

Complaint

71 F.T.C.

IN THE MATTER OF

DUBROWSKY & JOSEPH, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION AND THE WOOL PRODUCTS
LABELING ACTS*Docket C-1166. Complaint, Feb. 7, 1967—Decision, Feb. 7, 1967*

Consent order requiring a New York City manufacturer of ladies' coats to cease misbranding the fiber content of interlinings of its wool coats, and failing to comply with other statutory requirements.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Dubrowsky & Joseph, Inc., a corporation, and Morris Dubrowsky, Morris Joseph, Irving Dubrowsky and Rubin Joseph, 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 Wool Products Labeling Act of 1939, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

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

Individual respondents Morris Dubrowsky, Morris Joseph, Irving Dubrowsky and Rubin Joseph are officers of said corporation. They are responsible for and formulate the acts, practices and politics of said corporation, including the acts and practices hereinafter referred to.

Respondents are manufacturers of wool products (ladies coats) with their office and principal place of business located at 520 Eighth Avenue, New York, New York.

PAR. 2. Subsequent to the effective date of the Wool Products Labeling Act of 1939, respondents have manufactured for introduction into commerce, introduced into commerce, sold, transported, distributed, delivered for shipment, shipped, and offered for sale, in commerce, as "commerce" is defined in said Act, wool products as "wool product" is defined therein.

PAR. 3. Certain of said wool products were misbranded within the intent and meaning of Section 4(a) (1) of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, in that they were falsely and deceptively stamped, tagged, labeled, or otherwise identified with respect to the character and amount of the constituent fibers contained therein.

Among such misbranded wool products, but not limited thereto, were ladies coats stamped, tagged, labeled, or otherwise identified as containing 100% wool interlining, whereas in truth and in fact, such interlining contained substantially different amounts of fibers than represented.

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

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

PAR. 5. The acts and practices of the respondents as set forth above were, and are, in violation of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, and constituted, and now constitute, unfair methods of competition and unfair and deceptive acts and practices, 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 the respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Textiles and Furs proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by 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 said Acts, 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 Dubrowsky & Joseph, 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 520 Eighth Avenue, New York, New York.

Respondents Morris Dubrowsky, Morris Joseph, Irving Dubrowsky and Rubin Joseph 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 Dubrowsky & Joseph, Inc., a corporation, and its officers, and Morris Dubrowsky, Morris Joseph, Irving Dubrowsky and Rubin Joseph, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, or manufacture for introduction, into commerce, or the offering for sale, sale, transportation, distribution, delivery for shipment or shipment, in commerce, of wool products, as "commerce" and "wool product" are defined in the Wool Products Labeling Act of 1939, do forthwith cease and desist from misbranding such products by:

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

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

information required to be disclosed by Section 4(a)(2) of the Wool Products Labeling Act of 1939.

It is further ordered, That the 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

PANAT JEWELRY CO., INC., ET AL.

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

Docket 8660. Complaint, April 30, 1965—Decision, Feb. 8, 1967

Order requiring New York City distributors of perfumes and costume jewelry to jobbers and retailers, to cease deceptively preticketing and misbranding its perfume and jewelry as to the regular selling price and composition, ambiguously using French words and symbols to falsely imply that its perfumes are imported, and furnishing retailers with means and materials to deceive the public in the above enumerated ways.

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 Panat Jewelry Co., Inc., a corporation, and Nathan Jachter, individually and as an officer of said corporation, and Nathan Jachter doing business and trading as Jác de Paris, 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 Panat Jewelry 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 principal office and place of business located at 162 Fifth Avenue, in the city of New York, State of New York.

Respondent Nathan Jachter is an officer of the corporate respondent. He formulates, directs and controls the acts and prac-

* Reported as amended by order of hearing examiner dated June 14, 1965, to reflect correct address of respondent.

tices of the corporate respondent, including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

Respondent Nathan Jachter has registered the trade name "Jáq de Paris" under his own name and at the same address. The name "Jáq de Paris" is used in connection with the sale of certain of respondents' products as hereinafter mentioned.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of perfumes, toilet waters, cosmetics and costume jewelry for men and women to distributors, 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 New York, or from such other State in which said products are ultimately packaged, to purchasers thereof located in various other States of the United States and in the District of Columbia, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Respondents sell their products through salesmen who call on the trade, through exhibits of their said products at various regional trade markets, through advertisements in newspapers, trade publications, other periodicals and circulars.

PAR. 5. Respondents for the purpose of inducing the purchase of their products, have engaged in the practice of using fictitious pricing and of misrepresenting the material of which their products are made or composed, the identity of the manufacturer and the country of origin or manufacture by the following methods and means:

(a) By using cardboard boxes or cartons, in which their bottled perfumes are packaged, on which are printed, or otherwise affixed, the figures "10.00," "15.00" or some other amount, and in advertisements and circulars, respondents thereby represented, directly or indirectly, that said amounts are the dollar prices that have been established in good faith as an honest estimate of the actual retail price and that they do not appreciably exceed the highest price at which substantial sales are or have been made at retail in respondents' trade area. In truth and in fact, said amounts are fictitious and are appreciably in excess of the highest

price at which substantial sales of said preticketed articles are made at retail in respondents' trade area.

(b) By using cardboard boxes or containers in which their bottled perfumes are packaged, on which are printed, or otherwise affixed on labels, in large print, the initial letters such as, but not limited to, "A," "C," "M" and "W" and, through salesmen calling on distributors, jobbers and retailers, respondents have thereby represented, directly or by implication, that the said perfumes so designated are those of or the same as those perfumes, sold under the brand names, "Arpege" by Lanvin Parfums, Inc., of New York, N.Y., "Chanel No. 5" by Chanel, Inc., of New York, N.Y., "My Sin" by Lanvin Parfums, Inc., of New York, N.Y., and "White Shoulders" by Parfums Evyan, Inc., of New York, N.Y. In truth and in fact, said perfumes sold by respondents are designated or labeled with the initial letters "A," "C," "M" and "W," are not the same as, nor those of, the said brand names "Arpege" by Lanvin Parfums, Inc., "Chanel No. 5" by Chanel, Inc., "My Sin" by Lanvin Parfums, Inc., or "White Shoulders" by Parfums Evyan, Inc.

(c) By use of the name "Jáq de Paris" and by a depiction of the Eiffel Tower with the tricolor French flag flying on top in connection with the name "Jáq de Paris" they have thereby represented, directly or by implication, that the same are French perfumes and are made, manufactured or compounded in Paris, France, and by a business entity or concern "Jáq de Paris." The representations are further accentuated by the wording "DISTRIBUTED BY JÁQ DE PARIS, NEW YORK, N.Y.," or by words or markings of similar import or meaning used on containers in which the bottles of perfume are packaged and otherwise. In certain circulars used by respondents the words "Boudoir Ensemble" and "Paris Inspired Perfume" appear thereon. Respondents thereby add further support to the representation that their perfumes are made in France or are connected in some manner with Paris, France. In truth and in fact, Jáq de Paris is a trade name used by respondents and said perfumes are not French perfumes and are not made, manufactured or compounded in Paris nor in France; that same are not manufactured by a separate business entity or concern "Jáq de Paris" located in Paris nor in France. Respondents are not distributors for a business entity or concern under the name of Jáq de Paris located in Paris, France.

(d) By using individual boxes for packaging costume jewelry inside the top lid of which appears the wording or legend "STERLING SILVER" under the name "Panat," or under what appears to be

the depiction of a trademark, design or emblem, respondents represent directly or by implication that the costume jewelry so packaged is made up of at least 925/1000ths pure silver. In truth and in fact, said costume jewelry so packaged is not made of sterling silver of at least 925/1000ths pure silver.

(e) By using individual boxes for packaging costume jewelry inside the top lid of which appears the wording or legend "GOLD FILLED," under the name "Panat," or under what appears to be the depiction of a trademark, design or emblem, respondents represent that the costume jewelry so packaged is plated with a gold alloy of 24 karat fineness and of a substantial thickness of at least 1/20th of the weight of the metal in the entire article. In truth and in fact, said costume jewelry so packaged is not plated with a gold alloy of 24 karat fineness and is not of a substantial thickness of at least 1/20th of the weight of metal in the entire article of jewelry.

(f) By using individual boxes for packaging costume jewelry inside the top lid of which appears the wording or legend "14 KT. GOLD," and by attaching or affixing a tag or label to said article of jewelry on which tag or label appears the wording or legend "14 KT. GOLD," respondents represent, and have represented, that the article so packaged, marked, tagged or labeled is entirely composed and made of a gold alloy of 14 karat fineness for the metal portion of said article. In truth and in fact, the metal part of said articles so packaged, marked, tagged or labeled are composed or made of a gold alloy of less than 14 karat fineness.

(g) By placing tags or labels inside the boxes in which certain of respondents' articles of costume jewelry are packaged and on which tags or labels appear the words "CULTURED PEARL," respondents thereby represent, directly or by implication, that said jewelry contains a genuine cultured pearl. In truth and in fact, certain of said costume jewelry are not made with a genuine cultured pearl, but are imitations.

(h) By using labels or tags on which are printed "\$24.95 plus tax" or some other amount, which are attached to or included with respondents' products, respondent thereby represented, directly or indirectly, that said amounts are the prices that have been established in good faith as an honest estimate of the actual retail price and that they do not appreciably exceed the highest price at which substantial sales have been made at retail in respondents' trade area. In truth and in fact, said amounts are fictitious and are appreciably in excess of the highest price at

which substantial sales of said preticketed articles are made at retail in respondents' trade area.

Therefore, the statements and representations set forth above were, and are, false, misleading and deceptive.

PAR. 6. There is a preference on the part of a substantial number of the purchasing public for perfumes manufactured in France, a fact of which the Commission takes official notice.

PAR. 7. In the course and conduct of their business, as aforesaid, respondents have represented through advertisements, labeling, orally and otherwise, that certain of their products are perfume whereas the same are not perfume as the term "perfume" is understood and used in the trade. Perfume contains at least 16 ounces of perfume oil per gallon of mixture. In truth and in fact said products are toilet waters or colognes.

PAR. 8. In the course and conduct of their business, as aforesaid, respondents have represented that certain of their products are guaranteed, and have enclosed a printed folded circular in the package or box in which the respondents' said product is packaged. Typical, but not all inclusive of said representations are the following: On the outside front of the circular—

BRONZINI
PEARLS
LIFETIME
GUARANTEE

On the inside right page:

THE GIFT THAT LASTS

A seed of the ocean's treasure selected for perfection * * * then oysterized by Oriental master craftsmen.

Emulating the cultured pearl with regard to luster, color, beauty * * * further enhanced by gem-like quality skins surpassing the hardness, durability and elegance of the cultured pearl * * * warranting a lifetime guarantee.

JAQ DE PARIS
New York, N.Y.

On the inside right page:

LIFETIME GUARANTEE*

The same shell-base-seeds are used as in growing cultured pearls * * * given a superb coating on the surface of special essence forming the depth and mystery of the heirloom pearl.

*Will not pit or peel

*Will not fade or discolor

In the manner aforesaid respondents represent that respondents' BRONZINI Pearls have an unconditional lifetime guarantee.

In truth and in fact respondents' BRONZINI Pearls are not unconditionally guaranteed in any manner.

Therefore, the statements and representations set forth above were, and are, false, misleading and deceptive.

PAR. 9. By the aforesaid acts and practices, respondents place in the hands of jobbers, retailers, and dealers, means and instrumentalities by and through which they may mislead the public as to the usual and regular price of said perfumes or other products, the composition of same, and the country or place of origin or manufacture of same, and by whom made, manufactured or compounded.

PAR. 10. In the course and conduct of their business, and at all times mentioned herein, respondents have been in substantial competition, in commerce, with other corporations, firms and individuals in the sale of products of the same general kind and nature as those sold by respondents.

PAR. 11. 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' product by reason of said erroneous and mistaken belief.

PAR. 12. 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.

Mr. Charles S. Cox supporting the complaint.

Mr. Matthew L. Salonger, New York, N.Y., for respondents.

INITIAL DECISION BY WALTER K. BENNETT, HEARING EXAMINER
DECEMBER 10, 1965

This proceeding seeks to prevent respondents from conducting their perfume and jewelry business in a misleading manner. In addition to numerous minor contested factual matters, the principal questions are: when the term "perfume," may be used in labeling a scent; and, what parts, if any, may be base metal in an assembled piece of jewelry when its container is marked: "Sterling," "Gold Filled," or "14 Karat."

The Commission complaint dated April 30, 1965, initiated this proceeding. A prehearing conference was held June 11, 1965, and hearings commenced June 28, 1965, and were concluded on August 24, 1965.¹ Decision was reserved on respondents' motion to dismiss that was made at the conclusion of the case of counsel supporting the complaint (Tr. 1018-1021 *et seq.*).² The motion, as renewed at the conclusion of the hearings, is denied insofar as it seeks dismissal of the complaint in its entirety. We shall dispose of particular deficiencies, pointed out in respondents' motion, in ensuing Findings of Fact and Conclusions. However, we will consider first the issues presented prior to trial.

Issues Presented Prior to Trial

The complaint identifies the respondents (C. Par. 1); describes their business (C. Par. 2); alleges interstate commerce (C. Par. 3); and states that respondents use salesmen, advertising, etc., in selling their products (C. Par. 4).

The answer raised no issue on these allegations, hence such allegations will be incorporated in ensuing findings in the language of the complaint.

The complaint also stated that respondents were in competition with others (C. Par. 10). While this allegation was denied in the answer, it was admitted at the prehearing conference (Tr. 2-3) and will appear in terms in findings. Counsel for respondents indicated that he would offer no evidence to rebut the Commission's taking official notice that there is a preference for French perfumes (C. Par. 6; Tr. 12) or to contest the stated percentage requirements for "Sterling," "Gold Filled," and "14 Karat Gold" (see C. Par. 5 (d) (e) and (f), and Tr. 4-5).

Specifically at issue is the balance of the complaint. Because of respondents' claim of fatal variance between the complaint and proof, we describe these charges in some detail.

The first charge (C. Par. 5) is that to induce the purchase of their products the respondents have used fictitious prices and

¹ A total of twelve (12) days of hearings were held at: Dallas, Texas; Kansas City, Missouri; Providence, Rhode Island; New York, New York. Deviations from the rule regarding continuous hearings were approved by the Commission upon certificates of the hearing examiner issued on the facts as stated in motions of counsel supporting complaint; and on November 18, 1965, the Commission extended the time of the hearing examiner to file his initial decision until December 23, 1965.

² The following abbreviations will sometimes be used: Tr. = Transcript; C. = Complaint; A. = Answer; CX = Commission Exhibit; RX = Respondents' Exhibit; CF = Complaint Counsel's Proposed Findings; RF = Respondents' Proposed Findings; Panat for Respondents Panat Jewelry Co., Inc. Reference to particular citations are illustrative only. This decision has been made on the basis of the record as a whole including the demeanor of the witnesses.

have misrepresented: the material, the manufacturer, and the country of origin of their products "by the following methods and means." Then follow eight lettered subparagraphs. These deal respectively with: printing of "10.00" and "15.00" on cartons and advertisements that indicate fictitious prices (C. Par. 5(a)); using initial letters on perfume packages representing directly or by implication that the perfumes are the same as those sold by other manufacturers who use brand names having the same initial letters (C. Par. 5(b)); using the name "Jaq de Paris," the Eiffel Tower, and the French flag on perfumes, thereby falsely claiming French origin for their perfumes (C. Par. 5(c)); using the legend "Sterling" on boxes for costume jewelry, when the jewelry is not entirely 925/1000ths pure silver (C. Par. 5(d)); using the legend "Gold Filled" on boxes for costume jewelry, when the jewelry is not entirely 1/20th of its weight of 24 karat fineness of gold (C. Par. 5(e)); using the legend "14 Kt. Gold" on labels and boxes of costume jewelry where the jewelry is not entirely of 14 karat fineness (C. Par. 5(f)); using the term "Cultured Pearl" on tags and labels attached to costume jewelry when imitation pearls are used (C. Par. 5(g)); using labels or tags marked "\$24.95 plus tax" which indicate fictitious prices (C. Par. 5(h)).

The second charge is that respondents have falsely advertised and labeled as "perfume" certain products that did not contain 16 oz. of perfume oil per gallon of mixture (C. Par. 7).

The third charge is that respondents have represented certain of their products as unconditionally guaranteed, when such is not the fact (C. Par. 8).

The fourth charge is that respondents have placed in the hands of jobbers, dealers, and retailers means and instrumentalities of deception through the acts previously alleged (C. Par. 9).

The complaint concludes that these practices have had the tendency to mislead and to divert purchasers to respondents (C. Par. 11) and that they are prejudicial to the public and are in violation of Section 5 of the Federal Trade Commission Act.

Counsel supporting complaint at the prehearing conference, unsuccessfully sought to reduce factual proof by disclosure of his documents and physical exhibits and by requesting an admission by respondents that they issued or produced the documents and exhibits. Hence, a large portion of the hearings was devoted to more or less successful efforts linking the exhibits produced at the hearings with the respondents.

At the prehearing conference, counsel for respondents amended.

his answer to plead that some of the alleged practices occurred a long time ago and have since been discontinued by respondents (Tr. 3-4; Prehearing Order No. 1 dated June 14, 1965). This raised an issue of fact and of law, which also required proof at the hearings.

Basis of Decision

This decision is based on all of the evidence produced at the trial—oral, written, and physical. Consideration has been given, among other things, to the demeanor of the witnesses produced before the hearing examiner in determining their credibility. The proposed findings and conclusions submitted, but not incorporated in this decision in whole or part in terms or in effect, are denied as immaterial, irrelevant, erroneous, or argumentative. The following findings of fact, conclusions, and order are hereby adopted:

FINDINGS OF FACT

Uncontested Findings

1. Respondent Panat Jewelry 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 principal office and place of business located at 162 Fifth Avenue^{2a} in the city of New York, State of New York (C. Par. 1, A.).

2. Respondent Nathan Jachter is an officer of the corporate respondent. He formulates, directs and controls the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent (C. Par. 1, A.).

