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## Final Order

promulgated thereunder to describe such fur products or furs which are not pointed, bleached, dyed, tip-dyed, or otherwise artificially colored.

## 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 3.51 of the Commission's Rules of Practice (effective July 1, 1967), 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 be, and it hereby is, adopted as the decision of the Commission.

*It is further ordered,* That respondents, Market Fur Dressing Corp., a corporation, and Milton Mainwold, 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.

## IN THE MATTER OF

## THERMOCHEMICAL PRODUCTS, INC., ET AL.

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

*Docket 8725. Complaint, Jan. 9, 1967—Decision July 25, 1969*

Order requiring a New York City marketer of water repellent paints and coatings to cease misrepresenting that it is a division of Union Carbide Co. or any other large company, exaggerating the earnings of prospective franchised dealers, misrepresenting the quality of its paints, using a fictitious subsidiary to collect its accounts, failing to reveal that its purchase contracts may be negotiated to third parties, making false guarantees, and using other deceptive means to recruit salesmen and dealers to sell its products.

## 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 Ther-

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mochemical Products, Inc., a corporation, and Jeannette Vine and Beatrice Freeman, also known as Beatrice Jacobs, individually and as officers of said corporation, and Charles A. Jacobs and David Jacobs, individually and as managers of said corporation, and Walmart Discount Corporation, a 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 Thermochemical Products, 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 1860 Broadway, New York, New York.

Respondents Jeannette Vine and Beatrice Freeman, also known as Beatrice Jacobs, are officers of said corporate respondent and their address is the same as that of said corporate respondent Thermochemical Products, Inc.

Respondents Charles A. Jacobs and David Jacobs are managers of the said corporate respondent and their address is the same as that of the said corporate respondent Thermochemical Products, Inc.

Respondent Walmart Discount Corporation 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 1841 Broadway, New York, New York. It is a wholly owned subsidiary of respondent Thermochemical Products, Inc.

Respondents Jeannette Vine and Beatrice Freeman, also known as Beatrice Jacobs, as officers, and Charles A. Jacobs and David Jacobs as managers, formulate, direct and control the acts and practices of the corporate respondent Thermochemical Products, Inc., including the acts and practices hereinafter set forth.

The aforementioned respondents cooperate and act together in carrying out the acts and practices hereinafter set forth.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the offering for sale, sale and distribution of water repellent paints and coatings to dealers for resale to the public under the trade names, among others, of "Aqua-Chek," "Vivilume" and "Vin-L-Brush-On."

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said

products, when sold, to be shipped and transported from their place of business in the State of New York to purchasers thereof located in various other States of the United States and maintain, and at all times hereinafter mentioned have maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Respondent Walmart Discount Corporation is now, and for some time past has been, engaged in the collection of past due or delinquent accounts and negotiable paper for the respondent Thermochemical Products, Inc., and others.

PAR. 5. In the course and conduct of its business, respondent Walmart Discount Corporation is now, and for some time last past has been, receiving accounts and negotiable paper for collection from outside the State of New York. In addition thereto said respondent has sent and received, by means of the United States mail, letters, checks and documents to and from States other than the State of New York and maintains, and at all times herein mentioned has maintained, a substantial course of trade in commerce, as "commerce" is defined in the Federal Trade Commission Act.

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

PAR. 7. In the course and conduct of their business, respondents have operated, and continue to operate, a sales plan by means of which they secure dealers for the sale and distribution of their products to the purchasing public. These dealers are solicited and secured by salesmen employed by said respondents, such salesmen having been selected and trained by said respondents for this purpose. The primary function of these salesmen is to establish said dealerships and to obtain orders for the products of said respondents by means of written contracts or so-called "special dealership agreements" with which are combined an initial order for one of said respondents' products. This special dealership agreement assigns to the said dealer a particular territory within which he may operate and sell said respondents' products. The dealer has the option of paying for the merchandise purchased within a specified time, usually 10 days, or of paying the amount in installments, usually by executing three trade acceptances which are immediately transferred to a finance or discount com-

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pany. When, in the course of attempts to enforce payment of such trade acceptances, dealers protest that their contracts with respondents were obtained as a result of misrepresentation, the position is asserted in opposition to such protest that the finance company is a holder in due course and not subject to such defenses.

It is the said respondents' usual practice to follow up this transaction within a few weeks by having another salesman, called a "back man," visit the dealer and, using the same tactics as the first salesman, attempt to sell the dealer an order of a different one of respondents' products than that which was included in the first sale.

During the course of the sales presentations, as aforesaid, the said respondents' salesmen use physical demonstrations to portray the water repellent properties of the particular product being sold. The equipment for these demonstrations is supplied to the salesmen by the said respondents. When the product is delivered it is sometimes different from that used by the salesmen in the demonstrations and the dealer cannot perform the same demonstrations for his customers as did the salesman.

PAR. 8. In the course and conduct of their business, as aforesaid, and for the purpose of inducing the sales of their products, respondents have made certain statements and representations to prospective dealers, by and through oral statements of their salesmen and representatives and by means of brochures and other written and printed material, directly or by implication.

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

1. That the respondent Thermochemical Products, Inc., is a subsidiary of, a division of or is affiliated with Union Carbide Company, General Electric Company or Aluminum Company of America.
2. That the products of the said corporate respondent are manufactured, or have been developed, by one of the aforesaid companies.
3. That products sold by the respondents are unconditionally guaranteed for five or ten years as the case may be.
4. That respondents' dealers will realize various profits up to \$18,000 per year from the resale of respondents' products.
5. That the respondents' dealers may return to the respondents any merchandise that is not sold or that the respondents will transfer it to another dealer.

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6. That respondents' products are waterproof.
7. That respondents' products are suitable for both inside and outside of a building.
8. That a survey has been made of the territory in which the prospective dealer is located, prior to the visit of the respondents' salesman to the dealer.
9. That one coat of any of respondents' products will be sufficient to cover the surface to be painted.
10. That respondents will assist the dealer in making sales by sending a representative to contact prospective customers of the dealer, by erecting billboards for display, by furnishing newspaper mats for the use of the dealer free of charge and by preparing suitable mailings on the dealer's letterhead which are to be sent to prospective customers of the dealer.

