hereby is, dismissed as to all parties.

## DECISION OF THE COMMISSION

Pursuant to Section 4.19 of the Commission's Rules of Practice, effective June 1, 1962, the initial decision of the hearing examiner shall, on the 11th day of December 1962, become the decision of the Commission.

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IN THE MATTER OF

## HALSAM PRODUCTS COMPANY

ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF SEC. 2(d) OF THE  
CLAYTON ACT*Docket 8230. Complaint, Dec. 22, 1960—Decision, Dec. 13, 1962*

Order requiring a Chicago toy manufacturer to cease violating Sec. 2(d) of the Clayton Act by making payments to certain toy catalog companies controlled by its jobber customers as compensation for advertising its products in the catalogs, while not offering such payments on proportionally equal terms to all its other customers who were in competition with those so favored.

## COMPLAINT

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

PARAGRAPH 1. Respondent Halsam Products Company is a corporation organized and doing business under the laws of the State of Illinois, with its principal office and place of business located at 3610 Touhy Avenue, Chicago 45, Ill.

PAR. 2. Respondent has been engaged, and is presently engaged, in the business of manufacturing and distributing toys. These toy products are sold and distributed by respondent to wholesalers, department stores and chain stores located in various parts of the nation. Respondent's sales in 1959 exceeded \$2,600,000.

PAR. 3. Respondent has sold and distributed, and now sells and distributes, its products in substantial quantities in commerce, as "commerce" is defined in the amended Clayton Act, to competing customers located throughout various States of 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 or facilities furnished, or contracted to be furnished, by or through such customers in connection with the handling, sale, or offering for sale, of products sold to them by re-

spondent. Such payments or allowances were not offered or made available on proportionally equal terms to all other customers of respondent competing with such favored customers in the distribution of respondent's products.

PAR. 5. As an example of the practices alleged herein, respondent has granted, and is presently granting, promotional payments or allowances for the promoting and advertising of its products to certain wholesale customers who publish toy catalogs, either in combination with each other through wholesaler associations and groups, or in an individual capacity. The payments or allowances are granted by respondent to said wholesale customers in connection with their advertising respondent's products in their toy catalogs. These catalogs are sold and distributed by said favored wholesale customers to retail outlets for redistribution to the consuming public.

The aforesaid promotional payments or allowances were not offered or granted on proportionally equal terms to all other customers of respondent who compete with said favored customers in the distribution of respondent's products. These unfavored competing customers include wholesalers who are not members of any toy wholesaler association or group. Included among the favored customers are the members of the following wholesaler associations or groups:

Wholesaler Associations or Groups:	<i>Approx. Amounts Received in 1959</i>
Santa's Official Toy Prevue, Inc.....	\$1, 100
ATD Catalogs, Inc.....	2, 250
Individualized Catalogues, Inc.....	3, 750
Billy & Ruth.....	2, 880

PAR. 6. The acts and practices of respondent, as alleged above, are in violation of the provisions of subsection (d) of Section 2 of the amended Clayton Act.

*Mr. James E. Corkey* and *Mr. Stanley M. Lipnick* for the Commission.

*Finn. Van Mell & Penney*, of Chicago, Ill., and *Howrey, Simon, Baker & Murchison*, of Washington, D.C., for respondent.

INITIAL DECISION BY RAYMOND J. LYNCH, HEARING EXAMINER

The complaint charges the respondent, Halsam Products Company, with violation of subsection (d) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act (15 U.S.C. Sec. 13), in the payment of something of value to or for the benefit of some of its customers as compensation or in consideration for services or facilities furnished, or contracted to be furnished, by or through such customers

in connection with the handling, sale, or offering for sale of products sold to them by respondent, without making such payments or allowances available to all other competing customers on proportionally equal terms. As an example of this practice, the complaint alleges the respondent made payments to certain wholesale customers for the advertising of its products in the catalogs of these wholesale customers, without proportionally equal payments to the rest of respondent's customers competing with the recipients of the promotional payments.

Respondent's answer to the complaint, dated March 9, 1961, made partial admissions of the allegations of the complaint, in particular catalog advertising, but denied that any of its promotional payments constituted violations of the Act.