3. Respondent Nathan Jachter has registered the trade name "Jáq de Paris" under his own name at the same address. The name "Jáq de Paris" is used in connection with the sale of certain of respondents' products as hereinafter mentioned (C. Par. 1, A.).

4. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of perfumes, toilet waters, cosmetics and costume jewelry for men and women to distributors, jobbers and retailers for resale to the public (C. Par. 2, A.).

5. 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 New York, or from such other State in which said prod-

^{2a} Complaint amended by Order dated June 14, 1965, on consent of the parties to show correct address.

ucts are ultimately packaged, to purchasers thereof located in various other States of the United States and in the District of Columbia, and they 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 (C. Par. 3, A.).

6. Respondents sell their products through salesmen who call on the trade, through exhibits of their said products at various regional trade markets, through advertisements in newspapers, trade publications, other periodicals and circulars (C. Par. 4, A.).

7. There is a preference on the part of a substantial number of the purchasing public for perfumes manufactured in France, a fact of which the Commission takes official notice (C. Par. 6; Tr. 12).

8. In the course and conduct of their business, and at all times mentioned herein, respondents have been in substantial competition, in commerce, with other corporations, firms and individuals in the sale of products of the same general kind and nature as those sold by respondents (C. Par. 10; Tr. 2-3).

Contested Findings

Respondents' Perfume Operations

9. From 1958 to 1959, the respondents rebottled and sold genuine perfumes in very small quantities, including Arpege, Chanel No. 5, White Shoulders, and My Sin (CX 147, 148; Tr. 1099).

10. Sometime during 1960 or 1961, the respondents went into the business of assembling and selling scents that were compounded to their order. Their business consisted of purchasing cartons, boxes, tubes, valves, and glass or metal containers, and engaging a "filler," Aero-Chem Fillers, Inc. Aero-Chem obtained the approval of the Alcohol Tax Unit, Internal Revenue Service, compounded the approved mixture and filled the containers with a mixture of perfume, oil and alcohol (Tr. 465-532; CX 107-118, 119-125). In some cases the "filler" completed the assembling by inserting the containers into boxes, which were then ready for shipment to wholesalers and retailers. In other cases the respondents completed the assembling and affixed labels or sleeves to the containers before boxing them (Tr. 626-632). Respondents made the shipments to distributors and retailers in both cases. In addition, respondents prepared advertisements for publication and display material, for use by retailers (CX 4, 51, 52, 55; Tr. 130-144).

Preticketing Perfumes

11. Respondents sold a "golden filigree" spray perfume. On the bottom of the carton in which this item was packaged appeared the number 15, followed by two small zeros (CX 49A, 103; Tr. 128-129, 632). Later runs of the carton left off the "15.00" (Tr. 129). Respondents also sold another spray perfume item on the carton of which appeared the number 10 followed by two small zeros (CX 50A, 69, 95A; Tr. 632, 633).

12. Respondents thereby represented that "15.00" and "10.00" are the dollar prices established in good faith as an honest estimate of the actual retail price and do not appreciably exceed the highest prices at which substantial sales of such products are, or have been, made at retail in respondents' trade area.

13. In retail operations in trade areas served by respondents, their spray perfume was advertised and sold at approximately \$1 a bottle (CXs 70, 71 A and B, 75, 96, 97, 103, 104; Tr. 217, 226, 228, 332, 407, 421).

Using Initials of Well-Known Perfumes

14. In submitting respondents' labels to the Alcohol Tax Unit, Internal Revenue Service, Aero-Chem Fillers, Inc., in some instances, used the initials A, C, M, W, for labels. In other instances, the following names were used in connection with the initial letters: A, Appreciation; C, Chanteuse; M, Mystic Sands; W, White Sands (CX 109-118; Tr. 524). In distributing their product, respondents sometimes used the initial letters alone on the product and sometimes used the initial letters with the names just listed (RX 12 A, B, 13 A, B; CX 45, 46, 48, 56 A, 57 A, 59, 71, 95; Tr. 1096).

15. Irving Auerbach, a former salesman of respondents, testified that he represented to customers that the fragrance designated "A" was an imitation of the fragrance of Arpege; "C" an imitation of Chanel No. 5; "W" an imitation of White Shoulders, and, "M" an imitation of My Sin (Tr. 130-132). He denied that he told customers the perfumes were genuine perfumes which the scent imitated (*id.*). Respondent Jachter testified that he gave no instructions to salesmen concerning what the initials stood for; just told them it was a good product to go out and sell it (Jachter, Tr. 1124). The hearing examiner regards Jachter's testimony as incredible in this regard. Respondents' bookkeeper testified that she could not recall instructions given to salesmen by Jachter that the perfumes were to be sold as genuine

(Tr. 1060). She was quite obviously not always present when conversations between Jachter and the salesmen took place (Tr. 1082-1083). Consequently, we find that there were representations made that the initials stood for scents which imitated famous perfumes having the same initial. This accords with the testimony given by Oscar Gerson, a Kansas City distributor. He said that Jachter told him in 1960 or 1961 that the letters "A," "C," "M," and "W" stood for imitation[s] of other perfumes which start with the same letter (Tr. 187-188).

French Origin

16. Respondent Nathan Jachter registered the name "Jâq de Paris" under his own name in October 1961 (CX 204; Tr. 1135). That name in conjunction with a representation of the Eiffel Tower and the French flag was used by respondents in the sale and distribution of perfumes a large number of which had initials of well-known French perfumes (Findings 14, 15) and scents which imitated such perfumes (Finding 15; CX 4, 55; Tr. 1123, 1134). These perfumes were compounded in the United States by Aero-Chem Fillers, Inc. (Tr. 1134), and had no connection with Paris or with France.

Mislabeled Jewelry

17. Respondents are also engaged in assembling jewelry; that is, they purchase parts, or "findings" as they are called in the trade, and physically put together from such parts: cuff links, tie tacks, pendants, necklaces, and other similar pieces of jewelry (Tr. 626, 641-644). Respondents also purchase the boxes in which such jewelry is placed and is offered for sale (*id.*). In the boxes, respondents use an insert which contains a characteristic design known in the trade as a "logo" (Tr. 127, 128; CX 33A-36A inclusive). Some of these inserts also contain a statement of the quality of the jewelry, such as "Gold Filled," "Sterling" (*e.g.*, CX 33A-36A), or "Cultured Pearl"; others contain a tag stating the quality of the jewelry such as "14 Karat" which is placed on the piece of jewelry itself (see *e.g.*, CX 93A-D; Tr. 301).

18. Respondent Jachter claimed that his "logo" was not registered and that he had seen his "logo" used by others (Tr. 1191-1192) but no physical exhibits were produced showing the use of the characteristic "logo" by other manufacturers. The testimony of a former employee, now a competitor, that the crest (logo) was Panat's and no one else's, appeared to the hearing examiner to be entirely credible (Tr. 659). Another jewelry manufacturer

testified that it was not probable that anyone else would use a logo like Panat's (Tr. 993-995). Thus, the presence of the characteristic logo on boxes containing jewelry tends to corroborate identification of such jewelry as emanating from respondents.

19. In the middle of 1962, Coro, Inc., a jewelry distributor, purchased an extensive amount of jewelry from respondents (Tr. 755, 861; CX 169, 171). Thereafter, about September 1962, Coro, Inc., received complaints about the quality of the merchandise (Tr. 766). Coro, Inc., then tested a random sampling of the inventory in its Providence warehouse (Tr. 768). The tested merchandise was marked "Gold Filled" in some cases, and in others "Sterling" on the satin lining inside the box containing the jewelry (Tr. 769). As a result of the test, Coro, Inc., returned its entire inventory of respondents' merchandise (Tr. 772). When the merchandise was returned a representative of Coro, Inc., told respondent Jachter that the tests revealed some pieces were not as represented. Jachter stated that the mislabeling was a mistake, and he agreed to Coro's returning all its inventory for fresh merchandise (Tr. 786-787). Jachter thereafter replaced the merchandise (Tr. 788-790).

20. Fourteen items of jewelry which were chosen at random from Coro's stock, were tested by Gannon & Scott, Incorporated, expert assayers (Tr. 903, 907-918; CX 178 A-B). Of these fourteen, three marked "Sterling" and one marked "Gold Filled" were found to be as represented (Items 1, 10, 12 and 14 CX 178; Tr. 907, 908, 914, 915, 916-17). Of two additional items marked "Sterling," one had a base metal setting (Item 2 CX 178B; Tr. 908-910) and the other base metal oval link and spring ring (Item 13 CX 178B; Tr. 916). With the exception of these base parts the balance of the items were as represented (*id.*). An item marked "Gold on Sterling" was found to have a base metal oval link and connecting link and gold color on a sterling chain and setting (Item 11 CX 178B; Tr. 914-915). Seven items tested were marked "Gold Filled." Three of these had gold-filled parts, except for the setting which was sterling silver (Items 3, 6 & 7 CX 178B; Tr. 910, 911, 912, 913). Of the balance of the items Coro tested which were marked "Gold Filled," two had a base metal setting (Items 4, 8 CX 178B; Tr. 911, 913); one a connecting link of base metal and a setting of gold color (Item 5 CX 178B; Tr. 911-912); still another had a connecting link of base metal and a sterling silver setting (Item 9 CX 178B; Tr. 913-914).

21. Sometime in 1962 (Tr. 992), Harry Hedison, president of

Hedison Manufacturing Company of Cranston, Rhode Island (Tr. 996-997), purchased a number of items of jewelry which looked like those advertised by respondents in "Fashion Accessories" (CX 4, 133A through 137B; Tr. 978, 990). The items purchased had the Panat "logo" on them at the time of purchase (Tr. 977-990). After having some initial tests made by his own plating department (Tr. 976-986), Hedison sent some of the articles to George Conley Company, Inc., an assaying house in Cranston, Rhode Island (Tr. 986), who supplied a report of assay (CX 195A-D; Tr. 990). On cross-examination, however, Hedison testified that it was probable that the articles assayed were Panat's but he could not swear that the products "definitely came from Panat Jewelry" (Tr. 994-995). In light of the uncertainty of the identification of the articles as Panat's, we have not made any finding or conclusion based on these exhibits purchased by Hedison except in the case of Commission Exhibits 135-137. These exhibits were identified by someone else (see Tr. 634-636).

22. In 1961, in 1963, and in January 1965, Commission personnel purchased five articles of jewelry from tradespeople (CX 6, 7, 32, 33, 36, 41, 44; Tr. 15-24, 111, 112, 943, 945). At the hearing, the sellers identified these articles as having been bought from Panat (CX 37, 38, 39, 43; Tr. 15-24, 105-112, 1011). These five articles were assayed by Carl Kuck of Lucius Pitkin, Inc. (Tr. 706-707). Kuck testified that four out of the five articles were not qualified for the markings given (Tr. 711-724; CX 160-164 inclusive). One article marked "Gold Filled," although not up to the standard, was within manufacturing tolerance (CX 145, 146, 162-164; Tr. 715-718). Another article, a cuff link marked "Sterling" was sterling on the front but a base metal on the back or snap bar (CX 6, 163; Tr. 721). A pendant marked "14 Karat" (CX 41), which had been bought from Panat in 1964, and from the distributor in 1965, had no parts which measured up to 14 karat fineness (CX 164; Tr. 723-724). Two other pendants, marked respectively, "Sterling" and "Gold Filled" (CX 33, 36), were also assayed at less than the qualifying amount of precious metal (CX 160, 161; Tr. 711-714).

23. A Commission attorney bought from a dealer (CX 44) a Bronzini Pearl pendant (CX 42B) which the dealer bought from Panat (CX 43; Tr. 118-120). This exhibit was shown to Ernest Reuter, an expert in cultured pearls and a principal of Leys Christie (Tr. 688-689). Reuter, after examination through a jeweler's loupe, testified that it was not a cultured or a real pearl (Tr. 691). Morton Salm, a former employee of Panat, identified as Panat's,

two pendants marked "Cultured Pearls" (CX 135, 136; Tr. 634-636). These were purchased by Hedison and were sent to the Commission by Frankovich (Tr. 964, 990). Salm testified that these pendants were not cultured pearls, and his testimony was corroborated by Ernest Reuter who made an examination of them at the hearing (Tr. 690-691). Despite the testimony of an imitation pearl manufacturer that a chemical test was required to determine whether a pearl was imitation or cultured (Tr. 805, 806), we accept, as convincing, the explanation given by Ernest Reuter of how he could determine under a jeweler's loupe whether a pearl was imitation, cultured, or natural (Tr. 695-696). Hence, we find that the pearls sold as "Cultured Pearls" by respondents were not cultured pearls but imitation pearls.

24. Complaint counsel produced as an expert witness, George R. Frankovich, Executive Director of the Manufacturing Jewelers and Silversmiths of America, Incorporated (Tr. 957-958). Mr. Frankovich described in detail the process of producing rolled gold and differentiated this from the electroplating of gold (Tr. 965-968). And, he testified that rolled gold has vastly superior wearing qualities (Tr. 968). He also expressed the opinion that it would not be proper to place into a package marked "Gold Filled" or "Sterling" an article made in part of base metal (Tr. 968, 970), excepting those parts specifically exempted by the commercial standards of the Department of Commerce that now have been incorporated into the Federal Trade Commission Rules for the Jewelry Industry (CX 165, 166, 186, 188).

Preticketing Bronzini Pearls \$24.95

25. A jewelry distributor in Kansas City produced a box containing a pendant marked "Bronzini Pearl" (CX 93A, B and C) that had attached to it a tag with "\$24.95" on it when received from Panat on July 7, 1965 (Tr. 301, 302). He testified that these pendants are purchased from Panat at \$22.50 a dozen by the distributor, and they are sold by the distributor to his retailers for \$36 a dozen. The suggested retail price is \$6 each (Tr. 303). A Commission attorney purchased a similar article from State Wide Distributors, January 25, 1965, for \$2 (CX 44). On the basis of these facts, we find that the preticketing of the product at \$24.95 is not an honest estimate of the retail price (RF 9).

Use of Label "Perfume"

26. Respondents utilized Aero-Chem Fillers, Inc., to compound and fill the containers supplied by respondents (Tr. 1088). Aero-

Chem in each instance used the proportion of perfume oil requested by respondents which would be used in each of the scents compounded for respondents (Tr. 510, 516). In addition, Aero-Chem in each instance filed with the Alcohol Tax Unit of the Internal Revenue Service an application for using denatured alcohol. Commission Exhibits 109 through 118 are the applications relating to the Panat compounds that were approved by the Alcohol Tax Unit and were kept in the regular course of business by Aero-Chem (Tr. 489-492, 508). These applications included the label to be used and the designation "Cologne" or "Perfume." Some of these applications showed only the initial letters. All of the products labeled "Perfume" had a perfume oil content of less than 16 ounces per gallon (CX 109-118, inclusive).

27. Respondents sold scents labeled perfume and spray perfume in accordance with labels submitted to the Alcohol Tax Unit which had a perfume oil content of substantially less than 16 ounces per gallon (CX 8B, 9B, 10B, 11B, 177A-D; Tr. 819-820).

28. A number of persons testified as experts in the field of preparing, selling, or investigating irregularities in the sales of perfume that, while there was no statute or regulation requiring that perfume contain at least 16 ounces of perfume oil per gallon, the practice in the industry was to label as perfume only a mixture of at least 16 ounces of perfume oil to a gallon of denatured alcohol (Tr. 552, 565, 616, 825, 826). There was no credible contrary testimony.

Guarantee of Bronzini Pearls

29. Respondents have represented that certain of their products are guaranteed, and they have enclosed a printed, folded circular in the package in which respondents' pearls are packaged. Typical, but not all inclusive of said representations are the following: On the outside front of the circular—

BRONZINI
PEARLS
LIFETIME
GUARANTEE

On the inside left page:

THE GIFT THAT LASTS

A seed of the ocean's treasure selected for perfection * * * then oysterized by Oriental master craftsmen.

Emulating the cultured pearl with regard to luster, color, beauty * * * further enhanced by gem-like quality skins surpassing the hardness, dura-

bility and elegance of the cultured pearl * * * warranting a lifetime guarantee.

JAQ DE PARIS
NEW YORK, N.Y.

On the inside right page:

LIFETIME GUARANTEE*

The same shell-base-seeds are used as in growing cultured pearls * * * given a superb coating on the surface of special essence forming the depth and mystery of the heirloom pearl.

*Will not pit or peel.

*Will not fade or discolor.

In the manner aforesaid, respondents represent that their BRONZINI Pearls have an unconditional lifetime guarantee (CX 41B, 42B, 93C).

30. No evidence was offered concerning failure on the part of respondents to replace Bronzini Pearls containing such guarantees. Respondent Jachter testified without contradiction that he had received no complaints concerning Bronzini Pearls (Tr. 1123).

Placing Instruments of Deception in the Hands
of Retailers and Dealers

31. By placing prices on cartons in which scents were packaged and on the cartons in which the Bronzini Pearls were packaged, the respondents placed an instrumentality in the hands of retailers and dealers to deceive the public as to the true retail price of products which customarily sold at a much lower price, as heretofore found (see Findings 8, 10 and 24).

32. By the use of the name Jáq de Paris, coupled with the representation of the Eiffel Tower and the French flag, respondents placed an instrumentality in the hands of retailers and dealers to deceive the public as to the country of origin of their products (see Finding 15).

33. By marking their scents with the initials A, C, M, and W, and by representing that such markings stood for scents that imitated "Arpege," "Chanel No. 5," "My Sin," and "White Shoulders," respondents placed an instrumentality in the hands of retailers and dealers to deceive the public as to the composition of their products and as to the persons by whom they were made, manufactured, or compounded (see Findings 11 to 14).

34. Retailers, engaged in selling scents, advertised and sold respondents' products as genuine "Arpege," "Chanel No. 5," "My Sin," and "White Shoulders" (CX 70; Tr. 307, 357, 414, 418, 431).

They were assisted in this deception by the price tags on the products and by the manner of packaging (Tr. 414, 416).

35. Respondents were informed that retailers were engaged in misleading the public as to the composition and manufacturer of their products (CX 141, 142; Tr. 595, 596).

36. It was not established that respondents urged their dealers and retailers to advertise their products as genuine "Arpege," "Chanel No. 5," "My Sin," and "White Shoulders," except by providing a product packaged and marked in a manner to facilitate the deception (see Tr. 356-358, 416).