## PAR. 9. In truth and in fact:

1. Respondent Thermochemical Products, Inc., is not a subsidiary of, a division of or is not affiliated with Union Carbide Company, General Electric Company, Aluminum Company of America or any other corporation.
2. The products of the corporate respondent Thermochemical Products, Inc., are neither manufactured nor developed by any one of said companies, although one of the ingredients in said products may have been manufactured by one or the other of said corporations and is placed in combination by the respondents with other ingredients not manufactured by such company.
3. The products sold by the respondents are only guaranteed in a limited way and not unconditionally.
4. Few, if any, dealers earn \$18,000 per year from the resale of respondents' products or whatever lesser amount was represented to them at the time of the purchase and in many cases make no profit at all, but sustain a substantial loss.
5. Respondents seldom, if ever, permit the return of unsold merchandise or transfer such merchandise to other dealers.
6. Respondents' products are not waterproof but only water repellent.
7. Respondents' products are not suitable for use on the inside of a structure.
8. No survey has ever been made of the territory in which the prospective dealer is located for the purpose of ascertaining the potential sales within that territory.

9. One coat of any of respondents' products is not sufficient to cover the surface to be painted.

10. Respondents do not assist the dealer in making sales either by sending a representative to contact prospective customers of the dealers, by erecting billboards and other displays, by furnishing newspaper mats for the use of the dealer free of charge, or by preparing suitable mailings on the dealer's letterhead.

PAR. 10. When trade acceptances are taken in payment of merchandise purchased they are discounted with Ambassador Factors Corporation or some other discount company claiming to be holders in due course. After a default in the payment of such trade acceptances, the same are assigned to respondent Walmart Discount Corporation which company brings suit in its name, alleging that it is an assignee of a holder in due course and therefore entitled to all the rights of a holder in due course.

PAR. 11. In truth and in fact, said Walmart Discount Company is a wholly owned subsidiary of the respondents, so that the effect of such assignment is the same as if the paper had been assigned to the other corporate respondent, the original holder thereof.

PAR. 12. The fact of assignment to Walmart Discount Corporation and the bringing of suit in its name as assignee has had, and now has, the tendency and capacity to mislead and deceive dealers against whom suit is brought into the erroneous and mistaken belief that the said representations and implications are true and to induce the said dealers to refrain from asserting defenses they may have against the respondents and to make payments which they might otherwise not have made.

PAR. 13. The use by the respondents of the aforesaid false, deceptive and misleading statements and representations with respect to their said products and the status of Walmart Discount Corporation, has had, and now has, the capacity and tendency to mislead and deceive a substantial number of their said dealers as well as members of the purchasing public into the erroneous and mistaken belief that such statements and representations were, and are, true and to cause substantial numbers of said dealers, as well as members of the purchasing public, to purchase substantial quantities of the said respondents' products because of such erroneous and mistaken belief.

PAR. 14. 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

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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. Roy B. Pope and Mr. Herbert S. Forsmith* for the Commission.

*Mr. Miles Warner*, of Philadelphia, Pa., for respondents.

INITIAL DECISION BY JOHN B. POINDEXTER, HEARING EXAMINER  
DECEMBER 11, 1968

The complaint, issued in this proceeding on January 9, 1967, charges Thermochemical Products, Inc., a corporation, Jeannette Vine, Beatrice Freeman, also known as Beatrice Jacobs, individually and as officers of said corporation, Charles A. Jacobs and David Jacobs, individually and as managers of said corporation, and Wolmart Discount Corporation, a corporation, hereinafter referred to as respondents, with using false, deceptive and misleading statements and misrepresentations to recruit dealers for respondents' paints and coatings, in violation of Section 5 of the Federal Trade Commission Act.

Through counsel, respondents answered the complaint and denied the substantial allegations. Hearings have been held in Los Angeles and San Francisco, California, Chicago, Illinois, Houston, Texas, Greensboro, North Carolina, and New York, New York, to receive testimony offered by complaint counsel. Defense hearings were delayed due to the illness of the individual respondent, Charles A. Jacobs. Defense hearings have now been completed and proposed findings of fact and conclusions of law have been filed by respective counsel. All proposed findings and conclusions not found or concluded herein are denied. Upon the basis of the entire record, the hearing examiner makes the following findings of fact and conclusions of law, and issues the following order:

## FINDINGS OF FACT

1. The respondent, Thermochemical Products, Inc., is a corporation organized and doing business under the laws of the State of New York, with its office and principal place of business located at 1860 Broadway, New York, New York (Answer, Par. 1).
2. The individual respondent, Beatrice Freeman, is the wife of the individual respondent, David Jacobs (Tr. 1663-64), but does

business under her maiden name, Beatrice Freeman (CX 133A). The individual respondents, Jeannette Vine and Beatrice Freeman Jacobs, are the officers and directors of Thermochemical Products, Inc., Jeannette Vine being president and treasurer, and Beatrice Freeman Jacobs being Secretary thereof (Tr. 1663, 1669, 1670, 1674; CX 134A; Answer, Par. 1). Jeannette Vine and Beatrice Freeman Jacobs own all of the outstanding capital stock of the corporate respondent, Thermochemical Products, Inc. (Tr. 1664; CX 135 and 187).

3. The individual respondents, Charles A. Jacobs and David Jacobs, are agents of the individual respondents, Jeannette Vine and Beatrice Freeman Jacobs, appointed to operate Thermochemical Products, Inc. As such agents, Charles A. Jacobs and David Jacobs are managers of said corporate respondent. Their business addresses are the same as that of corporate respondent (CX 133A and B; Answer, Par. 1). As such managers, the said Charles A. Jacobs and David Jacobs control the acts and practices of Thermochemical Products, Inc., as agents for the individual respondents, Jeannette Vine and Beatrice Freeman Jacobs (CX 187; Tr. 1690-91, 2194).

4. The gross business of respondent Thermochemical Products, Inc., for the year ending October 31, 1967, amounted to approximately \$2,000,000 (Tr. 1967).

5. The respondent, Walmart Discount Corporation, is a corporation organized under the laws of the State of New York on December 17, 1964 (Glantz, Tr. 1932). No stock has been issued by Walmart Discount Corporation, and no capital stock paid in. There are no directors, and the only officer is Bruce Mund, who is acting as secretary (Glantz, Tr. 1933; Mund, Tr. 1812). Walmart Discount Corporation had no bank account until November 18, 1965 (Mund, Tr. 1874).

6. Thermochemical Products, Inc., along with the individual respondents named herein and above referred to, is now, and for some time last past has been, engaged in the offering for sale, sale, and distribution of paints and coatings to dealers for resale to the public under the trade names, among others, of "Aqua-Chek," "Permalume," "Vivilume," and "Vin-L-Brush-On" (Answer, Par. 2; CX 133A and 133B).