On April 3, 1962, a stipulation was executed by the respondent and counsel for both parties, setting forth certain facts and waiving hearing. Argument was reserved on the scope of the cease and desist order to be entered. Proposed findings and order were submitted by both parties and, on July 30, 1962, oral argument was allowed thereon.

The hearing examiner has considered the proposed findings of fact and conclusions submitted by counsel representing the parties, and all findings of fact and conclusions of law not hereinafter specifically found or concluded are herewith rejected. The hearing examiner having considered the entire record makes the following findings as to the facts, conclusions drawn therefrom, and order.

#### FINDINGS OF FACT

##### I

Respondent Halsam Products Company is a corporation organized and doing business under the laws of the State of Illinois, with its principal office and place of business located at 3610 Touhy Avenue, Chicago 45, Illinois.

##### II

Respondent has been engaged, and is presently engaged, in the business of manufacturing toys, games and hobbies (hereinafter called "products"). These products are sold by respondent to jobbers located in various parts of the nation for resale to retailers. Respondent's sales in 1959 exceeded \$2,600,000.

##### III

Respondent has sold, and now sells, its products in commerce, as "commerce" is defined in the amended Clayton Act, to customers located

throughout various states of the United States and in the District of Columbia, some of whom are in competition with other of its customers.

## IV

In the course and conduct of its business in commerce, respondent made payments to certain toy catalog companies, which companies are owned or controlled, in whole or in part, by jobber customers of respondent. Some of respondent's jobber customers who own or control, in whole or in part, said toy catalog companies, sell and distribute the toy catalogs to retailers for redistribution to the consuming public. Such payments were made as compensation or in consideration for the illustration and description in such catalogs of one or more products sold by respondent to some or all of such jobber customers. Such payments were not offered or made available by respondent on proportionally equal terms to all of its other jobber customers who were in competition in the contemporaneous resale of its products of like grade and quality with those jobber customers who owned or controlled, in whole or in part, a toy catalog company to which such an advertising payment was made.

## CONCLUSION

The acts and practices of the respondent as herein found were in violation of subsection (d) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act (15 U.S.C., Sec. 13), in the payment of something of value to or for the benefit of some of its customers as compensation or in consideration for services or facilities furnished by or through such customers in connection with the handling, sale, or offering for sale of products sold to them by respondent, without making such payments or allowances available to all other competing customers on proportionally equal terms.

Based upon the above findings, the public interest requires the issuance of a cease and desist order. The only question before the examiner is a determination of the type of order that should issue. Counsel supporting the complaint request a broad order; counsel representing respondent argue that the order should be limited to the specific violations admitted by the stipulation. While the examiner, in a similar case, *Emenee Industries, Inc.*, Docket No. 7974 [pp. 629, 690 herein], agreed with the contention of counsel supporting the complaint that a broad order should issue in the language of the Act, the Commission adopted a different view in *Transogram Company, Inc.*, Docket No. 7978 [pp. 629, 703 herein], issued September 19, 1962, and, therefore, the examiner concludes that the precedent

## Decision and Order

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established in the *Transogram* case is controlling in this proceeding, and, therefore, a similar order must be issued herein.

## ORDER

*It is ordered*, That respondent Halsam Products Company and its officers, directors, employees, agents and representatives, directly or through any corporate or other device, in, or in connection with, the offering for sale, sale, or distribution in commerce, as "commerce" is defined in the Clayton Act, as amended, of any toy, game, or hobby products, do forthwith cease and desist from:

Paying or contracting for the payment of anything of value to or for the benefit of any customer of such respondent as compensation or in consideration for any services or facilities consisting of advertising or other publicity, furnished by or through such customer, in a toy catalog, handbill, circular, or any other printed publication serving the purpose of a buying guide, distributed, directly or through any corporate or other device, by such customer, in connection with the processing, handling, sale, or offering for sale of any toy, game, or hobby products manufactured, sold, or offered for sale by such respondent, unless such payment or consideration is made available on proportionally equal terms to all other customers competing in the distribution of such products.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF  
COMPLIANCE

Pursuant to Section 4.19 of the Commission's Rules of Practice, effective June 1, 1962, the initial decision of the hearing examiner shall, on the 13th day of December 1962, 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.