37. The denial by Mrs. Norman, a Commission witness, that she had stated that the Panat perfumes sold by her were genuine "Arpege," "Chanel No. 5," "White Shoulders," and "My Sin," is not credible in the light of the other circumstances and the testimony of Mr. Hayes, a Commission attorney investigator (CX 70; Tr. 213-240, 307).

Effect of Statements

38. 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.

Continuation of Practices

39. The major portion of the evidence in this case related to practices which were engaged in during 1960 and 1961. Respondents, however, continued to sell their products and to make certain false representations through 1964. Respondent Jachter testified that he stopped preticketing the Bronzini Pearls after they received the complaint in this case from the Federal Trade Commission (Tr. 1120-1121).

CONCLUSIONS

1. The Federal Trade Commission has jurisdiction over respondents; and their activities, including those charged to be misleading, were in commerce within the meaning of the Federal Trade Commission Act.

2. Respondents were engaged in the unfair practice of preticketing their perfume and their Bronzini Pearls with fictitious

prices that were in neither case an honest estimate of the prevailing retail prices. The preticketed prices were, in fact, considerably in excess of the highest prices at which substantial amounts of such products were sold at retail.

3. It was not established by the evidence that respondents represented, through the use of the initials A, C, M, and W, that scents manufactured for them and distributed by them were in fact the well-known perfumes "Arpege," "Chanel No. 5," "My Sin," and "White Shoulders." It was, however, established by the evidence that respondents sold said scents as imitations of said well-known perfumes.

4. Respondents, through the use of the fictitious trade name "Jác de Paris" in conjunction with the use of the Eiffel Tower and the French flag and the method of advertising, packaging, and using the name "Jác de Paris," represented falsely that their scents were of French origin. Because of the officially noticed fact that French perfume is preferred by consumers, such representations are false and misleading and constitute unfair trade practices.

5. Respondents in labeling certain of their jewelry products "Sterling Silver," "Gold Filled," and "14 Karat," represented that such jewelry was of the standard of fineness generally recognized in the industry and conformed to the Commercial Standards approved by the Department of Commerce and the Trade Practice Rules of the Federal Trade Commission. The exceptions specified in said standards and regulations are the exclusive exceptions recognized in the industry. Respondents in using any metal parts which were not of the fineness specified on the label and not within recognized exceptions, engaged in an unfair practice and in making false and misleading representations.

6. The term "Pearl" means a natural gem produced by an oyster without artificial stimulus. An imitation pearl is merely a bead coated with a lacquer to resemble a natural pearl. A cultured pearl means a gem produced by an oyster under artificial stimulus. To label an imitation pearl either as "Pearl" or "Cultured Pearl" tends to deceive the public who cannot without special expertise distinguish one from the other. Respondents in falsely labeling certain of their jewelry as "Pearl" or "Cultured Pearl," when in fact the jewelry contained an imitation pearl, were engaged in an unfair trade practice and in making false and misleading representations.

7. The term "Perfume" has a well-recognized meaning in the trade. It denotes a much higher percentage of essential perfume

oils than is found in toilet water or in cologne. Uncontradicted expert testimony placed the customary ratio of perfume oils in perfume as at least 16 ounces to the gallon of standard denatured alcohol or other solvent. In labeling their scent "Perfume," when it contained substantially less than 16 ounces of perfume oil to the gallon, respondents were engaging in an unfair trade practice and were making false and misleading representations. The fact that the respondents' "filler," Aero-Chem Fillers, Inc., filed applications with the Alcohol Tax Unit of the Internal Revenue Service, which were approved, containing the label, the formulae, and accompanied by a sample of the scent, did not constitute, merely because the label contained the word "Perfume," an approval by the Alcohol Tax Unit of such a misleading designation. The submission of the label was presumably for the purpose of identifying the product as sold in the market and of permitting the Alcohol Tax Unit to determine whether or not the amount of alcohol contained therein was in accordance with the representation of the "filler." This follows from the fact that the legislation, authorizing the formation of the Alcohol Tax Unit, is in aid of the tax on alcohol. It should not be construed as a prior restraint on the use of a label. Such a peacetime censorship of advertising in a label would hardly be consistent with the functions of the Alcohol Tax Unit.³

8. The proof did not establish that respondents failed to live up to the guarantee stated in the folder that accompanied its Bronzini Pearls.⁴ The only testimony was that there had been no complaints concerning same.

9. The use of the term "Jág de Paris" as an assumed trade name was part of respondents' effort to mislead the public as to the origin of its products. In such circumstances its continued use cannot be countenanced.

10. Respondent Jachter is the owner of the trade name "Jág de Paris," and he formulates and controls the acts and practices of the corporate respondent, Panat. The proof established that in some instances the name Jág de Paris was used alone, and at other times in conjunction with the name, Panat. This demon-

³ It is clear that approval "does not constitute an endorsement of the article, directions for use, claims of efficacy or strength or similar statements" (see 26 Code of Federal Regulations Part 211, § 211.106).

⁴ The complaint charged only that by the terms of the guarantee respondents represent that their "Pearls" have an unconditional lifetime guarantee; while in truth, they are not unconditionally guaranteed in any manner. Hence, it is not charged that the terms of the guarantee constitute a material, factual misrepresentation (see Guides Against Deceptive Advertising of Guarantees, April 26, 1960, VII).

strates the versatility of respondent Jachter in utilizing different names to conduct respondents' business. In such circumstances it seems necessary to the protection of the public that Jachter be personally named in any order to cease and desist.

11. While respondents were not shown to have specifically represented that the initials used on their scents referred to genuine perfumes—"Arpege," "Chanel No. 5," "My Sin," and "White Shoulders"—they took actions which assisted retailers and dealers in so misrepresenting them. They packaged their scents to represent genuine perfumes. They preticketed their scents with a price comparable to the price of genuine perfumes. And, they represented to dealers that their scents were imitations of the genuine perfumes whose initials were shown on the respondents' packages. This constituted placing an instrumentality in the hands of dealers and retailers to represent to the public—as they did—that respondents' scents were the genuine perfumes whose initials appeared on respondents' scents. The fictitious prices and the use of the namé Jâq de Paris, together with a depiction of the Eiffel Tower and the French flag, were similarly instrumentalities that respondents placed in the hands of the retailers and dealers with which said retailers and dealers could mislead the public as to the country of origin of respondents' perfumes. The placing of such means in the hands of dealers and retailers constituted an unfair trade practice calculated to result in a misrepresentation to the public. The proof established that respondents were aware that certain retailers were making misrepresentations concerning the country of origin of the scents sold by respondents.

12. There was no serious variance between the acts alleged and those established. There was, at most, merely a failure to prove certain of the misleading means alleged. Respondents had clear and ample notice of the facts, which formed the basis of the charges against them.

13. Despite the fact that a large portion of the evidence related to acts that occurred several years ago, some misleading acts were current at the time of the issuance of the complaint. Hence, the case is not moot, and it cannot be concluded that respondents' unlawful conduct has surely stopped.

14. The aforesaid acts and practices of respondents were and are prejudicial and injurious to the public and to 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 of the Federal Trade Commission Act. Consequently, the following order should issue.

Order

71 F.T.C.

ORDER

It is ordered, That respondents Panat Jewelry Co., Inc., a corporation, and its officers, and respondent Nathan Jachter, individually and as an officer of said corporation, and Nathan Jachter trading and doing business as Jáq de Paris, or under any other name or names, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of perfumes, toilet waters, cosmetics, costume jewelry, or any other product, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Preticketing any product at a suggested retail price that is not established in good faith as an honest estimate of the actual retail price or that appreciably exceeds the highest price at which substantial sales are made in respondents' trade area.

2. Furnishing to others, any means or instrumentality by or through which the public may be misled as to the actual bona fide retail prices of respondents' merchandise.

3. Using any letters, numerals, or symbols that are associated with or otherwise suggestive of nationally advertised or well-known perfumes, toilet waters, or related products in the labeling or advertising of respondents' products without clearly and conspicuously revealing in immediate conjunction therewith, the actual trade name of the manufacturer of said products.

4. Using the term "Jáq de Paris" or any other French word or words, or a depiction of the Eiffel Tower, the French flag, or any other typically French scene, in advertising or labeling to describe perfumes, toilet waters, or cosmetics that are not manufactured or compounded in France.

5. Representing in any manner that merchandise was manufactured, compounded or distributed by a named person or concern, or originated in a given country or geographical area, unless such article was so manufactured, compounded, distributed, or originated.

6. Using the word "Perfume" or "Perfumes" to designate, describe or refer to any product having a perfume oil content of less than 16 ounces per gallon.

7. Using the term "Sterling Silver" or any other word or words of similar import or meaning, to designate, describe,

or refer to an article which is not wholly composed of 925/1000ths pure silver.⁵

8. Using the term "Gold Filled," or any other word or words of similar import or meaning, to designate, describe, or refer to an article unless it is made by affixing a shell of karat gold alloy on one or more surfaces of base metal and unless the karat gold alloy is at least of 10 karat fineness and of a substantial thickness of at least 1/20th of the weight of the metal in the entire article.⁵

9. Using the term "14 K. GOLD," "14 KT. GOLD," "14 KARAT GOLD" or any other term, word, number, abbreviation, or symbol, either singularly or in combination one with another, relative to the karat fineness of the gold alloy content of the metal in the article to which it refers, unless the metal in the article is wholly composed of gold alloy of the karat fineness specified.⁵

10. Using the words "Pearl," "Cultured Pearl," or any other word or words of similar import or meaning to describe imitation pearls, or representing in any manner that imitation pearls are genuine pearls: *Provided, however,* That the word "Pearl" may be used to describe the appearance of an imitation pearl if, whenever used, the word "Pearl" is immediately preceded, in equally conspicuous type, by the words "imitation" or "simulated" or other words of similar import or meaning, which will clearly indicate that the imitation pearl is not a genuine pearl.

11. Furnishing or placing in the hands of retailers or dealers the means and instrumentalities by and through which they may mislead or deceive the public in the manner or as to the things hereinabove prohibited.

OPINION OF THE COMMISSION

FEBRUARY 8, 1967

This matter is before the Commission on the cross appeals of respondents and complaint counsel from the hearing examiner's initial decision finding that respondents had engaged in various

⁵ In construing paragraphs 7, 8 and 9 of this order, the provisions of Title 15 U.S.C. § 291-300 relating to tolerances and the exemptions customary in the industry; contained in Commercial Standards CS 51-35, CS 67-38, CS 118-44, and CS 47-34 issued by the Department of Commerce and incorporated in Trade Practice Rules for the Jewelry Industry promulgated by the Federal Trade Commission June 28, 1957, and amended November 17, 1959, shall be applied.

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

Respondents are engaged in the sale and distribution of scents, cosmetics and costume jewelry to distributors, jobbers and retailers for resale to the public. The complaint charged them with preticketing their products with fictitious prices; falsely labeling certain of their jewelry products as "Sterling Silver," "Gold Filled," "14 Karat," "Pearl" and "Cultured Pearl"; falsely labeling certain of their products as "perfume"; falsely representing that scents manufactured for them were of French origin; falsely representing that certain of their products are unconditionally guaranteed; and placing in the hands of jobbers and retailers the means by which they might mislead the public as to the usual and regular prices of respondents' products, the composition of same, and their origin of manufacture. The hearing examiner held that all such allegations had been sustained except for the charge concerning respondents' representations of guarantees.

Respondents chose not to file briefs on appeal. In oral argument before the Commission, they took exception only to the hearing examiner's conclusion that they had falsely labeled certain of their products as "perfume," contending that the evidence was insufficient to support such a holding.

The record reveals that respondents, in the course of their business in commerce, assembled and sold scents that were compounded to their order. Certain of these products were labeled and sold by the respondents as "perfume." The hearing examiner found that the term "perfume" has a "well-recognized meaning in the trade"; that it denotes a product compounded from perfume oils and standard denatured alcohol or other solvent, each gallon of the compound containing at least 16 ounces of perfume oil. He further found that some of respondents' products, labeled and sold as "perfume," had a perfume oil content substantially less than "the customary ratio." On the basis of these findings, he concluded that respondents had falsely labeled their scents, and issued an order prohibiting respondents' use of the word "perfume" to describe any product "having a perfume oil content of less than 16 ounces per gallon."

In support of his finding concerning industry practice in compounding and labeling scents as "perfume," the examiner lists citations to the expert testimony of a "number of persons." Upon examination, we have noted that several of the record citations are inapposite and that only the testimony of two witnesses is pertinent to the point under review. This testimony tends to sup-

port the examiner's finding. However, when considered in the light of the record as a whole, it does not afford a substantial basis for a finding that could have significant ramifications within the industry. Accordingly, respondents' appeal is granted.

Counsel supporting the complaint takes exception to the examiner's dismissal of the allegation that respondents falsely represented that certain of their products were unconditionally guaranteed. Respondents sell imitation pearls under the trade name of BRONZINI and advertise that such products have a "LIFETIME GUARANTEE." The examiner correctly found that such advertising represents that respondents' BRONZINI pearls are unconditionally guaranteed. However, there was no evidence offered to show that respondents' guarantee on such products was actually conditional. Therefore, the examiner's dismissal of the allegation was clearly warranted.

Complaint counsel also takes exception to the hearing examiner's order, contending that in certain respects it is not broad enough to prevent repetition of respondents' misleading trade practices. We find no merit in his specific contentions. We are concerned, however, with that provision in the examiner's order relating to respondents' misleading use of the term "Gold Filled." This provision fails to require disclosure of the karat fineness of the alloy used in articles to be labeled as "Gold Filled."¹ In our opinion, the record and the public interest call for issuance of an order that will require such disclosure. The examiner's order will, therefore, also be modified in this respect.

This action was taken without the concurrence of Commissioner MacIntyre.

FINAL ORDER

This matter having been heard by the Commission upon the exceptions of respondents and of counsel supporting the complaint to the hearing examiner's initial decision, and upon a brief and oral argument in support thereof and in opposition thereto; and

The Commission having rendered its decision and having determined that the initial decision should be modified to conform with the views expressed in the accompanying opinion and, as so modified, adopted as the decision of the Commission:

It is ordered, That the initial decision be modified by striking therefrom finding 28 and conclusion 7 and substituting therefor the following:

¹ See Rule 22 C (2) of the Commission's Trade Practice Rules for the Jewelry Industry.

28. There is testimony in the record to the effect that, while there is no statute or regulation requiring that perfume contain at least 16 ounces of perfume oil per gallon, the practice in the industry is to label as perfume only a mixture of at least 16 ounces of perfume oil to a gallon of denatured alcohol. However, this testimony when considered in the light of the record as a whole, does not provide a substantial basis for a finding concerning industry practice in labeling scents as "perfume."

7. The proof did not establish that respondents falsely represented certain of their products as "perfume."

It is further ordered, That the order to cease and desist in the initial decision be modified to read as follows:

It is ordered, That respondents Panat Jewelry Co., Inc., a corporation, and its officers, and respondent Nathan Jachter, individually and as an officer of said corporation, and Nathan Jachter trading and doing business as Jáq de Paris, or under any other name or names, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of perfumes, toilet waters, cosmetics, costume jewelry, or any other product, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Preticketing any product at a suggested retail price that is not established in good faith as an honest estimate of the actual retail price or that appreciably exceeds the highest price at which substantial sales are made in respondents' trade area.

2. Furnishing to others, any means or instrumentality by or through which the public may be misled as to the actual bona fide retail prices of respondents' merchandise.

3. Using any letters, numerals, or symbols that are associated with or otherwise suggestive of nationally advertised or well-known perfumes, toilet waters, or related products in the labeling or advertising of respondents' products without clearly and conspicuously revealing in immediate conjunction therewith, the actual trade name of the manufacturer of said products.

4. Using the term "Jáq de Paris" or any other French word or words, or a depiction of the Eiffel Tower, the French flag, or any other typically French scene, in ad-

vertising or labeling to describe perfumes, toilet waters, or cosmetics that are not manufactured or compounded in France.

5. Representing in any manner that merchandise was manufactured, compounded or distributed by a named person or concern, or originated in a given country or geographical area, unless such article was so manufactured, compounded, distributed, or originated.

6. Using the term "Sterling Silver" or any other word or words of similar import or meaning, to designate, describe, or refer to an article which is not wholly composed of 925/1000ths pure silver.*

7. Using the term "Gold Filled" or any word or words of similar import or meaning, to designate, describe or refer to an article unless the article contains a surface plating of gold alloy of not less than 10 karat fineness which is of a substantial thickness of at least 1/20th of the weight of the metal in the entire article, and unless the term is immediately preceded, with equal conspicuousness, by a correct designation of the karat fineness of the alloy.*

8. Using the term "14 K. GOLD," "14 KT. GOLD," "14 KARAT GOLD" or any other term, word, number, abbreviation, or symbol, either singularly or in combination one with another, relative to the karat fineness of the gold alloy content of the metal in the article to which it refers, unless the metal in the article is wholly composed of gold alloy of the karat fineness specified.*

9. Using the words "Pearl," "Cultured Pearl," or any other word or words of similar import or meaning to describe imitation pearls, or representing in any manner that imitation pearls are genuine pearls: *Provided, however,* That the word "Pearl" may be used to describe the appearance of an imitation pearl if, whenever used, the word "Pearl" is immediately preceded, in equally conspicuous type, by the words "imitation" or "simulated" or other words of similar import or meaning, which will

* In construing paragraphs 6, 7 and 8 of this order, the provisions of Title 15 U.S.C. § 291-300 relating to tolerances and the exemptions customary in the industry, contained in Commercial Standards CS 51-35, CS 67-38, CS 118-44, and CS 47-34 issued by the Department of Commerce and incorporated in Trade Practice Rules for the Jewelry Industry promulgated by the Federal Trade Commission June 28, 1957, and amended November 17, 1959, shall be applied.

clearly indicate that the imitation pearl is not a genuine pearl.

10. Furnishing or placing in the hands of retailers or dealers the means and instrumentalities by and through which they may mislead or deceive the public in the manner or as to the things hereinabove prohibited.

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

It is further ordered, That respondents Panat Jewelry Co., Inc., and Nathan Jachter 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 in which they have complied with the order to cease and desist.