7. Prior to the formation of Thermochemical Products, Inc., the respondents, Charles A. Jacobs and David Jacobs, were engaged in the offering for sale, sale, and distribution of paints and coatings under the corporate names of Ohmlac Painting and Re-

fining Company, Inc., Sterling Materials Company, Inc., and Carbozite Coatings, Inc., and their sales methods were similar to those now used by Thermochemical Products, Inc. The Federal Trade Commission entered an order against the said Charles A. Jacobs and David Jacobs, and the three corporations named in the preceding sentence, directing the respondents to cease and desist from certain practices found therein to be deceptive (Docket No. 6426, 52 F.T.C. 909; Jacobs, Tr. 2229). A civil penalty proceeding was brought against said respondents in Docket No. 6426 for violation of the order entered therein, which resulted in a consent judgment for \$28,000 against the said respondents (CX 129 and 130).

8. In the course and conduct of its business, Thermochemical Products, Inc., and the individual respondents now cause, and for some time last past have caused, their said products, when sold, to be shipped and transported from their place of business in the State of New York, or from the place where such products are manufactured in the State of New Jersey, to purchasers thereof located in various other States of the United States, and maintain, and at all times herein mentioned have maintained, a substantial course of trade in said products in commerce (Answer, Par. 3).

9. In the conduct of its business, the corporate respondent, Thermochemical Products, Inc., has been in substantial competition, in commerce, with corporations, firms, and individuals in the sale of products of the same general kind and nature as that sold by respondents (Answer, Par. 6).

10. The charging allegations of the complaint allege, among other things, that:

In the course and conduct of the business of Thermochemical Products, Inc., the respondents have operated, and continue to operate, a sales plan by means of which they secure dealers for the sale and distribution of their products to the purchasing public. These dealers are solicited and secured by salesmen employed by respondents, such salesmen having been selected and trained by respondents for this purpose. The primary function of these salesmen is to establish said dealerships and obtain orders for the products of Thermochemical Products, Inc., by means of written contracts or so-called "Special Dealership Agreements" with which is combined an initial order for one of respondents' products. This Special Dealership Agreement purports to assign to the said dealer a particular territory within which the dealer may op-

erate and sell respondents' products. The dealer has the option of paying for the merchandise purchased within a specified time, usually ten days, or of paying the amount in installments, usually by executing three trade acceptances which are immediately transferred to a finance or discount company.

11. The complaint further alleges that it is the respondents' usual practice to follow up this original transaction within a few weeks by having another salesman, called a "back man," visit the dealer and, using the same or similar representations as the first salesman, attempt to sell the dealer an order for a product similar to that purchased by the dealer from the first salesman, but under a different trade name.

12. The complaint further alleges that, during the course of the sales presentations by respondents' salesmen, said salesmen use physical demonstrations to portray the water repellent properties of the particular product being sold. The equipment for these demonstrations is supplied to the salesmen by the respondents. When the product is delivered to, and received by, the dealer, it is generally different from that used by the salesmen in the demonstrations, and the dealer cannot perform the same demonstration with the product as did the salesmen.

13. The complaint further alleges that, in the course and conduct of their business, and for the purpose of inducing the sales of their products, respondents have made certain statements and representations to prospective dealers, by and through oral statements of their salesmen and representatives and by means of brochures and other written and printed material, directly or by implication; and that, typical and illustrative, but not all inclusive, of said statements and representations, are the following:

(a) That the respondent Thermochemical Products, Inc., is a subsidiary of, a division of or is affiliated with Union Carbide Company, General Electric Company or Aluminum Company of America; whereas, in truth and in fact, respondent Thermochemical Products, Inc., is not a subsidiary of, a division of or is not affiliated with Union Carbide Company, General Electric Company, Aluminum Company of America or any other corporation.

(b) That the products of the said corporate respondent are manufactured, or have been developed, by one of the aforesaid companies; whereas, in truth and in fact, the products of the corporate respondent Thermochemical Products, Inc., are neither manufactured nor developed by any one of said companies, although one of the ingredients in said products may have been

manufactured by one or the other of said corporations and is placed in combination by the respondents with other ingredients not manufactured by such company.

(c) That products sold by the respondents are unconditionally guaranteed for five or ten years as the case may be; whereas, in truth and in fact, the products sold by the respondents are only guaranteed in a limited way and not unconditionally.

(d) That respondents' dealers will realize various profits up to \$18,000 per year from the resale of respondents' products; whereas, in truth and in fact, few, if any, dealers earn \$18,000 per year from the resale of respondents' products or whatever lesser amount was represented to them at the time of the purchase and in many cases make no profit at all, but sustain a substantial loss.

(e) That the respondents' dealers may return to the respondents any merchandise that is not sold or that the respondents will transfer it to another dealer; whereas, in truth and in fact, respondents seldom, if ever, permit the return of unsold merchandise or transfer such merchandise to other dealers.

(f) That respondents' products are waterproof; whereas, in truth and in fact, respondents' products are not waterproof but only water repellent.

(g) That respondents' products are suitable for both inside and outside of a building; whereas, in truth and in fact, respondents' products are not suitable for use on the inside of a structure.

(h) That a survey has been made of the territory in which the prospective dealer is located, prior to the visit of the respondents' salesman to the dealer; whereas, in truth and in fact, no survey has ever been made of the territory in which the prospective dealer is located for the purpose of ascertaining the potential sales within that territory.

(i) That one coat of any of respondents' products will be sufficient to cover the surface to be painted; whereas, in truth and in fact, one coat of any of respondents' products is not sufficient to cover the surface to be painted.

(j) That respondents will assist the dealer in making sales by sending a representative to contact prospective customers of the dealer, by erecting billboards for display, by furnishing newspaper mats for the use of the dealer free of charge and by preparing suitable mailings on the dealer's letterhead which are to be

sent to prospective customers of the dealer; whereas, in truth and in fact, respondents do not assist the dealer in making sales either by sending a representative to contact prospective customers of the dealers, by erecting billboards and other displays, by furnishing newspaper mats for the use of the dealer free of charge, or by preparing suitable mailings on the dealer's letterhead.

14. The complaint further alleges that, when trade acceptances are taken in payment of merchandise purchased from respondents, the trade acceptances are discounted with Ambassador Factors Corporation or some other discount company which claims to be a holder in due course; and, when the discount company or factor attempts to enforce payment of such trade acceptances, and the dealer claims that the purchase of corporate respondent's product and the execution of the trade acceptances were obtained by misrepresentation, the finance company or factor asserts that it is a holder in due course and not subject to such a defense.