By the Commission, without the concurrence of Commissioner MacIntyre.

IN THE MATTER OF

EDWARD W. PUTNAM DOING BUSINESS AS
BLUE DIAMOND CHINCHILLAS

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

Docket C-1167. Complaint, Feb. 8, 1967—Decision, Feb. 8, 1967

Consent order requiring a Sioux City, Iowa, distributor of chinchilla breeding stock to cease misrepresenting the quality and fecundity of their animals and profits to be made from home breeding of chinchillas.

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 Edward W. Putnam, an individual doing business as Blue Diamond Chinchillas, 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 Edward W. Putnam is an individual doing business under the name of Blue Diamond Chinchillas, with

his principal office and place of business located at 3406 Military Road, Sioux City, Iowa.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the advertising, offering for sale, sale and distribution of chinchilla breeding stock to the public.

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

PAR. 4. In the course and conduct of his business, and for the purpose of inducing the sale of his chinchillas, the respondent has made numerous statements and representations in television and direct mail advertising, and through the oral statements and representations of salesmen to prospective purchasers with respect to the raising, breeding, pelting of chinchillas and the profits to be derived therefrom:

Typical and illustrative, but not all inclusive, of the statements made in respondent's television and direct mail advertising and promotional literature, are the following:

If you are a - - -

Farmer

City Dweller

Suburbanite

Chinchillas are a profitable hobby. They don't require a large area * * * you can raise them right in your own home * * * spare room, basement.

Money in your pocket * * * providing you have the high quality such as Blue Diamond has to offer.

The female usually breeds at anywhere from 6 to 10 months of age. Gestation period is about 111 days, with litters averaging approximately 2 babies * * * making 3 litters per year possible—the average being approximately 2 litters when figured on national basis.

Now, figuring on the conservative side of the national average rate of reproduction, one could have twenty pairs of chinchillas in three years, starting with one adult pair and on this same basis a rancher could have eighty pairs at the end of the three-year period by starting with four pairs. On the basis of two litters per year and two babies per litter, and barring any unpredictable casualties, eighty pairs could give you an annual production of three hundred and twenty animals to be marketed at the proper time.

(Starting) with four pairs it would take about 3 years time to be self-supporting * * * by self-supporting, I mean \$8,000 to \$10,000.

Chinchilla ranchers are earning thousands of dollars each year in their spare time. Quality chinchilla pelts on today's market bring \$30 to \$60 each.

Quality is a must in the chinchilla business and we make every endeavor to start the new rancher with what we believe to be the best stock available.

PAR. 5. Through the use of the above quoted statements and representations, and others of similar import and meaning, but not expressly set out herein, separately and in connection with oral statements and representations in direct sales presentations to prospective purchasers, respondent represents, and has represented, directly or by implication, that:

(1) It is practicable to raise chinchillas in the home and large profits can be made in this manner.

(2) The breeding of chinchillas for profit requires no previous knowledge or experience.

(3) Chinchilla breeding stock sold by respondent is of top quality, select quality or the best grade that can be obtained.

(4) Mated pairs of chinchillas sold by respondent will produce an average of two or more litters per year with an average of at least two animals per litter, resulting in four or more live offspring per year.

(5) The national average production of female chinchillas is two litters per year with two or more offspring per litter.

(6) Purchasers of respondent's mated pairs of chinchillas can expect them to multiply as follows:

One pair will increase to 20 mated pairs in three years and four pairs will increase to 80 mated pairs in the same period of time.

Eighty mated pairs of chinchillas will produce 320 offspring per year.

(7) All offspring from breeding stock sold by respondent will produce good quality pelts which will sell for at least \$30 per pelt.

(8) Four mated pairs of respondent's breeding stock will, in three years, produce an annual income of \$8,000 to \$10,000.

(9) Breeding chinchillas by mated pairs produces more offspring of better quality than by using one male to breed several females, called polygamous breeding.

PAR. 6. In truth and fact:

(1) It is not practicable to raise chinchillas in the home and large profits cannot be made in such manner.

(2) The successful breeding of chinchillas for profit requires

knowledge in the feeding, care and breeding of said animals, much of which must be acquired through actual experience.

(3) Chinchilla breeding stock offered and sold by respondent is not of select or top quality, or the best grade which can be obtained.

(4) Mated pairs of chinchillas sold by respondent will neither produce an average of two litters per year, nor an average of two animals per litter, nor four live offspring per year, but substantially less than that production.

(5) The national average production of female chinchillas is not two litters per year with two or more offspring per litter but substantially less than that production.

(6) Purchasers of respondent's mated pairs of chinchillas will not achieve the production of live offspring stated in Paragraph Five (6), above, since these figures do not allow for factors which substantially reduce chinchilla production, such as those born dead or which die after birth, culls which are unfit for reproduction, fur chewers, sterile animals, and pairs which will not breed.

(7) All offspring produced by breeding stock sold by respondent will not produce good quality pelts, nor will the pelts from said offspring sell for \$30 or more per pelt but substantially less than that amount.

(8) Four pairs of breeding stock purchased from respondent will not in as much as three years produce an annual income of \$8,000 but substantially less than that amount.

(9) Breeding chinchillas by mated pairs does not produce more offspring or offspring of better quality than by the polygamous breeding method.

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

PAR. 7. In the course and conduct of his business, at all times mentioned herein, respondent has been in substantial competition in commerce, with corporations, firms and individuals in the sale of chinchilla breeding stock.

PAR. 8. The use by respondent of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the tendency and capacity 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 respondent's chinchillas by reason of said erroneous and mistaken belief.

PAR. 9. The aforesaid acts and practices of the respondent, as

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

DECISION AND ORDER

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

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by the respondent 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 respondent has 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 Edward W. Putnam is an individual doing business as Blue Diamond Chinchillas, with his principal office and place of business located at 3406 Military Road, Sioux City, Iowa.

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, Edward W. Putnam, an individual doing business as Blue Diamond Chinchillas, or under any other trade name, and respondent's representatives, agents and

employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of chinchilla breeding stock in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication:

(1) That it is practicable to raise chinchillas in the home or that large profits can be made in this manner.

(2) That breeding chinchillas for profit can be achieved without previous knowledge or experience in the feeding, care and breeding of such animals.

(3) That chinchilla breeding stock sold by respondent is of select or top quality or the best grade that can be obtained; or misrepresenting in any manner the quality of breeding stock sold by respondent.

(4) That mated pairs of chinchillas sold by respondent will produce each year an average of two or more litters of two animals per litter or will produce four live offspring per year; or representing, directly or by implication, that chinchillas purchased from respondent or the offspring of said chinchillas will produce during a given period of time offspring in excess of the number usually and customarily produced by chinchillas sold by respondent or the offspring of said chinchillas; or misrepresenting the number of live chinchilla offspring resulting for any specified period of time.

(5) That the national average production of female chinchillas is as much as two litters per year with two offspring per litter; or misrepresenting in any manner the number of offspring produced by female chinchillas generally.

(6) That chinchilla pelts produced from respondent's breeding stock will sell for any amount in excess of that usually and customarily received for pelts by other purchasers of respondent's breeding stock; or misrepresenting in any manner the quality of pelts from the offspring of said animals.

(7) That four mated pairs of chinchilla breeding stock purchased from respondent will in three years result in an annual income of as much as \$8,000; or representing that the income derived from raising chinchillas is any amount in excess of the amount usually and customarily earned by breeders of chinchillas purchased from respondent.

(8) That breeding chinchillas by mated pairs will produce more or better quality offspring than by polygamous breeding.

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

IN THE MATTER OF

V. C. SPORTSWEAR CORP. ET AL.

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

Docket C-1168. Complaint, Feb. 8, 1967—Decision, Feb. 8, 1967

Consent order requiring a New York City manufacturer of wool products to cease misbranding the fiber content of its merchandise.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that V. C. Sportswear Corp., a corporation, and Herman Cohen, individually and as an officer of said corporation, and Marvin Cohen, individually and as manager, and Barry Cohen, individually and as assistant manager of said corporation, hereinafter referred to as respondents, have violated the provisions of the said Acts and the Rules and Regulations promulgated under the Wool Products Labeling Act of 1939, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent V. C. Sportswear Corp. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York.

Individual respondent Herman Cohen is an officer of said corporate respondent. Individual respondents Marvin Cohen and Barry Cohen are manager and assistant manager respectively of said corporation. They formulate, direct and control the acts, policies and practices of said corporation, including the acts and practices hereinafter referred to.

Respondents are manufacturers of wool products with their

office and principal place of business located at 475 Broadway, New York, New York.

PAR. 2. Subsequent to the effective date of the Wool Products Labeling Act of 1939, respondents have manufactured for introduction into commerce, introduced into commerce, sold, transported, distributed, delivered for shipment, shipped, and offered for sale, in commerce, as "commerce" is defined in said Act, wool products as "wool product" is defined therein.

PAR. 3. Certain of said wool products were misbranded within the intent and meaning of Section 4(a) (1) of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, in that they were falsely and deceptively stamped, tagged, labeled, or otherwise identified with respect to the character and amount of the constituent fibers contained therein.

Among such misbranded wool products, but not limited thereto, were certain slacks stamped, tagged, labeled or otherwise identified as containing "20% linen, 50% wool, 30% acetate," whereas in truth and in fact, said slacks contained substantially different amounts of woolen fibers than represented and contained other fibers in amounts of five per centum or more which fiber names were not set forth on labels.

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

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

PAR. 5. The acts and practices of the respondents as set forth above were, and are, in violation of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, and constituted, and now constitute, unfair 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 the respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Textiles and Furs proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939; and

The respondents and counsel for the Commission having thereafter executed an agreement containing, a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by 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 said Acts, 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 V. C. Sportswear Corp. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 475 Broadway, in the city of New York, State of New York.

Respondent Herman Cohen is an officer of said corporation and respondents Marvin Cohen and Barry Cohen are manager and assistant manager respectively 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 V. C. Sportswear Corp., a corporation, and its officers, and Herman Cohen, individually and as an officer of said corporation, and Marvin Cohen, individually and as manager, and Barry Cohen, individually and as assistant manager of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device,

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

1. Falsely or deceptively stamping, tagging, labeling, or otherwise identifying such products as to the character or amount of the constituent fibers contained therein.
2. Failing to securely affix to or place thereon a stamp, tag, label, or other means of identification correctly showing in a clear and conspicuous manner each element of information required to be disclosed by Section 4(a)(2) of the Wool Products Labeling Act of 1939.

It is further ordered, That the 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

THE PROCTER & GAMBLE COMPANY

ORDER, OPINIONS, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
SEC. 7 OF THE CLAYTON ACT

Docket C-1169. Complaint, Feb. 9, 1967—Decision, Feb. 9, 1967

Consent order requiring the Nation's largest producer of numerous household consumer products with its principal place of business in Cincinnati, Ohio, to divest itself of the Houston, Texas, coffee plant, within 5 years—one of five plants of the J. A. Folger & Co. coffee firm acquired through acquisition in November 1963—and prohibits further acquisition of household product firms for 7 years without prior approval of the Commission, and to comply with other related provisions of the divestiture order as set forth below.

COMPLAINT

The Federal Trade Commission has reason to believe that the above named respondent has acquired the assets of J. A. Folger & Company, a corporation, in violation of Section 7 of the Clayton Act, as amended (U.S.C., Title 15, Section 18); and therefore, pursuant to Section 11 of said Act, it issues this Complaint, stating its charges in that respect as follows:

I

DEFINITIONS

1. For the purpose of this Complaint, the following definitions shall apply:

(a) "Green coffee" is raw unroasted coffee which is produced in certain countries in Central America, South America and Africa and is imported into the United States for roasting and making regular and soluble coffee.

(b) "Regular coffee" is coffee processed from green coffee by means of blending, roasting and grinding into varying granular sizes, and which must be heated and steeped in water before being consumed. It is generally packed and sold in varying quantities in vacuum tin containers and paper bags.

(c) "Soluble coffee" (instant coffee) is coffee processed from green coffee by means of blending, roasting, grinding, brewing and dehydration, and which is dissolved in water before being consumed. It is generally packed and sold in varying quantities in glass containers.

(d) A "non-retailer coffee company" is a concern which sells regular and/or soluble coffee under its own label, or labels, to supermarkets, other retail grocery and food establishments and wholesalers, for resale, as distinguished from a retail grocery chain organization, or other retailer, which sells its own brand, or brands, of regular and/or soluble coffee through its own store or stores.

II

RESPONDENT

2. Respondent, The Procter & Gamble Company (Procter & Gamble), is a corporation organized and existing under the laws of the State of Ohio, with its office and principal place of business at The Procter & Gamble Building, 301 East Sixth Street, Cincinnati, Ohio.

3. Respondent, directly and through various completely owned subsidiary corporations, is a large diversified manufacturer and marketer of numerous lines of low cost, high turnover household consumer products, including packaged soaps; detergents; bleaches; shortenings, edible oils; and other food products; toilet goods, such as dentifrices, shampoos, home permanents and personal deodorants; and paper products; which are sold under ad-

vertised brand names. In 1964, respondent was the Nation's largest seller of toilet soap, packaged soaps and detergents (both heavy and light duty), abrasive cleaners, household cleaners, household liquid bleach, fabric softeners, dentifrices, shampoos, shortening and cake mixes. In each of these lines of household consumer products in which respondent was the largest seller, sales are concentrated in respondent and only two or three other diversified national concerns. Respondent was also a major producer and marketer of the other household consumer products it sells. Based on 1963 sales, respondent ranked as the 28th largest industrial corporation in the United States.

4. Respondent sells its household consumer products to supermarkets, other retail grocery and food establishments, cooperative buying groups and wholesale grocers. Respondent also sells its household consumer products to drug outlets, department stores and variety stores. Respondent markets its household consumer products under more than forty brand names.

5. Respondent also manufactures and sells soaps, detergents, shortenings and edible oils in bulk quantities to laundries, hotels, institutions, the baking industry and other industrial users; and manufactures vegetable oils and chemicals for use in its own products and for sale to other industrial users.

6. Respondent has an extensive nationwide marketing and selling organization and maintains numerous sales offices which are used in selling its household consumer and other products throughout the United States. It owns and operates more than 35 plants in the United States. It also conducts extensive technological and marketing research in developing and promoting its household consumer and other products.

7. For the year ended June 30, 1954, respondent and its subsidiaries' total assets were \$476,930,000, net sales \$911,050,000 and net earnings \$52,328,000. By the year ended June 30, 1964, respondent's total assets had increased to \$1,292,713,000, net sales to \$1,913,722,000 and net earnings to \$130,811,000. Respondent's expansion and growth during this ten year period were accomplished in part through internal growth; in part through internal diversification of its operations and the development of new products; and in part through acquisition of the stock and assets of seven independent companies, five of which were engaged in manufacturing and selling household consumer products. The companies acquired, their principal product lines and the year in which each was acquired by respondent, are as follows:

Company	Product	Year
W. T. Young Foods, Inc.	Peanut butter and peanut products*	1955
Prepared Mix Division of Nebraska Consolidated Mills, Inc.	Cake mixes*	1956
Hines-Park Foods, Inc.	Licensing the Duncan Hines trademark for use on various food products	1956
Duncan Hines Institute	Licensing the Duncan Hines trade mark for use on household appliances and publishing directories of dining and lodging establishments	1956
Charmin Paper Mills, Inc.	Paper tissues and related paper products*	1957
Clorox Chemical Company	Liquid bleach*	1957
J. A. Folger & Company	Regular and soluble coffee*	1963

* Household consumer product.

W. T. Young Foods, Inc., Prepared Mix Division of Nebraska Consolidated Mills, Inc., Charmin Paper Mills, Inc., Clorox Chemical Company and J. A. Folger & Company had combined sales of approximately \$244,000,000 in the year preceding acquisition of each.

8. Respondent spends substantial sums to advertise, promote and sell its household consumer products. In 1963, it spent over \$120,000,000 for television advertising; over \$7,000,000 for newspaper, magazine and billboard advertising; and approximately \$500,000 for radio advertising. By virtue of such substantial expenditures, respondent promotes the sale of, achieves wide consumer acceptance of, and obtains valuable shelf space for, its household consumer products. As a result of continuous advertising in all media and the use of extensive consumer and trade promotions, most of respondent's household consumer products have wide consumer acceptance, command shelf space, and are, in effect, presold to the consumer. By virtue of respondent's substantial advertising of its household consumer products, it generally receives the lowest rates available in the placement of such advertising, particularly on spot (local) and network television and radio.

9. At all times relevant herein, respondent sold and shipped its products in interstate commerce throughout the United States.

III

J. A. FOLGER & COMPANY

10. Prior to November 30, 1963, J. A. Folger & Company (J. A. Folger) was a corporation organized and existing under the laws of the State of Nevada, with its office and principal place of business at 101 Howard Street, San Francisco, California.

11. Prior to November 30, 1963, J. A. Folger was, and for many years had been, engaged in the business of processing and selling regular coffee and soluble coffee, mainly to supermarkets and other retail grocery and food establishments, including warehouses of food chainstores, co-operative buying groups and wholesale grocers. J. A. Folger also sold small quantities of regular and soluble coffee to private label and institutional customers, such sales constituting less than 3% of its total unit sales of coffee in 1962.

12. At the time of the acquisition, J. A. Folger's sales territory (market area) included the United States west of the Mississippi River, the portion of Minnesota east of that river, Wisconsin, Illinois, Indiana, Kentucky, Mississippi, Florida and parts of Michigan, Ohio, West Virginia, Tennessee, Alabama and Georgia. This market area included approximately 100,000,000 population of the total United States population of 180,000,000.

13. As of December 31, 1962, J. A. Folger, the Nation's largest independent coffee company, had total assets of \$65,368,123, net sales of \$156,935,000 and net income of \$6,952,000. In 1962, its total dollar sales of "Folger" brand coffee amounted to \$153,641,000; private label and institutional coffee sales amounted to \$3,066,000; and sales of sundry products (principally spices) purchased for resale amounted to \$228,000.

14. Prior to November 30, 1963, J. A. Folger operated regular coffee roasting plants at San Francisco and Los Angeles, California; Portland, Oregon; Houston, Texas; New Orleans, Louisiana; and Kansas City, Missouri. It also operated two soluble coffee plants, located in south San Francisco, California and Houston, Texas.