15. The complaint further alleges that, after a default in the payment of such trade acceptances, the same are assigned to the respondent, Walmart Discount Corporation, which company brings suit in its name, alleging that it is an assignee of a holder in due course and therefore entitled to all the rights of a holder in due course; that, in truth and in fact, said Walmart Discount Corporation is a wholly owned subsidiary of the respondents, so that the effect of such assignment is the same as if the paper had been assigned to the other corporate respondent, the original holder thereof; that the fact of assignment to Walmart Discount Corporation and the bringing of suit in its name as assignee has had, and now has, the tendency and capacity to mislead and deceive dealers against whom suits are brought into the erroneous and mistaken belief that the said representations and implications are true and to induce the said dealers to refrain from asserting defenses which they may have against the respondents and to make payments which they might otherwise not have made.

16. The complaint further alleges that the use by the respondents of the aforesaid false, deceptive and misleading statements and representations with respect to their products and the status of Walmart Discount Corporation has had, and now has, the capacity and tendency to mislead and deceive a substantial number of their said dealers, as well as members of the purchasing public, into the erroneous and mistaken belief that such statements and representations were true and to cause substantial numbers of said dealers and members of the purchasing public to purchase

substantial quantities of respondents' products because of such erroneous and mistaken belief; and that the aforesaid acts and practices of respondents were and are to the prejudice and injury of the public and of respondents' competitors and 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.

17. To establish the allegations of the complaint, especially with respect to the allegedly false representations made by respondents' salesmen to prospective dealers for the resale of respondents' products, complaint counsel offered the testimony of approximately 40 persons engaged in various types of retail businesses, who had been personally solicited by respondents' salesmen to purchase respondents' products and become local retail dealers therefor. It is the allegedly false, deceptive, and misleading statements and representations made by respondents' salesmen to these prospective dealers which constitute a substantial portion of the testimony offered by complaint counsel to establish the violations of Section 5 of the Federal Trade Commission Act alleged in the complaint. The evidence shows that respondents' salesmen called on and solicited prospective dealers among persons who operated retail businesses in various sections of the United States. At hearings held in California, 11 residents of that State testified concerning representations made to them by respondents' salesmen. In addition to the testimony of these 11 operators of businesses, two investigators from the District Attorney's office in Santa Clara County testified at the hearings held in San Francisco concerning representations made to them by salesmen for Thermochemical Products, Inc. (Howard B. Hamilton, Tr. 655-703; William D. Reed, Tr. 704-717). Ten witnesses testified at hearings held in Chicago, Ill., including three witnesses who resided in Ohio, two in Michigan, two in Indiana, one in Wisconsin, and two in Illinois. Eleven persons who resided in various sections of Texas testified at hearings held in Houston, Texas. Six persons who resided in North Carolina testified at hearings held in Greensboro, North Carolina. Two persons who resided in Pennsylvania and two from New York State testified at hearings held in New York, N.Y., concerning representations made to them by respondents' salesmen, along with other witnesses who testified on other phases of the case, including employees of respondents and the individual respondents. The testimony of each of these witnesses will not be discussed separately in this decision.

The discussion will be limited to a representative number who testified at hearings in various sections of the country, and whose testimony clearly shows a pattern of the types of representations made by respondents' salesmen to prospective dealers.

18. The first witness who testified was Mr. Paul Mauerhan, a master plumber, of Glendale, California. Mr. Mauerhan testified as follows: On April 24, 1967, pursuant to an appointment made by telephone, Mr. Mike Evans and an associate (whose name Mr. Mauerhan did not remember), representing the corporate respondent, Thermochemical Products, Inc., called at the office of Mr. Mauerhan's plumbing business, Mauerhan Plumbing, Inc., in Glendale, California, for the announced purpose of demonstrating Thermochemical's paint products and to set Mr. Mauerhan and his company up as a distributor of said products (Tr. 72, 74; CX 1 and 2). Mr. Evans proceeded to demonstrate one of Thermochemical's products, called "Aqua-Chek" (CX 1). Mr. Evans stated that the silicones contained in the paint were a product of General Electric Company (Tr. 86). Mr. Evans stated that the product was guaranteed for five years on outside use and for ten years when used inside. In Mr. Mauerhan's presence, Mr. Evans applied a clear liquid material to a brick, which caused the brick to appear to Mr. Mauerhan to be made waterproof. This clear liquid material was contained in a can bearing the name, Thermochemical, and which Mr. Evans had brought with him. Mr. Mauerhan asked Mr. Evans for a sample of the liquid material, but Mr. Evans stated that he was out of samples, as well as brochures. Mr. Evans then exhibited a piece of screen, and stated that he had put one coat of Aqua-Chek on the screen. The material on the screen had a high gloss, was very thick and flexible. Mr. Evans also produced a thin piece of metal on which the Aqua-Chek paint had been placed, and which, when twisted back and forth, the paint stayed on "beautifully," and which Mr. Evans stated was scratch-resistant. Mr. Mauerhan removed a key from his key chain and attempted to "scratch it, but it wouldn't scratch. It was a very tough—it was really an excellent material" (Tr. 75-76). Mr. Evans also produced an asphalt shingle which he stated was coated with this material and would stand up to 500 degrees in temperature. As a result of the demonstration, Mr. Mauerhan executed what is denominated as a "SPECIAL DEALERSHIP AGREEMENT," dated April 24, 1967 (CX 1), by which, among other things, Mauerhan Plumbing, Inc., purchased \$982.80 worth of Aqua-Chek from corporate respondent, Thermochemical Prod-

ucts, Inc. In payment therefor, Mr. Mauerhan executed three trade acceptances due June 10, July 10, and August 10, 1967, respectively.