15. In 1962, in its market area (defined in paragraph 12 herein), J. A. Folger was the largest nonretailer seller of regular coffee through the grocery market (defined in paragraph 19 herein), accounting for approximately 25.7% of total regular coffee sales. With approximately 15.1% of total regular coffee sales through the grocery market in the United States during 1962, J. A. Folger

ranked as the Nation's second largest nonretailer seller of regular coffee.

16. In 1962, in its market area, J. A. Folger was the second largest nonretailer seller of soluble coffee through the grocery market, accounting for approximately 15.4% of total soluble coffee sales. With approximately 6.6% of total soluble coffee sales through the grocery market in the United States during 1962, J. A. Folger ranked as the Nation's fourth largest nonretailer seller of soluble coffee.

17. During 1962, J. A. Folger spent \$1,274,000 in advertising its coffee by means of radio, \$5,202,000 for television advertising, \$54,000 for consumer and trade publication advertising and \$1,492,000 for outdoor, display and miscellaneous advertising. Such advertising expenditures, plus substantial consumer and trade promotions, were used by J. A. Folger in promoting the sale of, obtaining shelf space for, and gaining consumer acceptance of Folger regular and soluble coffee, sold primarily through the grocery market.

18. At all times relevant herein, J. A. Folger sold and shipped regular and soluble coffee in interstate commerce.

IV

TRADE AND COMMERCE

19. The lines of commerce relevant herein are the processing, distribution and sale of (1) regular coffee through the grocery market and (2) soluble coffee through the grocery market. Regular coffee and soluble coffee are distributed and sold through two separate and distinct markets: (a) the grocery market and (b) the institutional market. The grocery market (the distributional market relevant herein) is comprised of supermarkets and other retail grocery and food establishments.

20. Regular coffee and soluble coffee sold through the grocery market are low cost, high turnover household consumer products which, in general, are presold to the consumer, principally by advertising and consumer promotions.

21. Sales of regular coffee and soluble coffee through the grocery market are substantial and are increasing. Between 1957 and 1962 inclusive, sales of regular coffee through this market increased from approximately 1,250,000,000 to 1,392,000,000 pounds. During this same period, sales of soluble coffee through this market increased from 921,300,000 to 1,286,600,000 2-ounce units. Based on 1962 price levels, retail sales of regular coffee and sol-

uble coffee totaled approximately \$934,400,000 and \$407,159,000 respectively.

22. The geographic markets (sections of the country) relevant herein are the entire United States and/or various parts thereof in which regular coffee and soluble coffee are sold.

23. Prior to 1963, the regular coffee and soluble coffee industries in the United States were composed essentially of several diversified national firms, a large number of regional and local independent coffee companies and several large retail grocery chain organizations. The Nation's largest nonretailer seller of regular coffee and soluble coffee through the grocery market was a diversified national firm. The second, third, and fourth largest nonretailer sellers of regular coffee through the grocery market were regional independent coffee companies. These three independents were also substantial marketers of soluble coffee. The retail grocery chain organizations made sales of their own captive brands of regular coffee and soluble coffee only through their own stores.

24. Between 1957 and 1962 inclusive, concentration increased substantially in the sale of regular coffee through the grocery market in the United States. During this period, the combined share of the regular coffee market held by the five largest nonretailer coffee companies increased from approximately 48.1% to approximately 62.9%. During this period, the combined share of said market held by all other coffee companies, including retail grocery chain organizations, declined approximately 14.8 percentage points. During these six years, total unit sales of regular coffee through the grocery market increased approximately 11.4%.

25. Between 1957 and 1962 inclusive, there was a continuation of the high degree of concentration already present in the sale of soluble coffee through the grocery market in the United States. During this period, the combined share of the market held by the four largest nonretailer soluble coffee companies increased from approximately 75.3% to approximately 76.4%. During this period, the combined share of said market held by all other soluble coffee companies, including retail grocery chain organizations, declined 1.1 percentage points. During these six years, total unit sales of soluble coffee through the grocery market increased approximately 39.6%.

26. Since 1957, numerous acquisitions, mergers, liquidations and discontinuance of sales through the grocery market have reduced significantly the number of companies, and increased substantially the size of some of the remaining firms, engaged in

selling regular coffee through the grocery market in the United States. Moreover, only two firms, each of which was already established in the institutional coffee market, have entered the business of selling regular and soluble coffee through the grocery market since 1950.

27. As a result of respondent's acquisition of J. A. Folger (as alleged in paragraph 29 herein), the Nation's second largest non-retailer seller of regular coffee through the grocery market, which was also the fourth largest nonretailer seller of soluble coffee through the grocery market, has been absorbed into and combined with respondent, one of the Nation's largest diversified manufacturers, marketers, advertisers and promoters of household consumer products sold through the grocery market.

28. By virtue of respondent's acquisition of J. A. Folger, the diversified, national, nonretailer coffee companies substantially increased their combined share of regular coffee sales through the grocery market.

(a) In 1962, two large diversified national companies ranked first and fifth respectively in national sales and represented 30.8% of the regular coffee sold through the grocery market. In 1962, the Nation's three largest independent coffee companies ranked second, third and fourth respectively in national sales and represented 32.1% of the regular coffee sold through the grocery market.

(b) In 1963, subsequent to respondent's acquisition of J. A. Folger, three diversified national companies ranked first, second and fifth respectively in national sales and represented 47.2% of the regular coffee sold through the grocery market. Independent coffee companies continued to rank third and fourth respectively in national sales but these two companies represented only 17.1% of the regular coffee sold through the grocery market.

VIOLATION OF SECTION 7 OF THE CLAYTON ACT

29. On or about November 30, 1963, respondent acquired substantially all of the assets and business of J. A. Folger, including goodwill, intangible property, trademarks and names, trade secrets and the Folger name, for 1,650,000 shares of Procter & Gamble common stock having a market value of approximately \$130,000,000. Respondent did not acquire the institutional and private label business of J. A. Folger or its Los Angeles, California and Portland, Oregon manufacturing operations. These phases of the business and these plants were sold by J. A. Folger imme-

diately prior to its acquisition by respondent. The assets and business acquired from J. A. Folger were transferred to a newly formed subsidiary of respondent, The Folger Coffee Company, an Ohio corporation.

30. The effect of the acquisition of J. A. Folger by respondent may be substantially to lessen competition or to tend to create a monopoly in the processing and sale of (1) regular coffee through the grocery market and (2) soluble coffee through the grocery market, in the sections of the country set forth in paragraph 22 herein, in the following ways, among others:

(a) The Nation's largest independent coffee company has been permanently eliminated as a substantial independent competitive factor.

(b) Respondent has been permanently eliminated as a potential competitor in the regular coffee and soluble coffee industries.

(c) Respondent's replacement of J. A. Folger in the expanding regular coffee and soluble coffee business through the grocery market constitutes a major structural change in the regular coffee industry and the soluble coffee industry which: may alter substantially the existing competitive relations between large and small firms; may increase previously existing concentration; may raise the existing barriers to new entry which were already high; may precipitate additional acquisitions, mergers and liquidations of other independent coffee companies; and may stimulate and encourage additional withdrawals of independent coffee companies from selling through the grocery market.

(d) The trend toward domination of the regular coffee and soluble coffee industries by a few diversified national manufacturers selling low cost, high turnover household consumer products through the grocery market has been increased, and may be further increased by acquisitions and mergers of additional independent coffee companies by other diversified national manufacturers selling household consumer products through the grocery market.

(e) Actual and potential competition generally in the processing and sale of regular coffee and soluble coffee through the grocery market has been, or may be, substantially lessened or eliminated, due to any one or more, or all of the following factors:

1. Respondent's position as the leading seller in many highly concentrated markets for household consumer products;

2. Respondent's position as one of the largest marketers, advertisers and promoters of household consumer products sold through the grocery market;

3. Respondent's substantial financial resources and economic power;

4. Respondent's power to create consumer preference for its household consumer products and to obtain valuable grocery store shelf space by mass advertising and consumer and sales promotions;

5. Respondent's capacity to concentrate on one or more of its household consumer products, or on one or more selected sections of the country, the impact of its advertising, promotional and merchandising techniques; and

6. Respondent's capacity to make substantial expenditures for research and development.

(f) Actual and potential competition in the processing and sale of regular coffee and soluble coffee through the grocery market has been, or may be, substantially lessened or eliminated by the achievement of significant cost reductions in any one or more, or all of the following ways:

1. The buying of green coffee;
2. The procuring of financing;
3. The buying and placement of advertising;
4. The conducting of consumer and sales promotions;
5. The buying of containers and packaging materials; and
6. The procuring of warehousing and transportation.

31. The acquisition by respondent, as alleged above, constitutes a violation of Section 7 of the Clayton Act (U.S.C., Title 15, Section 18), as amended.

DISSENTING STATEMENT

FEBRUARY 9, 1967

BY REILLY, *Commissioner*:

I should like to associate myself with Commissioner Jones's dissenting statement.

While I do not fully share Commissioner Jones's feeling that any remedy short of divestiture is inappropriate as a general rule, I do agree with her that in this case the failure of the Commission to require divestiture is most unfortunate.

In my opinion, considering the size and economic power represented by the acquiring firm, the Commission was fully justified in issuing a complaint wherein the anticompetitive effects of this merger were set forth in terms strongly suggesting that divestiture was the only feasible remedy.

In settling for a lesser remedy the Commission did not, to my knowledge, have available any facts justifying disposition of this matter on a basis short of divestiture. I can only conclude that the Commission substituted an intuitive reaction that "regulation" as described by Commissioner Jones was an adequate substitute.

In short, in my opinion the Commission thundered in the complaint and cheeped in the order.

DISSENTING STATEMENT

FEBRUARY 9, 1967

BY JONES, *Commissioner*:

On June 23, 1966, the Commission served its complaint on Procter & Gamble Company challenging its acquisition of the Folger Company as a violation of Section 7 of the Clayton Act.

The Commission's complaint charges in essence that the acquisition by Procter & Gamble of Folger is anticompetitive because it effects a "major structural change" in the regular and soluble coffee industries. The structural change is not the usual immediate increase in concentration associated with a horizontal merger. The acquisition was charged with having the effect of increasing the trend toward the domination of the two coffee industries by a few diversified national manufacturers (Procter & Gamble joins General Foods in entering this field) which sell low price, high turnover household consumer products through the grocery market. It is alleged that the replacement of Folger, a non-diversified regional company that was the dominant factor in its large regional market, by Procter, a large diversified national company, can be expected to alter substantially the existing competitive relationships among the large and small firms already in these two industries; to increase eventually the level of concentration through its own growth, by precipitating additional acquisitions, and by encouraging further withdrawals; and to raise barriers to entry which were already high.

The complaint further alleges that the conduct of firms in the industry can be expected to change significantly as Procter employs its substantial resources to advertise and otherwise promote its products, utilizes its ability to obtain valuable grocery store shelf space, concentrates the impact of its advertising and merchandising techniques on one or more of its products and on one or more selected sections of the country, and makes substantial expenditures for research and development. In addition, the sur-

vival of existing firms is made more difficult because Procter, propping its own great power from the important base acquired, can achieve significant cost reductions in such areas as the buying of green coffee and packaging materials, the conducting of consumer and sales promotions, and the buying and placement of advertising.

The complaint sought divestiture of Folger in the belief that only divestiture can minimize the probability of the foreseen anticompetitive changes in conduct and structure created by this entry.

The consent order reaches only the periphery of the complaint. It allows Procter to keep four of the five acquired plants, thus perpetuating the major structural change caused by this merger. Instead of seeking divestiture, the order seeks to regulate, in a quite direct manner and for a five year period, certain aspects of the conduct of Procter—Procter's conduct of joint promotions involving coffee and its other products and Procter's ability to exact reductions in media rates because of the magnitude of its overall expenditures on advertising. The order also requires Procter to observe Section 2(a) of the Robinson-Patman Act and to obtain Commission approval of any future acquisition of a household consumer product company for a period of seven years and of any interest in a company manufacturing or selling coffee for a period of ten years.

The merger here charged by the complaint to be illegal is a product extension or conglomerate merger. The Commission has stated many times in public that corporate acquisitions will increasingly be of the conglomerate type. Since mergers of this type involve no immediate change in the level of concentration in the relevant market, their anticompetitive effect is not demonstrated by the more obvious and measureable changes in market shares associated with horizontal mergers. Instead the anticompetitive impact of these mergers, if any, turns on the elimination of potential competition, on changes in conduct which can be anticipated will occur as a result of the entry of the acquiring firm into the industry and on the subsequent structural changes which these conduct changes can be anticipated to produce in the future.

I do not believe that the Commission, having filed a complaint in which it had reason to believe that a challenged acquisition violated the law, should settle that complaint by consent unless the consent order adequately and fully removes the anticompetitive impact which the acquisition is believed to have engendered

and provides the relief which the Commission could reasonably anticipate a court would direct. Clearly in this case divestiture is the only remedy which will restore Folger to its former viable competitive existence and will eliminate Procter from the market as a substitute for Folger.

The law respecting the anticompetitive impact of conglomerate mergers has not yet been established. There is a great need to test and develop the case law in these areas. By its willingness to enter into consent orders and agreements, a majority of the Commission has prevented the development of case law dealing with such mergers that is so essential both to the law enforcement agency and to the businessman seeking to conform his conduct to the confines of the law. The Commission's acceptance of the requirement of prior approval for future acquisitions and reliance upon regulation of conduct by the order—apparently in place of divestiture—will not accomplish the objective of Section 7, which is designed to prevent undue concentration by mergers.¹

I believe that the coffee industry will be significantly less competitive seven years hence because of the majority's acquiescence in Procter's acquisition of Folger. There are strong reasons to believe that the level of competition that would have existed if this acquisition had not occurred would have been substantially greater than the level that will result from this acquisition. At least if the Commission was wrong in so believing in its issuance of the complaint, it should either dismiss the complaint or make its decision on the basis of a full and complete record which will document the effects, if any, of this acquisition on competition.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondent named in the caption hereof with violation of Section 7 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 con-

¹ "The dominant theme pervading Congressional consideration of the 1950 amendments was a fear of what was considered to be a rising tide of economic concentration in the American economy." *Brown Shoe v. United States*, 370 U.S. 313, 315.

stitute 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 The Procter & Gamble Company is a corporation organized, existing and doing business under the laws of the State of Ohio, with its office and principal place of business located at 301 East Sixth Street, Cincinnati, Ohio.

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

ORDER

I

It is ordered, That respondent, The Procter & Gamble Company ("Procter"), a corporation, and its officers, directors, agents, representatives, employees, subsidiaries, affiliates, successors and assigns, within five years from the date of service upon it of this Order, shall, unless the period of five years is extended by further order of the Commission on application of Procter, divest, absolutely and in good faith, to a purchaser or purchasers approved by the Federal Trade Commission, the coffee plant of The Folger Coffee Company, a subsidiary of Procter, located in Houston, Texas, and all assets, facilities and properties related to the Houston, Texas coffee plant, which were acquired by Procter as a result of the acquisition of the assets of J. A. Folger & Company, together with all machinery, buildings, improvements, and equipment which have been added to the Houston, Texas coffee plant since the acquisition and used in the production and sale of coffee together with a freeze dry unit now at the plant site but not in operation, if the purchaser desires to acquire this unit along with the plant.

II

It is further ordered, That none of the assets or properties, described in paragraph I of this Order, shall be sold or transferred, directly or indirectly, to any person who is at the time of the divestiture an officer, director, employee, or agent of, or under the control or direction of, Procter or any of Procter's subsidiary

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or affiliated corporations, or owns or controls, directly or indirectly, more than one (1) percent of the outstanding shares of common stock of Procter, or to any purchaser who is not approved in advance by the Federal Trade Commission.

III

It is further ordered, That pending divestiture, Procter shall not make or permit any deterioration in the plant, machinery, buildings, equipment, or other property or assets of the Houston, Texas, coffee plant, other than ordinary wear and tear, which may impair present capacity of such plant unless such capacity is restored prior to divestiture.

IV

It is further ordered, That Procter, for a period of seven years from the date of service upon it of this Order, shall cease and desist from acquiring, directly or indirectly, through subsidiaries or otherwise, without the prior approval of the Federal Trade Commission, the whole, or any part, of the stock or other share capital of any corporation engaged in commerce and in the manufacture, production, sale or distribution of any household consumer product or any assets valued in excess of \$25,000 used by such a corporation in the manufacture, production, sale or distribution of any household consumer product in the United States. A household consumer product is any product made for use or consumption in the home and generally sold through the grocery market as defined in the complaint.

V

It is further ordered, That Procter, for a period of ten years from the date of service upon it of this Order, shall cease and desist from acquiring, directly or indirectly, through subsidiaries or otherwise, without the prior approval of the Federal Trade Commission, any interest in any organization engaged in growing, producing, importing, manufacturing, processing or selling green coffee, regular coffee, soluble coffee or other coffee products in the commerce of the United States or any assets of such organization used in such activities.

VI

It is further ordered, That Procter, for a period of five years

from the date of service upon it of this Order, shall cease and desist from the acceptance of discounts or reductions in media rates of any kind on its purchase of advertising for regular coffee, soluble coffee or other coffee products in any media, other than discounts or reductions in rate resulting solely from Procter's purchases of advertising for regular coffee, soluble coffee or other coffee products.

VII

It is further ordered, That Procter, for a period of five years from the date of service upon it of this Order, shall cease and desist from initiating or conducting any type of promotion in which regular coffee, soluble coffee or other coffee product is promoted in conjunction with any of Procter's other products in the same promotion.

VIII

It is further ordered, That Procter, for a period of five years from the date of service upon it of this Order, shall cease and desist from granting or allowing any price discrimination, directly or indirectly, in or in connection with the sale or offering for sale of regular coffee, soluble coffee, or other coffee products to different purchasers unless any different price to a purchaser (a) makes only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which such products are to such purchaser sold or delivered, or (b) is granted in good faith to meet an equally low price of a competing seller of such products.