19. After receipt and delivery of the Aqua-Chek paint purchased from Thermochemical Products, Inc., and also sample cans of the product, Mr. Mauerhan decided to perform some tests of his own on the Aqua-Chek paint. He placed a coating of the colored Aqua-Chek on a piece of screen and found that it was entirely different from the product on the screen which Mr. Evans demonstrated to Mr. Mauerhan. The Aqua-Chek which Mr. Mauerhan applied on the screen was received in evidence as CX 3. Mr. Mauerhan further testified that he placed some of the Aqua-Chek on a piece of tile and it flaked off like chalk (CX 4). Mr. Mauerhan applied some of the Aqua-Chek to a piece of metal and it also flaked off like chalk (CX 6). Mr. Mauerhan testified that Mr. Evans told him that the Aqua-Chek paint would be ideal for "painting showers, waterproofing and painting and resurfacing showers" (Tr. 94). Mr. Mauerhan stated that the Aqua-Chek finish would not hold up for a period of five years and be water-resistant. Mr. Mauerhan described CX 5, which is a piece of plywood. Mr. Mauerhan testified that he applied two coats of Aqua-Chek to this piece of plywood as a test to verify whether or not it would be waterproof. After applying the first coat of Aqua-Chek, he waited twenty-four hours before applying the second coat. Mr. Mauerhan then "put it in water and it took on water like a piece of wood that was uncoated" (Tr. 96). Mr. Mauerhan testified that he applied two different colors of Aqua-Chek paint on the piece of galvanized metal (CX 6), in order to see how it would stay on a galvanized surface and how it would stand up to exterior use (Tr. 97-98). Mr. Mauerhan further testified that Mr. Evans stated that only one coat of Aqua-Chek would be required, and that there was no necessity for an undercoating or primer (Tr. 101). Mr. Mauerhan further stated that Mr. Evans promised, among other things, that, after the Aqua-Chek paint was delivered, Thermochemical Products, Inc., would send a person to assist in getting sales started, but that no one ever appeared. Contrary to the statement of Mr. Evans that only one coat of Aqua-Chek was necessary, the cans containing the Aqua-Chek paint, which were delivered to Mr. Mauerhan, had labels bearing directions which specified that an undercoat was required on some of the Aqua-Chek and some might require two coats of Aqua-Chek (Tr. 102).

20. On cross-examination, Mr. Mauerhan testified, among other things, that: After thirty years in the plumbing business, he knows "whether a material is going to stay on a shower for a reasonable amount of time or not" (Tr. 112). The scratch marks on CX 4 occurred after the paint had dried. Mr. Mauerhan was able to scratch it off with his fingernails. It was not necessary to use a key to scratch the paint, as was done in the case of the piece of metal produced by Mr. Evans (Tr. 112, 113). Unlike the Aqua-Chek which Mr. Mauerhan applied to the piece of galvanized metal (CX 6) and the wire screen (CX 3), the piece of metal which Mr. Evans demonstrated to Mr. Mauerhan contained a substance which clung to the metal. It was very elastic and would stretch with vigorous bending. Mr. Mauerhan testified that he "bent it politely," but that Mr. Evans bent it vigorously. "He had it in the screen and he [Mr. Evans] bent the screen vigorously" (Tr. 115).

21. As a result of the tests which Mr. Mauerhan made from the samples of Aqua-Chek, he refused to pay the trade acceptances, which had been assigned by Thermochemical Products, Inc., to Commercial Progress Corporation, a factoring concern. Mr. Mauerhan did not sell any of the Aqua-Chek paint, and it remained in his possession at the time of the hearing (Tr. 139).

22. Another witness, who testified at the hearing in Los Angeles, California, was Mr. Bryce Lee Long, a manufacturer of cement piers and screw jacks which are used to help support trailer or mobile homes. Mr. Long's plant is located in Orange, California. Mr. Long testified as follows: On February 1, 1967, pursuant to a telephone call made the previous day, a Mr. Winn called on Mr. Long to demonstrate "Permalume" paint. Mr. Winn stated that he was a representative of Thermochemical Products, Inc., and was interested in having Mr. Long become a dealer for its products (Tr. 322-25). Mr. Winn then proceeded to demonstrate the effectiveness of Permalume paint. Mr. Winn produced a sieve or screen which had been painted with Permalume, blew smoke through it, and then poured water on the screen and the screen retained the water. Mr. Winn also produced a spoon which had a split down the center. Mr. Winn then poured water into the spoon, and the spoon held the water (Tr. 326). Mr. Winn stated that he would sell Mr. Long the Permalume paint for \$8 per gallon, which Mr. Long could resell at a price of \$13 per gallon, and that Mr. Long could sell approximately 400 to 500 gallons per month. Mr. Winn stated that Permalume carried a regular guar-

antee for ten years, was very durable, and that one coat was sufficient to cover anything, metal, wood, cement, exterior and interior. Mr. Winn further stated that he would return in two weeks after delivery of the Permalume paint and render sales assistance to Mr. Long. However, he did not return (Tr. 327). As a result of Mr. Winn's demonstration, Mr. Long executed a Special Dealership Agreement, dated February 1, 1967 (CX 27), whereby, among other things, Mr. Long purchased \$737.10 worth of Permalume paint from Thermochemical Products, Inc., and became a so-called dealer for its products.

23. About two weeks later, on or about February 14, 1967, but before delivery of the above order for Permalume paint from Thermochemical Products, Inc., a second representative of Thermochemical Products, Inc., called on Mr. Long for the purpose of selling him an order for one of Thermochemical's other products, Aqua-Chek paint. The name of this representative was Mr. Durbin. Mr. Long stated that Dr. Durbin told him that Aqua-Chek paint was completely waterproof for swimming pools; that for the colored Aqua-Chek, Thermochemical Products, Inc., would give a five-year guarantee, and for the clear Aqua-Chek, a ten-year guarantee; that one coat of Aqua-Chek was adequate for waterproofing any "cement, buildings, swimming pools, or whatever"; and that he (Mr. Long) could return any unsold portion of the Aqua-Chek to Thermochemical Products, Inc. As a result of this visit, Mr. Long signed an order for \$501.00 worth of Aqua-Chek paint (CX 24), agreeing to send his check for \$200.00 in a few days, and the balance payable in three trade acceptances (Tr. 329-332). Mr. Long further testified that: After receiving the shipment of Permalume paint, he made a long distance telephone call and wrote several letters to Thermochemical Products, Inc., requesting sales assistance as Mr. Winn had promised during his sales demonstration on February 1, 1967 (Tr. 333, 368). Finally, Mr. Long received a sales kit (CX 25) from Thermochemical Products, Inc., but the material contained in this sales kit was different and bore no resemblance to the materials used by Mr. Winn in his demonstration (Tr. 333-35). Mr. Long sold one gallon of the Permalume paint, but had to refund the purchase price to the purchaser (Tr. 371). Mr. Long employed a professional painter to assist him in making some practical tests of the Permalume paint which he had purchased from Thermochemical

Products, Inc. (Tr. 336-38). Mr. Long testified that he took a piece of plywood, cleaned and sanded it, and then applied one coat each of the nine colors of Permalume paint to the piece of plywood, approximately 30 inches long and 8 inches wide, marked and received in evidence as CX 27 (Tr. 339). Two coats of the rose-colored Permalume were applied to the plywood strip, CX 27 (Tr. 340-41). Mr. Long further testified that the colors of the Permalume paint shown on CX 27 are entirely different from the colors of the paint shown to Mr. Long by Mr. Winn during his demonstration (Tr. 341-342). After these tests, Mr. Long wrote a letter to Thermochemical Products, Inc., requesting that it send a representative to visit him as Mr. Winn had originally promised, and stating that, until this was done, Mr. Long would not make any further payment on the trade acceptances. Mr. Long further testified that one coat of the Permalume paint was not sufficient, would not cover, that it streaked, and that the colors were not the same as represented and demonstrated by Mr. Winn (Tr. 344). Mr. Long further stated that Thermochemical Products, Inc., did not ever send the demonstration kit promised by Mr. Winn, which included the strainer Mr. Winn had promised to waterproof and send to Mr. Long for use in demonstrations, together with the spoon and a kit to demonstrate how the Permalume paint was resistant to acid (Tr. 369).

24. A witness who testified in support of the complaint at a session of the hearings held in San Francisco, California, was Mrs. Jean Hixson who, with her husband, Karl Hixson, owns and operates Karl's Radiator Repair Shop in Mountain View, California (Tr. 403-404). Mrs. Hixson testified as follows: On March 20, 1967, a representative of respondent Thermochemical Products, Inc., a Mr. DeLucia, called at their radiator repair shop for the purpose of demonstrating and selling them an order for Aqua-Chek, one of corporate respondent's paint products. Mr. DeLucia stated that Aqua-Chek was a masonry paint that could be used inside and outside, on wood, cement floors, driveways, swimming pools, stucco, and brick (Tr. 405, 412). Mr. DeLucia had with him a satchel which contained, among other things, pieces of brick and cinderblock, aspirin tablets, ink, and a piece of aluminum which had been painted with different colors of paint (Tr. 405-406). Mr. DeLucia then made a demonstration by placing the piece of painted aluminum in muriatic acid to show that the acid would not affect the paint. Mr. DeLucia then produced a piece of cinderblock, half of it

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painted with paint and half not, and he put some drops of ink on the one side which had been painted and the ink just beaded up. It didn't sink in at all. The other side, it sunk right into the brick (Tr. 406).

Mr. DeLucia next

put an aspirin in a cup of water that had been treated with this silicone, and it didn't dissolve, and an aspirin that hadn't been treated and which that dissolved (Tr. 406).

Mr. DeLucia also

put a tissuepaper over the piece of aluminum that was painted and put a cigarette on it and it didn't even burn the paper so—it was on top of the painted material.

\*\*\* Then he put some powder \*\*\* in a cup of water and stuck his finger down in it and it come down absolutely dry. And in the cup that didn't have it in and, of course, the finger was wet (Tr. 406).

Mr. DeLucia stated that the paint was guaranteed for ten years on the "inside and five on the outside" (Tr. 407). As a result of the demonstration, Mrs. Hixson purchased \$982.80 worth of Aqua-Chek paint and executed a Special Dealership Agreement, dated March 20, 1967, a copy of which was received in evidence as CX 28. The \$982.80 was to be paid in four monthly installments (Tr. 409; CX 28).

25. Mrs. Hixson testified that, after receiving shipment of the paint, she and her husband decided to paint their cement garage floor with the Aqua-Chek. She testified that they cleaned and scrubbed the floor with muriatic acid, a strong solution which they use in cleaning radiators (Tr. 407), and applied the clear Aqua-Chek to the cement garage floor. Mrs. Hixson was interested in preventing grease from sinking into the cement garage floor. After the clear Aqua-Chek had been applied to the floor and had dried, she and her husband poured some oil or grease on it "to see if it would wipe up, and it just smeared on there like there was nothing on the floor" (Tr. 412). After this, Mrs. Hixson, by letter and long distance telephone to Thermochemical Products, Inc., attempted to return the paint (Tr. 412; CX 29 and 30). Thermochemical Products, Inc., refused to accept return of the paint. Mrs. Hixson testified that she gave two quarts of the Aqua-Chek paint to a customer with which to paint some cement work around his place, and which he was to pay for later and probably purchase additional paint. The customer applied the Aqua-Chek paint, but it chipped and washed off and the customer refused to pay for it or to purchase any additional Aqua-Chek paint (Tr. 413-16). In spite of the representations of corporate

respondent's salesman, Mr. DeLucia, that the Aqua-Chek paint was appropriate to be used on cement floors and swimming pools, corporate respondent's letter to Karl's Radiator Repair Shop (CX 30) contradicts the representations of its salesman, Mr. DeLucia, and states, among other things, that Aqua-Chek is not suitable for use in swimming pools or on concrete floors.

26. Mr. C. L. Sweigart, operator of C. L. Sweigart Company, a machine shop, located in San Jose, California, was another witness who testified at the hearing in San Francisco, California. Mr. Sweigart testified as follows: In January 1967, he received a telephone call from a person who gave her name as Mrs. Johnson, who told Mr. Sweigart that she had a new product on the market, a clear plastic coating that would stick to glass, metal, wood, in fact, anything, without any necessary preparation beforehand; that it was rich in General Electric silicones; that Thermochemical Products, Inc., had the exclusive right in the United States to use such silicones in this product; and that Thermochemical Products, Inc., wanted to place this product in Mr. Sweigart's machine shop. Mrs. Johnson further told Mr. Sweigart that he would receive approximately \$4,000 a year extra profit for his machine shop by selling Thermochemical's product. On the following day, January 21, 1976 (CX 31), Mr. Mike Evans, Regional Franchise Director for Thermochemical Products, Inc., called on Mr. Sweigart and demonstrated Thermochemical's product, Aqua-Chek (Tr. 456-59). Mr. Evans told Mr. Sweigart that Aqua-Chek was blisterproof, heat-resistant, and would waterproof just about anything; that it was superior to "Rustoleum" and to duPont's "Lucite." Mr. Evans demonstrated the use of Aqua-Chek by applying Aqua-Chek to one-half of a brick and pouring water over it. The part of the brick that had been treated with Aqua-Chek "shed" the water, made it "waterproof," and the part of the brick that had not been treated with Aqua-Chek absorbed the water (Tr. 460). Mr. Evans then placed some silicones in a glass of water and directed Mr. Sweigart to put his "finger in the water and see how the silicones made it waterproof." Mr. Evans had a piece of metal, supposedly treated with Aqua-Chek, which he bent and scratched to show "me how superior this Aqua-Chek was." Mr. Evans told Mr. Sweigart that Aqua-Chek was to be used anywhere "for waterproofing or color to make the appearance of any building more beautiful"; that it could be used inside and outside; and that no preparation was needed before application (Tr. 461). Mr. Evans also told Mr. Sweigart that one coat of Aqua-Chek

was usually sufficient (Tr. 462). As a result of the demonstration, Mr. Sweigart executed a Special Dealership Agreement (CX 32), in which he purchased \$982.80 worth of Aqua-Chek paint, payable in the form of three trade acceptances which he executed for \$327.60 each, payable 45, 75, and 105 days after date thereof.