IX

It is further ordered, That Procter, having by acquisition succeeded to the business of J. A. Folger & Company, shall accept the responsibilities and duties imposed on J. A. Folger & Company prior to the acquisition under the cease and desist order in Federal Trade Commission Docket No. 8094 [61 F.T.C. 1166] with respect to the offer for sale, sale or distribution of regular coffee, soluble coffee or other coffee products.

X

As used in this Order, the word "person" shall include all members of the immediate family of the individual specified and

shall include corporations, partnerships, associations and other legal entities as well as natural persons.

XI

It is further ordered, That Procter 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 orders to cease and desist as set forth herein. Within such sixty (60) days and every six (6) months thereafter until complete divestiture of the Houston, Texas coffee plant and facilities is effected, Procter shall file a report in writing with the Commission, detailing its actions, plans and progress in complying with the divestiture provisions of this Order, including the name of every person who shall in writing have indicated to Procter a bona fide interest in purchasing said plant. On or before March 31 of each year for a period of ten years from the date of this Order, Procter shall report for that portion of the preceding year this Order is in effect: (a) any stock or share capital of any domestic concern purchased or acquired by Procter, directly or indirectly, and (b) any assets of any domestic concern valued in excess of \$100,000 purchased or acquired by Procter, directly or indirectly, except assets purchased or acquired in the normal course of business for use, processing or resale.

Commissioners Reilly and Jones dissenting.

IN THE MATTER OF

STYLECREST FABRICS, LTD., 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-1170. Complaint, Feb. 10, 1967—Decision, Feb. 10, 1967

Consent order requiring a New York City distributor of textile fabrics to cease deceptively misbranding the fiber content of its textile fiber 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 Stylecrest Fabrics, Ltd., a corporation, and Irving Stern, 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 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 Stylecrest Fabrics, Ltd., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York.

Respondent Irving Stern is an officer of the corporate respondent. He formulates, directs and controls the acts, policies and practices of the corporate respondent.

Proposed respondents are engaged in the sale and distribution of textile fabrics with their office and principal place of business located at 214 West 39th Street, New York, New York.

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

PAR. 3. Certain of said textile fiber products were misbranded by respondents within the intent and meaning of Section 4 (a) of the Textile Fiber Products Identification Act and the Rules and Regulations promulgated thereunder in that they were falsely and deceptively stamped, tagged, labeled, invoiced, advertised, or otherwise identified as to the name of the constituent fibers contained therein.

Among such misbranded textile fiber products, but not limited thereto, were textile fiber products advertised by means of brochures prepared by respondents, containing terms which repre-

sented, directly or by implication, certain fibers as present in the said products when such was not the case.

Among such terms, but not limited thereto, was the phrase "Silk-Like Linen" when in truth, and in fact, the fabric contained neither silk nor linen.

PAR. 4. Certain of the textile fiber products were misbranded by respondents in that they were not stamped, tagged, labeled, or otherwise identified to show each element of information required to be disclosed by Section 4(b) of the Textile Fiber Products Identification Act, and in the manner and form 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:

(1) To disclose the true percentage of the fibers present by weight; and

(2) To disclose the true generic name of the fibers present; and

(3) To disclose the name of the country where imported textile fiber products were processed or manufactured.

PAR. 5. 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 or practices, in commerce, and unfair methods of competition in commerce, under the Federal Trade Commission Act.

DECISION AND ORDER

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

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

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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 said Acts, 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 Stylecrest Fabrics, Ltd., 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 214 West 39th Street, New York, New York.

Respondent Irving Stern 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 Stylecrest Fabrics, Ltd., a corporation, and its officers, and Irving Stern, 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, 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 misbranding textile fiber products by:

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

2. Failing to affix a stamp, tag, label, or other means of identification to each such product showing each element of

information required to be disclosed by Section 4(b) of the Textile Fiber Products Identification Act.

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
C. M. GOURDON, INC., ET AL.

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

Docket C-1171. Complaint, Feb. 13, 1967—Decision, Feb. 13, 1967
Consent order requiring a New York City distributor of fabrics to cease importing or selling dangerously flammable fabrics and furnishing false guaranties to its customers.

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 C. M. Gourdon, Inc., a corporation, and Charles M. Gourdon, individually and as an officer of the said corporation, 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 C. M. Gourdon, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York. Respondent Charles M. Gourdon is the president and treasurer of the said corporate respondent. He formulates, directs and controls the acts, practices and policies of said corporation.

The respondents are engaged in the sale and distribution of fabrics, with their office and principal place of business located at 58 West 40th Street, New York, New York.

PAR. 2. 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 for the purpose of sale or delivery 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 Fabric Act, as amended, so highly flammable as to be dangerous when worn by individuals.

PAR. 3. Respondents subsequent to July 1, 1954, have furnished their customers with a guaranty with respect to the fabric, mentioned in Paragraph Two hereof, 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, show that said fabric is not, in the form delivered by respondents, so highly flammable under the provisions of the Flammable Fabrics Act as to be dangerous when worn by individuals. There was reason for respondents to believe that the fabric covered by such guaranty might be introduced, sold, or transported in commerce.

Said guaranty was false in that with respect to some of said fabric, respondents have not made such reasonable and representative tests.

PAR. 4. 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 Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Textiles and Furs proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act and the Flammable Fabrics 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 the Flammable Fabrics 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 C. M. Gourdon, 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 58 West 40th Street, New York, New York.

Respondent Charles M. Gourdon is an officer of the corporate respondent and his address is the same as that of said corporate respondent.

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

ORDER

It is ordered, That respondents C. M. Gourdon, Inc., and its officers, and Charles M. Gourdon, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, do forthwith cease and desist from:

(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 respondents C. M. Gourdon, Inc., and its officers, and Charles M. Gourdon, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, do forthwith cease and desist from furnishing a false guaranty that any fabric is not so highly flammable as to be dangerous when

worn by individuals when respondents have reason to believe such fabric may be introduced, sold, or transported 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.

IN THE MATTER OF

THE EMPECO CORPORATION DOING BUSINESS AS EMPIRE
FURNITURE AND APPLIANCE CO., ET AL.

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

Docket 8702. Complaint, Aug. 4, 1966—Decision, Feb. 14, 1967

Order requiring a Washington, D.C., furniture and appliance retailer to cease using various deceptive practices to induce its customers to sign sale contracts, making fictitious value claims, using deceptive offers of "free" merchandise, failing to disclose interest and other charges, and offering used articles as new.

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 Empeco Corporation, a corporation, doing business as Empire Furniture and Appliance Co. and as Empire Home Equipment Co., and Allen C. Baverman, 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 The Empeco Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Virginia, with its principal office and place of business located at 4911 Georgia Avenue, NW., Washington, D.C.

Respondent Allen C. Baverman is an officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent, including the acts and

practices hereinafter set forth. His business address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of television sets, phonographs, household furniture, electrical appliances and other articles of merchandise to the public. Respondents do business under the names Empire Furniture and Appliance Co. and Empire Home Equipment Co.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said merchandise, when sold, to be shipped from their place of business in the city of Washington, in the District of Columbia, to purchasers thereof located in various other States of the United States and in the District of Columbia, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their aforesaid business, and for the purpose of inducing the purchase of their merchandise, respondents have made numerous statements in advertisements inserted in newspapers having a wide circulation in the District of Columbia and the States of Maryland and Virginia, and in commercial messages broadcast throughout that area by radio station WOOK located in the District of Columbia.

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

NO MONEY DOWN
PHILCO 19" PORTABLE
\$2.00 Weekly

* * * * *
EMPIRE says pick any name brand 19 inch portable TV and we'll deliver it to you with no money down and payments of only \$2.00 a week.
* * * * *

EMERSON FM MULTIPLEX
STEREO RADIO PHONO
\$3.00 WEEKLY
FREE \$50 WORTH OF RECORDS

* * * * *
Call EMPIRE right now for a no obligation free home demonstration and to the first ten callers you get with your TV a \$19.95 portable stand free, plus, and listen to this plus, take your choice of a man's or woman's 17 jewel Gruen wristwatch.
* * * * *

And here's a bonus to the first 10 callers * * * You get with your TV

a \$19.95 antenna, plus and listen to this, plus, a beautiful Gruen wrist-watch.

PAR. 5. Through the use of the above-quoted statements and representations, and others of similar import not specifically set out herein, respondents represent, and have represented, directly or by implication, that:

(1) Respondents sell their merchandise without requiring a down payment;

(2) Respondents arrange credit payments as low as \$2 weekly;

(3) The aforesaid amounts of \$50 for the records, \$19.95 for the portable television stand and \$19.95 for the television antenna are not appreciably in excess of the highest prices at which substantial sales of such merchandise have been made in the recent regular course of business in the trade area where such representations appeared;

(4) Respondents give a Gruen watch to the first ten callers who respond to their radio commercial message and purchase a television set.

PAR. 6. In truth and in fact:

(1) Respondents will not sell their merchandise without requiring a cash down payment or the trade-in of merchandise owned by the purchaser;

(2) Respondents do not arrange credit payments as low as \$2 weekly;

(3) The aforesaid amounts of \$50 for the records, \$19.95 for the portable television stand and \$19.95 for the television antenna are appreciably in excess of the highest prices at which substantial sales of such merchandise have been made in the recent regular course of business in the trade area where such representations appeared;

(4) Respondents do not give a Gruen watch, or any other article of merchandise, to the first ten callers who respond to their radio commercial message and purchase a television set.

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

PAR. 7. In the course and conduct of their business, and in furtherance of a deceptive sales program for inducing the purchase of their merchandise, respondents have engaged in the following unfair and deceptive acts and practices:

(1) Respondents have induced purchasers of their merchandise to sign blank conditional sale contracts and other instruments which respondents later complete as to prices, terms and

product information. In some instances the later inserted prices and charges substantially exceed those expressly or tacitly agreed upon and understood by the purchaser at the time of the instrument's execution.

(2) Respondents have obtained purchasers' signatures on conditional sale contracts and promissory notes by falsely representing that such instruments were merely receipts acknowledging that merchandise has been placed in the purchaser's home for demonstration or approval purposes.

(3) Respondents have failed or refused to disclose the total purchase price of their merchandise during the negotiation and at the consummation of the contract and have informed the purchaser of only the approximate amount of weekly installment payments. In some instances the purchaser learned the total amount of indebtedness for the first time when contacted by the finance company to which respondents had negotiated or assigned the conditional sale contract and promissory note.

(4) Respondents have induced purchasers to fabricate and simulate the signatures of absent members of the household as cosigners in the execution of conditional sale contracts and promissory notes attached thereto.

(5) Respondents have failed to disclose to the purchaser that the conditional sale contract and promissory note executed by such purchaser may at the option of respondents be negotiated or assigned to a finance company to which the purchaser will be indebted.

(6) Respondents have failed to supply certain purchasers with a copy of the executed conditional sale contract and promissory note at the time of consummation of the sale.

(7) Respondents have sold merchandise to purchasers which was represented, directly or by implication, to be new, when in truth and in fact said merchandise was used. In some instances, no representation was made concerning whether the merchandise was new or used. In the absence of disclosure that the aforesaid merchandise was used, respondents' customers believed that it was new. Therefore, respondents' failure to disclose that such merchandise was used was to the prejudice of respondents' customers.

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 television sets, phonographs, household furniture, electrical appli-

ances and other articles of merchandise of the same general kind and nature as those sold by respondents.

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

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

Mr. Sheldon Feldman and *Mr. Walter C. Gross, III*, supporting the complaint.

Mr. Maurice A. Guervitz of Washington, D.C., for respondents.

INITIAL DECISION BY JOHN LEWIS, HEARING EXAMINER

DECEMBER 23, 1966

STATEMENT OF PROCEEDINGS

The Federal Trade Commission issued its complaint against the above-named respondents on August 4, 1966, charging them with the use of unfair methods of competition and unfair and deceptive acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act, by the use of false, misleading and deceptive statements, representations, and practices in the advertising and sale of the products sold by them. After being served with said complaint, respondents appeared by counsel and thereafter filed their answer, in which they admitted certain of the allegations of the complaint but denied having engaged in the illegal practices charged.

Pursuant to order of the examiner then in charge of this proceeding, a prehearing conference was convened herein on September 27, 1966, in Washington, D.C. On November 21, 1966, the undersigned was designated to act as hearing examiner in this proceeding due to the engagement of the prior examiner in other matters. Thereafter counsel supporting the complaint, with the concurrence of counsel for respondents, moved that (a) a stipula-

tion entered into between counsel, together with supporting exhibits, be accepted in lieu of testimony and that (b) the hearing then scheduled for December 6, 1966, be cancelled. The examiner, by order dated December 1, 1966, cancelled said hearing and took under advisement the balance of said motion pending his consideration of the adequacy of said stipulation and exhibits to dispose of this proceeding without the taking of testimony. By order dated December 20, 1966, the examiner incorporated the stipulation and supporting exhibits into the record, and closed the record herein for the reception of evidence.

The stipulation entered into between counsel contains a statement as to certain facts which would be testified to by witnesses who would have been called to testify in support of the allegations of the complaint, with the proviso that respondents neither admit nor deny the truth thereof. It has been agreed by counsel, pursuant to said stipulation, that the statements and exhibits stipulated to, together with the pleadings previously filed, shall constitute the entire record in this proceeding, and that the examiner may proceed to make his decision thereon without the filing of proposed findings or briefs, or the presentation of argument, by counsel. As part of their stipulation, counsel have also agreed to a form of order which may be entered herein.

Upon due consideration of the stipulation of counsel, together with the supporting exhibits and the pleadings filed herein, the undersigned finds that this proceeding is in the interest of the public, and makes the following:

FINDINGS OF FACT ¹

1. Respondent The Empeco Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Virginia, with its principal office and place of business located at 4911 Georgia Avenue, NW., Washington, D.C. Respondent Allen C. Baverman is an officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Until October 1966 his business address was the same as that of the corporate respondent. (Admitted in Paragraph One of Answer, as modified by paragraph 1 of stipulation.)

2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and dis-

¹ Except where otherwise indicated, all findings made herein are based on the facts contained in the stipulation of counsel, or the reasonable inferences drawn therefrom.

tribution of television sets, phonographs, household furniture, electrical appliances and other articles of merchandise to the public. Respondents do business under the names Empire Furniture and Appliance Co. and Empire Home Equipment Co. Since October 1966, respondent Allen C. Baverman has ceased doing business at the above address. (Admitted, Paragraph Two of Answer, as modified by paragraph 1 of stipulation.)

3. In the course and conduct of their business, respondents, until October 1966, caused, and for some time last past have caused, their said merchandise, when sold, to be shipped from their place of business in the city of Washington, in the District of Columbia, to purchasers thereof located in various other States of the United States and in the District of Columbia, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act. (Admitted, Paragraph Three of Answer, as modified by paragraph 1 of stipulation.)

4. In the course and conduct of their aforesaid business, and for the purpose of inducing the purchase of their merchandise, respondents have made numerous statements in advertisements inserted in newspapers having a wide circulation in the District of Columbia and the States of Maryland and Virginia, and in commercial messages broadcast throughout that area by radio station WOOK located in the District of Columbia.

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

NO MONEY DOWN!
PHILCO 19" PORTABLE
\$2.00 WEEKLY

* * * * *
EMPIRE says pick any name brand 19 inch portable TV and we'll deliver it to you with no money down and payments of only \$2.00 a week.

EMERSON FM MULTIPLEX
STEREO RADIO PHONO
\$3.00 WEEKLY
FREE \$50 WORTH OF RECORDS

* * * * *
Call EMPIRE right now for a no obligation free home demonstration and to the first ten callers you get with your TV a \$19.95 portable stand free, plus, and listen to this plus, take your choice of a man's or woman's 17 jewel Gruen wristwatch.

* * * * *
And here's a bonus to the first 10 callers * * * You get with your TV

a \$19.95 antenna, plus and listen to this, plus, a beautiful Gruen wrist-watch. (Admitted, Paragraph Four of Answer.)

5. Through the use of the above-quoted statements and representations, and others of similar import not specifically set out herein, respondents represent, and have represented, directly or by implication, that:

(1) Respondents sell their merchandise without requiring a down payment;

(2) Respondents arrange credit payments as low as \$2 weekly;

(3) The aforesaid amounts of \$50 for the records, \$19.95 for the portable television stand and \$19.95 for the television antenna are not appreciably in excess of the highest prices at which substantial sales of such merchandise have been made in the recent regular course of business in the trade area where such representations appeared;

(4) Respondents give a Gruen watch to the first ten callers who respond to their radio commercial message and purchase a television set. (Admitted except as to subparagraph (3), in Paragraph Five of Answer.)²

6. In truth and in fact:

(1) Respondents did not sell their merchandise without requiring a cash down payment or the trade-in of merchandise owned by the purchaser;

(2) Respondents did not arrange credit payments as low as \$2 weekly;

(3) The advertised amounts of \$50 for the records, \$19.95 for the portable television stand and \$19.95 for the television antenna were appreciably in excess of the highest prices at which substantial sales of such merchandise had been made in the recent regular course of business in the trade area where such representations appeared; and

(4) Respondents did not give a Gruen watch, or any other article of merchandise, to the first ten callers who responded to their radio commercial message and purchased a television set.

Therefore, it is found that the statements and representations, as set forth in paragraphs 4 and 5 above, were and are false, misleading and deceptive.

7. In the course and conduct of their business, and in furtherance of a deceptive sales program for inducing the purchase of

² Finding in subparagraph (3) is based on examiner's expertise (acquired after almost 15 years as a Commission examiner) as to what a significant number of ordinary consumers would understand from respondents' advertising. *Drew v. FTC*, 235 F. 2d 735, 741 (2nd Cir. 1956).

their merchandise, respondents have engaged in the following unfair and deceptive acts and practices:

(1) Respondents induced purchasers of their merchandise to sign blank conditional sale contracts and other instruments which respondents later completed as to prices, terms and product information. In some instances the later inserted prices and charges substantially exceeded those expressly or tacitly agreed upon and understood by the purchaser at the time of the instrument's execution.

(2) Respondents obtained purchasers' signatures on conditional sale contracts and promissory notes by falsely representing that such instruments were merely receipts acknowledging that merchandise had been placed in the purchaser's home for demonstration or approval purposes.

(3) Respondents failed or refused to disclose the total purchase price of their merchandise during the negotiation and at the consummation of the contract, and informed the purchaser of only the approximate amount of weekly installment payments. In some instances the purchaser learned the total amount of indebtedness for the first time when contacted by the finance company to which respondents had negotiated or assigned the conditional sale contract and promissory note.

(4) Respondents induced purchasers to fabricate and simulate the signatures of absent members of the household as cosigners in the execution of conditional sale contracts and promissory notes attached thereto.

(5) Respondents failed to disclose to the purchaser that the conditional sale contract and promissory note executed by such purchaser may, at the option of respondents, be negotiated or assigned to a finance company to which the purchaser will be indebted.

(6) Respondents failed to supply certain purchasers with a copy of the executed conditional sale contract and promissory note at the time of consummation of the sale.

(7) Respondents sold merchandise to purchasers which was represented, directly or by implication, to be new, when in truth and in fact said merchandise was used. In some instances, no representation was made concerning whether the merchandise was new or used. In the absence of disclosure that the aforesaid merchandise was used, respondents' customers believed that it was new. Therefore, it is found that respondents' failure to disclose that such merchandise was used was to the prejudice of respondents' customers.

8. In the conduct of their business, at all times mentioned herein until October 1966, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of television sets, phonographs, household furniture, electrical appliances and other articles of merchandise of the same general kind and nature as those sold by respondents.

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

CONCLUSION OF LAW

The acts and practices of respondents, as hereinabove found, 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.

ORDER

It is ordered, That respondents The Empeco Corporation, a corporation, doing business as Empire Furniture and Appliance Co. or as Empire Home Equipment Co., or under any other name, and its officers, and Allen C. Baverman, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of television sets, phonographs, household furniture, electrical appliances or any other articles of merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that respondents sell their merchandise with "No money down," or that respondents sell their merchandise without requiring a down payment or trade-in.
2. Representing, directly or by implication, that respondents arrange credit or installment payments as low as \$2 weekly, or otherwise misrepresenting the amount of weekly

or monthly credit or installment payments permitted or required by respondents.

3. Representing, directly or by implication, that any amount is the "worth" or the value of merchandise given with or included in the purchase of specified merchandise, unless substantial sales of such merchandise have been made in the recent regular course of business in the trade area where such representations are made at or in excess of the specified amount.

4. Representing, directly or by implication, that respondents give free or without cost, a watch, or any other article of merchandise, to callers who ultimately purchase respondents' merchandise.

5. Inducing or causing purchasers or prospective purchasers of respondents' merchandise to sign blank or partially completed conditional sale contracts, or any other contractual instruments.

6. Inserting or changing any prices or any other charges in contracts or other instruments, unless such prices or other charges were agreed upon or understood by the purchaser, and unless such insertions or changes were with the written permission of the purchaser or were initialed by the purchaser on the changed instrument.

7. Inducing or causing purchasers or prospective purchasers of respondents' merchandise to execute conditional sale contracts, promissory notes or any other instruments by falsely representing that such contracts, notes or other instruments are receipts acknowledging that merchandise has been placed in the purchaser's home for demonstration or approval purposes; or otherwise inducing or causing purchasers or prospective purchasers to execute conditional sale contracts, promissory notes or any other instruments by misrepresenting the true nature or effect of such documents.

8. Failing or refusing to disclose the exact amount of the total purchase price of merchandise, including all interest, credit or service charges, at the time the contract for the sale of such merchandise is executed by the purchaser or purchasers.

9. Inducing or causing a purchaser of respondents' merchandise to fabricate or simulate the signature of an absent member of the household, or any other person, upon a conditional sale contract or any other instrument.

10. Failing or refusing prior to execution thereof to disclose orally, and in writing with such conspicuousness and clarity as likely to be observed and read by purchasers and prospective purchasers, that the conditional sale contract and promissory note executed by such purchaser may at the option of respondents be negotiated or assigned to a finance company or other party to which the purchaser will be indebted.

11. Failing or refusing to supply purchasers of respondents' merchandise with a copy of the executed conditional sale contract, promissory note or other agreement at the time of execution by the purchaser.

12. Representing, directly or by implication, that used merchandise is new; or selling any used merchandise which simulates or has the appearance of new merchandise without disclosing before consummation of the sale that such merchandise is used by conspicuously marking "used" on all written sales instruments, including invoices and sales contracts.

FINAL ORDER

No appeal from the initial decision of the hearing examiner having been filed, and the Commission having determined that the case should not be placed on its own docket for review and that pursuant to Section 3.21 of the Commission's Rules of Practice (effective August 1, 1963), the initial decision should be adopted and issued as the decision of the Commission:

It is ordered, That the initial decision of the hearing examiner shall, on the 14th day of February, 1967, become the decision of the Commission.

It is further ordered, That respondents The Empeco Corporation, a corporation, doing business as Empire Furniture and Appliance Co. or as Empire Home Equipment Co., or under any other name, and Allen C. Baverman, individually and as an officer of said corporation, shall, within sixty (60) days after service of this order upon them, file with the Commission a report in writing, signed by such respondents, setting forth in detail the manner and form of their compliance with the order to cease and desist.

Complaint

71 F.T.C.

IN THE MATTER OF

ANGUS FREEZER MEATS, INC., TRADING AS BLACK ANGUS
FREEZER MEATS ET AL.ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL
TRADE COMMISSION ACT*Docket 8720. Complaint, Nov. 4, 1966—Decision, Feb. 16, 1967*

Order requiring three affiliated meat dealers of Washington, D.C., Philadelphia, Pa., and Norfolk, Va., to cease using bait advertising, misrepresenting the grade and quality of their meat, falsely representing that their products are graded by the United States Department of Agriculture, and making other deceptive claims.

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 Angus Freezer Meats, Inc., a corporation trading as Black Angus Freezer Meats; Steakland Freezer Meats, Inc., a corporation; Black Angus Freezer Meats of Virginia, Inc., a corporation; and David W. Ewing, individually and as an officer of said corporations; 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 Angus Freezer Meats, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the District of Columbia, with its principal office and place of business located at 513 Morse Street, NE., in the city of Washington, District of Columbia, where it trades and does business as Black Angus Freezer Meats.

Respondent Steakland Freezer Meats, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office and place of business located at 6228 Bustleton Avenue, in the city of Philadelphia, State of Pennsylvania.

Respondent Black Angus Freezer Meats of Virginia, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Virginia, with its principal office and place of business located at 151 East Little Creek Road, in the city of Norfolk, State of Virginia.

Respondent David W. Ewing is an individual and an officer of the said corporate respondents. He formulates, directs and controls the acts and practices of the said corporate respondents, including the acts and practices hereinafter set forth. His principal office and place of business is located at 6228 Bustleton Avenue, in the city of Philadelphia, State of Pennsylvania.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of beef and other meat products which come within the classification of food as the term "food" is defined in the Federal Trade Commission Act to members of the purchasing public.

PAR. 3. In the course and conduct of their business, respondents have disseminated and caused the dissemination of certain advertisements by the United States mails and by various means in commerce as "commerce" is defined in the Federal Trade Commission Act, including advertisements in daily newspapers, for the purpose of inducing, and which were likely to induce, directly or indirectly, the purchase of food, as the term "food" is defined in the Federal Trade Commission Act; and have disseminated and caused the dissemination of advertisements by various means, including those aforesaid, for the purpose of inducing, and which were likely to induce, directly or indirectly, the purchase of food in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Typical of the statements appearing in the newspaper advertisements disseminated as aforesaid are the following:

(The Washington Post, 10-1-65)

[Depiction of a Black Steer] Black Angus' Fancy Beef Sides 31¢ lb. with volume orders.

IOWA BEEF

* * * Have your meat cut and wrapped at your convenience. Black Angus Fancy Hindquarters with Steak and Roast Sections * * * 36¢ lb. with volume orders.

Black Angus Freezer Meats

(Washington Daily News, 7-5-65)

Black Angus' Special. Consists of potentially sirloin, T-bone, round, club steak, roasts, porterhouse, etc., 29¢ lb. U.S.D.A. Choice Hindquarters with roast sections 49¢ lb. Special-Beef Orders 69¢ lb. and up.

Black Angus Freezer Meats

(The Philadelphia Inquirer, 9-19-65)

Western BEEF Round-up. A carload of top quality beef. Guaranteed tender, delicious beef halves, includes all top cuts of steaks and roasts

29¢ lb. Example: 300 lbs. only \$6.69 a week for 13 weeks. 2 Convenient locations.
Steakland Freezer Meats

(The Virginian-Pilot, 11-12-65)

"Black Angus" Beef Sale—[depiction of Black Steer]—29¢ lb. Western Fed Beef Sides including all Steaks, Roasts & Cuts. U.S.D.A. Choice beef orders 100 lbs. and up 33¢ lb.
Black Angus Freezer Meats

PAR. 5. Through the use of the aforesaid advertisements and others of similar import and meaning not specifically set out herein, respondents have represented, directly and by implication:

1. That the offer to sell beef at 29, 31, and 33 cents per pound is a bona fide offer to sell such merchandise at these prices.

2. That the beef offered at the prices aforesaid is top quality beef and that it has been graded as "choice" by the United States Department of Agriculture.

3. That the beef offered at the prices aforesaid consists primarily of sirloin, T-bone, porterhouse, roasts and other top quality cuts of beef.

4. That the beef offered in said advertisements comes entirely or primarily from the breed of cattle known as Black Angus.

5. That the beef offered in said advertisements will be cut and wrapped at the purchaser's convenience.

PAR. 6. In truth and in fact:

1. The offer to sell beef at 29, 31 and 33 cents per pound is not a bona fide offer but, on the contrary, is made for the purpose of inducing the public to come to respondents' places of business. When customers respond and go to said places of business, respondents' employees and representatives point out to said customers that there will be an excessive weight loss in trimming and cutting said beef and otherwise disparage the beef offered at the prices aforesaid and attempt to, and usually do, sell beef at higher prices to said customers.

2. The beef offered at 29, 31 and 33 cents per pound is not "choice" or top quality beef and it has not been so graded by the United States Department of Agriculture.

3. The beef offered at the prices aforesaid does not consist primarily of sirloin, T-bone, roasts, porterhouse and other top quality cuts of beef.

4. The beef offered in said advertisements does not come en-

tirely or primarily from the breed of cattle known as Black Angus.

5. The beef offered in said advertisements is not, in many instances, cut and wrapped at the purchaser's convenience; on the contrary, it is cut and wrapped at respondents' convenience.

Therefore, the advertisements referred to in Paragraph Five were, and are, misleading in material respects and constituted and now constitute, "false advertisements" as that term is defined in the Federal Trade Commission Act.

PAR. 7. The dissemination by respondents of the false advertisements, as aforesaid, constituted and now constitutes, unfair and deceptive acts and practices in commerce in violation of Sections 5 and 12 of the Federal Trade Commission Act.

Mr. William Hill supporting the complaint.

Mr. Samuel Kravitz, Philadelphia, Pa., for respondents.

INITIAL DECISION BY WILLIAM K. JACKSON, HEARING EXAMINER

JANUARY 6, 1967

This proceeding was commenced by the issuance of a complaint on November 4, 1966, charging the corporate respondents and David W. Ewing, individually and as an officer of said corporations, with unfair and deceptive acts and practices in commerce, in violation of Sections 5 and 12 of the Federal Trade Commission Act, by using bait advertising, by misrepresenting the grade and quality of their beef, and by making other false claims concerning their meat products.

After being served with the said complaint, the corporate respondents and the individual respondent appeared by counsel and filed their joint answer on December 2, 1966. In their answer they admitted a number of the specific allegations in the complaint, but denied generally the illegality of the practices set forth in the complaint.

On December 14, 1966, respondents by their attorney filed a Motion to Withdraw Answer to Complaint and requested leave to file Substituted Answer. In their Substituted Answer respondents set forth that they did not elect to deny or to challenge the averments contained in the complaint, that they waived any further proceedings and that they agreed that the order attached to the complaint be entered in this matter. This motion was unopposed by complaint counsel. On January 3, 1967, the hearing

examiner issued an order permitting respondents to withdraw their previous answer and to file in lieu thereof their Substituted Answer, dated December 14, 1966.

Based upon the entire record consisting of the complaint, Substituted Answer, and other matters of record, the hearing examiner makes the following findings as to facts, conclusions drawn therefrom, and order:

FINDINGS OF FACT

1. Respondent Angus Freezer Meats, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the District of Columbia, with its principal office and place of business located at 513 Morse Street, NE., in the city of Washington, District of Columbia, where it trades and does business as Black Angus Freezer Meats.

Respondent Steakland Freezer Meats, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office and place of business located at 6228 Bustleton Avenue, in the city of Philadelphia, State of Pennsylvania.

Respondent Black Angus Freezer Meats of Virginia, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Virginia, with its principal office and place of business located at 151 East Little Creek Road, in the city of Norfolk, State of Virginia.

Respondent David W. Ewing is an individual and an officer of the said corporate respondents. He formulates, directs and controls the acts and practices of the said corporate respondents, including the acts and practices hereinafter set forth. His principal office and place of business is located at 6228 Bustleton Avenue, in the city of Philadelphia, State of Pennsylvania.

2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of beef and other meat products which come within the classification of food as the term "food" is defined in the Federal Trade Commission Act to members of the purchasing public.

3. In the course and conduct of their business, respondents have disseminated and caused the dissemination of certain advertisements by the United States mails and by various means in commerce as "commerce" is defined in the Federal Trade Commission Act, including advertisements in daily newspapers, for the purpose of inducing, and which were likely to induce, directly or

indirectly, the purchase of food, as the term "food" is defined in the Federal Trade Commission Act; and have disseminated and caused the dissemination of advertisements by various means, including those aforesaid, for the purpose of inducing, and which were likely to induce, directly or indirectly, the purchase of food in commerce, as "commerce" is defined in the Federal Trade Commission Act.

4. Typical of the statements appearing in the newspaper advertisements disseminated as aforesaid are the following:

(The Washington Post, 10-1-65)

[Depiction of a Black Steer] Black Angus Fancy Beef Sides 31¢ lb. with volume orders.

IOWA BEEF

* * * Have your meat cut and wrapped at your convenience. Black Angus Fancy Hindquarters with Steak and Roast Sections * * * 36¢ lb. with volume orders.

Black Angus Freezer Meats

(Washington Daily News, 7-5-65)

Black Angus' Special. Consists of potentially sirloin, T-bone, round, club steak, roasts, porterhouse, etc., 29¢ lb. U.S.D.A. Choice Hindquarters with roast sections 49¢ lb. Special-Beef Orders 69¢ lb. and up.

Black Angus Freezer Meats

(The Philadelphia Inquirer, 9-19-65)

Western BEEF Round-up. A carload of top quality beef. Guaranteed tender, delicious beef halves, includes all top cuts of steaks and roasts 29¢ lb. Example: 300 lbs. only \$6.69 a week for 13 weeks. 2 Convenient locations.

Steakland Freezer Meats

(The Virginian-Pilot, 11-12-65)

"Black Angus" Beef Sale—[depiction of Black Steer]—29¢ lb. Western Fed Beef Sides including all Steaks, Roasts & Cuts. U.S.D.A. Choice beef orders 100 lbs. and up 33¢ lb.

Black Angus Freezer Meats

5. Through the use of the aforesaid advertisements and others of similar import and meaning not specifically set out herein, respondents have represented, directly and by implication:

(1) That the offer to sell beef at 29, 31, and 33 cents per pound is a bona fide offer to sell such merchandise at these prices.

(2) That the beef offered at the prices aforesaid is top quality beef and that it has been graded as "choice" by the United States Department of Agriculture.

(3) That the beef offered at the prices aforesaid consists primarily of sirloin, T-bone, porterhouse, roasts and other top quality cuts of beef.

(4) That the beef offered in said advertisements comes entirely or primarily from the breed of cattle known as Black Angus.

(5) That the beef offered in said advertisements will be cut and wrapped at the purchaser's convenience.

6. In truth and in fact:

(1) The offer to sell beef at 29, 31 and 33 cents per pound is not a bona fide offer but, on the contrary, is made for the purpose of inducing the public to come to respondents' places of business. When customers respond and go to said places of business, respondents' employees and representatives point out to said customers that there will be an excessive weight loss in trimming and cutting said beef and otherwise disparage the beef offered at the prices aforesaid and attempt to, and usually do, sell beef at higher prices to said customers.

(2) The beef offered at 29, 31 and 33 cents per pound is not "choice" or top quality beef and it has not been so graded by the United States Department of Agriculture.

(3) The beef offered at the prices aforesaid does not consist primarily of sirloin, T-bone, roasts, porterhouse and other top quality cuts of beef.

(4) The beef offered in said advertisements does not come entirely or primarily from the breed of cattle known as Black Angus.

(5) The beef offered in said advertisements is not, in many instances, cut and wrapped at the purchaser's convenience; on the contrary, it is cut and wrapped at respondents' convenience.

Therefore, the advertisements referred to in Finding No. 5 were, and are, misleading in material respects and constituted and now constitute, "false advertisements" as that term is defined in the Federal Trade Commission Act.

7. The hearing examiner also finds that 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.

CONCLUSIONS

1. The aforesaid acts and practices of respondents, as herein found, 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 Sections 5 and 12 of the Federal Trade Commission Act.

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

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

The order, as hereinafter set forth, follows the form of the order contained in the complaint and is also the order agreed to by the parties.

After due consideration, the hearing examiner believes that such order is appropriate and may be entered.

ORDER

It is ordered, That respondents Angus Freezer Meats, Inc., a corporation trading as Black Angus Freezer Meats, or under any other name or names, and its officers; Steakland Freezer Meats, Inc., a corporation, and its officers; Black Angus Freezer Meats of Virginia, Inc., a corporation, and its officers; and David W. Ewing, individually and as an officer of said corporations, 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 beef or other meat products, do forthwith cease and desist from:

A. Disseminating, or causing the dissemination of, any advertisement by means of the United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement represents, directly or by implication:

1. That any such products are offered for sale when such offer is not a bona fide offer to sell such products at the price or prices stated.

2. That beef offered at 29, 31 or 33 cents per pound, or at any other comparatively low price per pound, is "choice" or top quality meat; or that such beef has been so graded by the United States Department of Agriculture.