27. On or about February 9, 1967, but before delivery to Mr. Sweigart of the \$982.80 worth of Aqua-Chek paint which Mr. Sweigart purchased on January 21, 1967, another representative of Thermochemical Products, Inc., a Mr. Durbin, telephoned Mr. Sweigart and stated that he wished to visit him. Mr. Durbin visited Mr. Sweigart's machine shop and sought to interest Mr. Sweigart in purchasing another product of Thermochemical Products, Inc., called "Permalume." Mr. Durbin stated that Permalume was a superior automotive finish; that it was used on General Motors' Cadillacs; and that Ford also used it, and would probably use it entirely in their Lincoln line. Mr. Durbin stated that Permalume would "stay in 1165 degrees," and that the product was guaranteed for ten years due to the superior quality of the pigments, which were imported from Germany (Tr. 465). Mr. Durbin also told Mr. Sweigart that, if Mr. Sweigart became a dealer, Mr. Durbin would give Mr. Sweigart an exclusive franchise for Santa Clara County, and that Mr. Sweigart could expect about 1,000 gallons a month in sales. Mr. Sweigart signed a purchase order, dated February 9, 1967, for \$962.20 worth of Permalume paint, for which he gave his check for \$350 as a down-payment.

28. Mr. Sweigart further testified that: After receiving delivery of the Aqua-Chek paint, he attempted to make the tissuepaper test which had been demonstrated to him by Mr. Evans, but it "leaked right through there like a sieve" (Tr. 468). Mr. Sweigart also applied the Aqua-Chek paint to a piece of metal which he had first prepared by cleaning with a wire brush, emery cloth, and steel wool. Mr. Sweigart then applied one coat of Aqua-Chek to the piece of metal. After application, Mr. Sweigart was able to "peel it off" (Tr. 469).

29. Mr. Hugh W. Silsby, operator of the Silsby Implement Company, a seller of farm implements, of Mason, Michigan, was one of the witnesses who testified at a session of the hearings held in Chicago, Illinois. Mr. Silsby testified as follows: In January 1967, Mr. Silsby was called on the telephone by a person, ostensibly from New York, N.Y., who asked Mr. Silsby if he was interested in a business proposition on a new product (Tr.

781-82). Later, a man by the name of Mr. Andre, accompanied by another person, called on Mr. Silsby and stated that they were representatives of Thermochemical Products, Inc. Mr. Andre made a demonstration of one of Thermochemical's paint products, Aqua-Chek. Mr. Andre produced a spray can which he represented as containing a clear silicone paint, which he sprayed on Mr. Silsby's shoes, the threshold entrance to the store, a cement slab in front, a brick, and on a tile block on the adjoining building. After the paint had dried on each of these items, Mr. Andre then poured water over them and "the water beaded up and rolled off." Mr. Andre then produced a piece of flexible metal, which he stated had been coated with Aqua-Chek and on which he poured battery acid. Mr. Andre also poured the battery acid on the metal cover of a can, to which he then applied the heat from an acetylene torch. The heat from the torch did not mar the surface of the flexible piece of metal coated with Aqua-Chek; it boiled away the acid, but the Aqua-Chek coating remained on the flexible piece of metal. However, the heat from the torch boiled away the acid from the can cover, but discolored the surface of the can cover. Mr. Andre also produced two pieces of Kleenex. On one of the pieces, he sprayed the Aqua-Chek, and then allowed the Aqua-Chek to dry. He next poured water on each piece of Kleenex; the water did not pass through the piece of Kleenex which had been sprayed with the Aqua-Chek, but the water ran through the piece which had not been sprayed (Tr. 785-86). Mr. Andre represented to Mr. Silsby that Aqua-Chek was available in spray cans and would be helpful and useful in the home. For example, he stated that spraying Aqua-Chek on window drapery materials exposed to the sunlight would prevent their discoloration, and, when sprayed on furniture, would impregnate it against soiling. Mr. Andre also stated that Thermochemical Products, Inc., had a "practically unlimited warranty or guarantee"; that Aqua-Chek was a new product and could be applied on any material; and that one coat would be sufficient (Tr. 787-88). As a result of the demonstration and sales presentation by Mr. Andre, Mr. Silsby signed a Special Dealership Agreement, dated January 12, 1967, in which he agreed, among other things, to become a dealer for Aqua-Chek, and purchased \$591.60 worth of Aqua-Chek, for which he gave his check for \$147, with the balance payable in the form of three trade acceptances which he executed, due on or before 60, 90, and 120 days after date thereof (Tr. 795; CX 60). Mr. Andre stated that it would be possible for

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Mr. Silsby to "increase our profit by four to five thousand dollars very easily" (Tr. 789).

30. After delivery of the Aqua-Chek, Mr. Silsby applied some of the clear Aqua-Chek from a can to his daughter's snow boots for the purpose of stopping the boots from leaking; however, the Aqua-Chek did not stop the boots from leaking. Later, another person, who stated that he was a representative of Thermochemical Products, Inc., called on Mr. Silsby. This person stated that he was not a salesman, but had been instructed to ascertain if Mr. Silsby wanted another Thermochemical product on a limited basis, because the production was not very great (Tr. 788). Mr. Silsby informed the representative of the failure of the Aqua-Chek to stop his daughter's snow boots from leaking, and the representative told Mr. Silsby that his daughter had worn the snow boots too soon after application of the Aqua-Chek, and that more than an overnight period was necessary for the Aqua-Chek to form crystals and dry (Tr. 789). The representative of Thermochemical Products, Inc., wrote up a tentative order for the new type of paint which they had discussed, but Mr. Silsby did not sign the order at that time. He intended to discuss it with his brother, a partner with him in the implement business, before signing the purchase order (Tr. 790). Following the instructions of the second Thermochemical representative, Mr. Silsby applied the clear Aqua-Chek to his daughter's snow boots on a Friday evening and his daughter did not wear the boots until the following Monday morning; however, the boots still leaked at that time (Tr. 789). Mr. Silsby telephoned the secretary of a trade association to which he belonged, Farm & Power Equipment Association, and inquired about Thermochemical Products, Inc. (Tr. 791). As a result of this inquiry, Mr. Silsby telephoned the office of Thermochemical Products, Inc., in New York City, and attempted to cancel the \$591.60 order for Aqua-Chek paint. It was finally agreed that Mr. Silsby should pay \$200, keep the paint, and corporate respondent returned the three trade acceptances which Mr. Silsby had executed. At the time of the hearing, Mr. Silsby had not sold any of the paint.