3. That the beef offered at the prices aforesaid con-

sists primarily of sirloin, T-bone, roasts, porterhouse or other top quality cuts of meat.

4. That the beef offered for sale comes entirely or primarily from the Black Angus breed of cattle: *Provided, however*, That it shall be a defense in any enforcement proceeding instituted under subparagraphs 2, 3 or 4 of Paragraph A of this order for respondents to establish that the advertised beef conforms to the representations made.

5. That the beef or meat products offered for sale will be cut and trimmed at the convenience of the purchaser: *Provided, however*, That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that they in fact comply with such representation.

B. Disseminating, or causing the dissemination of, any advertisement by means of the United States mails or by any means in commerce, as "commerce," is defined in the Federal Trade Commission Act, which advertisement misrepresents in any manner the quality or grade of any beef or other meat product.

C. Discouraging the purchase of, or disparaging in any manner, any products which are advertised or offered for sale in advertisements disseminated or caused to be disseminated in commerce as "commerce" is defined in the Federal Trade Commission Act.

D. Disseminating, or causing to be disseminated, any advertisement by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of respondents' products in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement contains any of the representations or misrepresentations prohibited in Paragraphs A and B above.

FINAL ORDER

No appeal from the initial decision of the hearing examiner having been filed, and the Commission having determined that the case should not be placed on its own docket for review, and that pursuant to Section 3.21 of the Commission's Rules of Practice (effective August 1, 1963), the initial decision should be adopted and issued as the decision of the Commission:

It is ordered, That the initial decision of the hearing examiner

shall, on the 16th day of February 1967, become the decision of the Commission.

It is further ordered, That Angus Freezer Meats, Inc., a corporation, trading as Black Angus Freezer Meats; Steakland Freezer Meats, Inc., a corporation; Black Angus Freezer Meats of Virginia, Inc., a corporation; and David W. Ewing, individually and as an officer of said corporations, shall within sixty (60) days after service of this order upon them, file with the Commission a report in writing, signed by such respondents, setting forth in detail the manner and form of their compliance with the order to cease and desist.

IN THE MATTER OF
GROVAL KNITTED FABRICS, INC., ET AL.

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

Docket C-1172. Complaint, Feb. 17, 1967—Decision, Feb. 17, 1967

Consent order requiring a New York City jobber of piece goods which also operates a dyeing and finishing plant in Manchester, N.H., to cease misrepresenting the fiber content of its wool products.

COMPLAINT

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

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

Respondent Fred Alcott is an officer of the corporate respondent. He formulates, directs and controls the acts, practices and policies of the said corporation.

The respondents are wholesalers and jobbers of piece goods, with their office and principal place of business located at 36 West 37th Street, New York, New York. Said respondents also own and operate a dyeing and finishing plant at Manchester, New Hampshire.

PAR. 2. Subsequent to the effective date of the Wool Products Labeling Act of 1939, respondents have manufactured for introduction into commerce, introduced into commerce, sold, transported, distributed, delivered for shipment, shipped, and offered for sale, in commerce, as "commerce" is defined in said Act, wool products as "wool product" is defined therein.

PAR. 3. Certain of said wool products were misbranded by the respondents within the intent and meaning of Section 4(a)(1) of the Wool Products Labeling Act of 1939 and Rules and Regulations promulgated thereunder, in that they were falsely and deceptively stamped, tagged, labeled, or otherwise identified with respect to the character and amount of the constituent fibers contained therein.

Among such misbranded wool products, but not limited thereto, were fabrics that were stamped, tagged, labeled, or otherwise identified by respondents as containing Cotton and Mohair, whereas in truth and fact, such products contained substantially different fibers and amounts of fibers other than as represented.

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

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

PAR. 5. The acts and practices of the respondents as set forth above were, and are, in violation of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, and constituted, and now constitute unfair methods of competition and unfair and deceptive acts and practices in com-

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

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by 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 said Acts, 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 Groval Knitted Fabrics, 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 36 West 37th Street, New York, New York.

Respondent Fred Alcott 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 Groval Knitted Fabrics, Inc., and its officers, and Fred Alcott, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, or manufacture for introduc-

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

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

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

It is further ordered, That the 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

CUSTOM CARPET SHOP OF VIRGINIA 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-1173. Complaint, Feb. 17, 1967—Decision, Feb. 17, 1967

Consent order requiring an Arlington, Va., carpet dealer to cease making deceptive pricing and savings claims, misbranding the fiber content, and falsely advertising its textile fiber 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 Custom Carpet Shop of Virginia, a corporation, and Floyd H. Charsky, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of the said Acts, and the Rules and Regulations 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 Custom Carpet Shop of Virginia is a corporation organized, existing and doing business under and by virtue of the laws of the State of Virginia, with its office and principal place of business located at 4206 Wilson Boulevard, Arlington, Virginia.

Respondent Floyd H. Charsky is an officer and sole stockholder of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His business address is the same as the corporate respondent.

PAR. 2. Respondents now are, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of rugs, carpets and floor coverings to the public at retail.

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

PAR. 4. In the course and conduct of their business, and for the purpose of inducing the sale of their said products, respondents have made certain statements in their advertising in newspapers of general interstate circulation, in mailed handbills and in various signs on or within the respondents' premises. Typical and illustrative of the foregoing, but not all inclusive thereof, are the following:

1. Fabulous discount carpet sale.

Continuing our policy we'll give you a better carpet buy on any name brand carpet made in the United States during this special event.

Partial roll discounts carpet sale.

Inaugural carpet clearance sale, four days only * * * hundreds of room-sized remnants, part rolls all at sensational savings don't miss this clearance of top quality broadloom carpets at tremendous discounts.

Washington's Birthday Sale.

Warehouse Sale.

\$500,000 Inventory Clearance Sale!

\$500,000 Sale! Factory Closeout at better than wholesale prices.

6 Day Sale * * * Factory Close-Outs, Trial Runs and Partial Rolls * * *.

2. Savings up to 60% in our mill-end department.

Complaint

71 F.T.C.

Remnant Sale—Every Remnant on our Floor reduced from 50% to 75%.
 3. Nylon solids and tweeds regular \$4.95 reduced to \$2.95 square yard.
 Continuous Filament Multi-Tone Nylon regular \$5.95 reduced to \$3.95 square yard.
 Thick Acrilan Plush Pile, regular \$11.95 square yard, \$7.95 square yard.
 Wool Loop Textured Pile, regular \$12.95 square yard, reduced to \$6.95 square yard.

BRAIDED RUGS

Reg.	Size	Sale
\$ 8.95	27"x48"	3.00
14.95	3'x5'	5.00
49.95	9'x12'	29.95
69.95	9'x12'	39.50
89.95	9'x12'	49.50
109.95	9'x12'	59.95

4. Broadloom Clearance 3 outstanding \$10.95 Carpet Values \$6.95 sq. yd.
 * * * Completely installed—Includes carpet * * * cushion and installation.
 YOUR CHOICE.

1. Dupont 501 Continuous Filament Nylon Pile.
2. Acrylic plush pile.
3. Wool tight loop pile.

Special Package
 Your Choice
 Now \$6.95 sq. yd.

Dupont 501 Continuous
 Filament Nylon Pile
 Acrylic Plush Pile
 Wool Plush Pile

Includes carpet, cushion and installation.

PAR. 5. By and through the use of the aforesaid statements and representations, and others of similar import but not specifically set forth herein, respondents have represented directly or indirectly:

1. That during the period of the aforesaid advertised "Sales," "clearances," "special events," "factory closeouts" or other limited periods of sale, the price of each item of merchandise contained in said statements and representations represents a reduction, not so insignificant as to be meaningless, from the price at which respondents had made an actual bona fide offer to sell said merchandise on a regular basis for a reasonably substantial period of time in the recent regular course of their business. That the represented reduced prices are available only during the limited period of the sale and would be returned to the respond-

ents' pre-sale bona fide offering price or to some other substantially higher amount immediately after the completion of the sale.

2. That purchasers of merchandise advertised as "Savings up to 60% . . ." or "reduced from 50% to 75%" or words of similar import would realize a savings of the stated dollar or percentage amount from the actual bona fide price at which said merchandise was offered to the public by the respondents for a reasonably substantial period of time in the recent regular course of their business.

3. That the said higher price amounts, accompanied by the words "Regular," "Reg," or words of similar import, are the prices at which such articles of merchandise were sold or offered for sale in good faith by the respondents for a reasonably substantial period of time in the recent regular course of their business. By and through the use of such comparative price technique, respondents represent, directly or indirectly, that the purchasers of said merchandise save an amount equal to the difference between said higher prices and corresponding lower prices.

4. That purchasers of merchandise advertised as a "Special Package . . ." or words of similar import, which listed a single price covering the cost of the carpet, cushion and installation, would realize a savings of a stated or implied amount from the price of the said merchandise if each item of the "package" was purchased separately in the regular course of the respondents' business.

PAR. 6. In truth and fact:

1. The prices of each of the items of merchandise offered during the alleged "Sales," "Clearances," "special events," "factory closeouts" or other limited periods of sale did not represent a reduction, not so insignificant as to be meaningless, from the prices at which respondents had made bona fide offers to sell said merchandise on a regular basis for a reasonably substantial period of time in the recent regular course of their business.

2. The purchasers of the merchandise, advertised as "Savings up to 60%," "reduced from 50% to 70%" or other words of similar import, would not realize a savings of the stated dollar or percentage amounts from the respondents' actual bona fide price at which said merchandise was offered for sale by respondents for a reasonably substantial period of time in the recent regular course of their business.

3. The higher price amounts, accompanied by the words "Regular," "Reg," or words of similar import, are not the prices at

which such items of merchandise were sold. The purchasers of said merchandise do not save an amount equal to the difference between the said higher prices and the corresponding lower prices because the said higher prices are fictitious and non-existent and the corresponding lower prices are actually the respondents' usual and regular prices in the recent regular course of their business.

4. The purchasers of merchandise, advertised as a "Special Package" or words of similar import, which listed a single price to cover the cost of the carpet, cushion and installation do not realize a savings of the stated or implied amount from the price of the said merchandise if each item of the said "package" was purchased separately, because said package price amounted to the total of the prices of the items of said merchandise as sold separately by the respondents in the recent regular course of their business.

Said statements and representations were, therefore false, misleading and deceptive.

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

PAR. 8. 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 erroneous and mistaken belief that said statements and representations are true and into the purchase of substantial quantities of respondents' products by reason of said erroneous and mistaken belief.

PAR. 9. The acts and practices of the 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 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.

PAR. 10. Subsequent to the effective date of the Textile Fiber Products Identification Act on March 3, 1960, respondents have been, 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 in the importation into the United States, of textile fiber products; and have sold, offered for sale, advertised, delivered, transported and caused to be transported, textile fiber products,

which have been advertised or offered for sale in commerce; and have sold, offered for sale, advertised, delivered, transported and caused to be transported, after shipment in commerce, textile fiber products, either in their original state or contained in other textile fiber products; as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act.

PAR. 11. 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 Regulations promulgated thereunder, in that they were falsely and deceptively stamped, tagged, labeled, invoiced, advertised, or otherwise identified as to the name or amount of constituent fibers contained therein.

Among such misbranded textile fiber products, but not limited thereto, were floor coverings which were falsely and deceptively advertised in the Washington Post, a newspaper published in the city of Washington, District of Columbia, and having a wide circulation in interstate commerce, in that the respondents in disclosing the fiber content information as to floor coverings containing exempted backings, fillings, or paddings, failed to set forth such fiber content information in such a manner as to indicate that it applied only to the face, pile, or outer surface of the floor covering and not to the exempted backings, fillings, or paddings.

PAR. 12. Certain of said textile fiber products, namely floor coverings, were further misbranded by the respondents, in that there was not on or affixed to said textile fiber products any stamp, tag, label or other means of identification showing the required information in violation of Section 4(b) of the Textile Fiber Products Identification Act and the Rules and Regulations promulgated under such Act.

PAR. 13. Certain of said textile fiber products were falsely and deceptively advertised in that respondents, in making disclosures or implications as to the fiber content of such textile products in written advertisements used to aid, promote and assist, directly or indirectly, in the sale or offering for sale of said products, failed to set forth the required information as to fiber content as specified by Section 4(c) of the Textile Fiber Products Identification Act and in the manner and form prescribed by the Rules and Regulations promulgated under said Act.

Among such textile fiber products, but not limited thereto, were floor coverings which were falsely and deceptively adver-

tised in the Washington Post, a newspaper published in the city of Washington, District of Columbia, and having a wide interstate circulation in that such terms as "tweed" and "Du Pont 501" were used without the true generic names of the fibers in such floor coverings being set forth.

PAR. 14. By means of the aforesaid advertisements and others of similar import and meaning not specifically referred to herein, respondents falsely and deceptively advertised textile fiber products, namely floor coverings, in violation of the Textile Fiber Products Identification Act in that said textile fiber products were not advertised in accordance with the Rules and Regulations promulgated thereunder in the following aspects:

A. Information required under Section 4(c) of the Textile Fiber Products Identification Act and the Rules and Regulations promulgated thereunder was set forth in abbreviated form, in violation of Rule 5(a) of said Rules and Regulations.

B. In disclosing the required fiber content information as to floor coverings containing exempted backings, fillings, or paddings, such disclosure was not made in such a manner as to indicate that such required fiber content information related only to the face, pile, or outer surface of the floor covering and not to the backing, filling, or padding, in violation of Rule 11 of the aforesaid Rules and Regulations.

C. Fiber trademarks were used in advertising textile fiber products, namely floor coverings, without a full disclosure of the fiber content information required by the said Act and the Rules and Regulations thereunder in at least one instance in said advertisement, in violation of Rule 41(a) of the aforesaid Rules and Regulations.

D. Fiber trademarks were used in advertising textile fiber products namely floor coverings, containing only one fiber and such fiber trademarks did not appear, at least once in the said advertisement, in immediate proximity and conjunction with the generic name of the fiber in plainly legible and conspicuous type, in violation of Rule 41(c) of the aforesaid Rules and Regulations.

PAR. 15. The acts and practices of the respondents as set forth in Paragraphs Ten through Fourteen above were, and are, in violation of the Textile Fiber Products Identification Act and the Rules and Regulations promulgated thereunder, and constituted, and now constitute, unfair methods of competition and unfair and deceptive acts or practices in commerce under the Federal Trade Commission Act.

DECISION AND ORDER

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

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by 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 said Acts, 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 Custom Carpet Shop of Virginia is a corporation organized, existing and doing business under and by virtue of the laws of the State of Virginia, with its principal office and place of business located at 4206 Wilson Boulevard, Arlington, Virginia.

Respondent Floyd H. Charsky is an officer of the said corporation and his business address is the same as that of the 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 Custom Carpet Shop of Virginia, a corporation, and its officers, and Floyd H. Charsky, individually and as an officer of the said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device in connection with the advertising, offering for sale, sale or distribution of rugs, carpets, floor coverings or any other product in commerce, as "commerce"

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

1. Representing, directly or by implication, by use of the words "Sale," "Clearance," "special event," "factory close-out," "limited time only" or any other word or words of similar import that the price of any merchandise is a reduction from respondents' former offering price for said merchandise: *Provided, however,* That it shall be a defense in any enforcement proceeding instituted hereunder for the respondents to establish that the price at which said merchandise is being offered for sale constitutes a reduction, in an amount not so insignificant as to be meaningless, from the actual bona fide price at which such merchandise was offered to the public on a regular basis by respondents for a reasonably substantial period of time in the recent regular course of their business;

2. Representing, directly or by implication, that any offer is limited in point of time or in any manner: *Provided, however,* That it shall be a defense in any enforcement proceeding instituted hereunder for the respondents to establish that any represented limitation or restriction was actually imposed and in good faith adhered to;

3. Using the words "Save," "Savings," "reduced" or any other word or words of similar import in conjunction with a stated dollar or percentage amount of savings: *Provided, however,* That it shall be a defense in any enforcement proceeding instituted hereunder for the respondents to establish as a fact that the stated dollar or percentage amount of savings actually represents the difference between the offering price and the actual bona fide price at which such merchandise had been sold or offered for sale on a regular basis to the public by the respondents for a reasonably substantial period of time in the recent regular course of their business;

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

5. Using the words "Special Package," "Package," "Combination" or any other word or words of similar import, either alone or in conjunction with an offering price: *Provided, however*, That it shall be a defense in any enforcement proceeding instituted hereunder for the respondents to establish that the offering price of said "Special Package," "Package" or "Combination" is a reduction, not so insignificant as to be meaningless, from the sum of the actual bona fide prices at which the items of the said package or combination were sold separately by the respondents on a regular basis for a reasonably substantial period of time in the recent regular course of their business;

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

It is further ordered, That respondents Custom Carpet Shop of Virginia, a corporation, and its officers, and Floyd H. Charsky, 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, 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 textile fiber products

showing each element of information required to be disclosed by Section 4(b) of the Textile Fiber Products Identification Act.

B. Falsely and deceptively advertising textile fiber products by:

1. Making any representations, directly or by implication, as to the fiber content of any textile fiber product in any written advertisement which is used to aid, promote, or assist, directly or indirectly, in the sale or offering for sale of such textile fiber product, unless the same information required to be shown on the stamp, tag, label or other means of identification under Section 4(b) (1) and (2) of the Textile Fiber Products Identification Act is contained in the said advertisement, in the manner and form required, except that the percentages of the fibers present in the textile fiber product need not be stated.

2. Setting forth information required under Section 4(c) of the Textile Fiber Products Identification Act and the Rules and Regulations promulgated thereunder in abbreviated form.

3. Failing to set forth, in disclosing the required fiber content information as to floor coverings containing exempted backings, fillings or paddings, that such disclosure relates only to the face, pile or outer surface of such textile fiber products and not to the exempted backings, fillings, or paddings.

4. Using a fiber trademark in advertisements without a full disclosure of the required content information in at least one instance in the said advertisement.

5. Using a fiber trademark in advertising textile fiber products containing only one fiber without such fiber trademark appearing at least once in the advertisement, in immediate proximity and conjunction with the generic name of the fiber in plainly legible and conspicuous type.

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.