31. Another witness, who testified at the hearing in Chicago, Illinois, was Mr. Richard D. Small, operator of a service station in Michigan City, Michigan. Mr. Small testified as follows: In January 1967, a person called him on the telephone, telling Mr. Small that he was a representative of Thermochemical Products, Inc., in New York, N.Y.; that Thermochemical Products, Inc.,

had just discovered and was placing on the market a new protective coating, and inquired if Mr. Small was interested in seeing a demonstration of the product. Subsequently, a man appeared, stating that he was the representative of Thermochemical Products, Inc., and proceeded to demonstrate the use of his company's product, Aqua-Chek, with a clear color, from an aerosol spray can. The representative sprayed some of the contents from the can on a piece of wood, a piece of metal, and a paper napkin. He poured water on these articles that had been sprayed with the Aqua-Chek to show how the Aqua-Chek repelled water. The representative stated that the Aqua-Chek would last for ten years, and that one coat would be sufficient to cover (Tr. 881-884, 888). Mr. Small inquired from the representative if the Aqua-Chek came in different colors, and the representative went to his automobile and returned with a can of paint. With paint from this can, the representative painted a piece of wood which Mr. Small had in his service station. This paint was a rose color and looked very well (Tr. 885). As a result of this demonstration, Mr. Small executed a Special Dealership Agreement on the form produced by the representative, dated January 23, 1967 (CX 73). Mr. Small did not remember the name of the representative, but CX 73 bears the signature of M. Andre as the representative of Thermochemical Products, Inc. According to the terms of CX 73, Mr. Small purchased \$819 worth of Aqua-Chek, and executed three trade acceptances for the balance due in payment therefor. After the Aqua-Chek was delivered, Mr. Small painted a wooden cabinet in his service station with some of the Aqua-Chek. On the following day, after the Aqua-Chek had completely dried, Mr. Small moistened a rag with water and rubbed it on the wooden cabinet which he had painted with the Aqua-Chek. The paint washed off (Tr. 887). Mr. Small then employed an attorney who arranged with the "company" to return the trade acceptances to him (Tr. 888).

32. Mr. T. E. Reese, a partner with Mr. Robert C. Maynard, in the operation of Metal Forms Company, a metal stampings business, of Grand Prairie, Texas, was one of the witnesses who testified at the hearing held in Houston, Texas. Mr. Reese testified as follows: In September 1965, he received a telephone call from a Mr. Wichita, who stated that he represented Thermochemical Products, Inc., and that Metal Forms Company was one of two companies that had been chosen from the Dallas area to be representatives of Thermochemical's product, Aqua-Chek. Subse-

quently, Mr. Wichita visited the place of business of Metal Forms Company in Grand Prairie, and made the representations complained about (Tr. 1243-45). Mr. Wichita stated that Thermochemical Products, Inc., was a part of the General Electric Company organization and used General Electric silicones in its paint products. These representations were the primary reasons Mr. Reese became interested in the Aqua-Chek paint. Mr. Wichita produced some brochures containing, among other things, a picture of an atomic submarine that had been painted with Aqua-Chek, and pictures of houses, with one-half of the house painted with Aqua-Chek and the other half unpainted, and portions of haydite brick construction painted with Aqua-Chek and portions not painted (Tr. 1249). Mr. Wichita described Aqua-Chek "as a water repellent paint-waterproof paint" (Tr. 1245); that Aqua-Chek could be used on metal surfaces for waterproofing, for painting on wooden surfaces, house eaves to waterproof them, to paint on concrete brick, haydite brick to waterproof, or to make it water-resistant, and for cellars (Tr. 1264). Mr. Wichita had with him a box or kit which contained bricks, a tea strainer, a bottle of Aqua-Chek, and bottles containing silicones and chemicals used in the Aqua-Chek paint to make it waterproof. Mr. Wichita then took two pieces of the firebrick, one of which he placed in water, and the brick absorbed the water. Mr. Wichita then painted the other brick with Aqua-Chek. After allowing the Aqua-Chek to dry for approximately three to five minutes, Mr. Wichita placed the brick in water, and "the brick would float, completely dry" (Tr. 1251). Mr. Wichita painted the brick in Mr. Reese's presence. Mr. Reese further testified that Mr. Wichita also showed me a tea strainer where you could paint this coating on the tea strainer then let it completely dry and it would hold water. He also showed me the paint on a Kleenex would make it water tight, where it would hold together, it would not leak out (Tr. 1251).

Mr. Wichita also "put some material on his finger and stuck it in a container, put it in a glass of water, when it came out it was dry" (Tr. 1252). Mr. Wichita told Mr. Reese that this material was a powdered silicone (Tr. 1252). As a result of the demonstration, Mr. Reese purchased \$942.30 worth of Aqua-Chek paint, and executed a Special Dealership Agreement, dated September 9, 1965 (Tr. 1253; CX 102). Simultaneously, Mr. Reese executed three trade acceptances for a portion of the purchase price (Tr. 1255). Mr. Wichita further told Mr. Reese that, if he could not resell the Aqua-Chek paint, Mr. Reese could return it to Thermo-

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chemical Products, Inc., and Thermochemical Products, Inc., could sell it to another company (Tr. 1258). Mr. Wichita further told Mr. Reese that, if his percentage return on sales was normal, Mr. Reese could expect "approximately fourteen hundred a month" in earnings (Tr. 1266-67). By the time the first and second trade acceptances, which Mr. Reese had executed, came due, the Aqua-Chek paint had not been received by Mr. Reese. Mr. Reese did not pay the first and second trade acceptances when they came due, but paid a portion and made an agreement for the remainder (Tr. 1267-68). When the Aqua-Chek paint finally arrived, Mr. Reese and his partner, Mr. Maynard, attempted to test it in the same type of demonstrations that Mr. Wichita had used, but Mr. Reese stated that their tests "were not effective, the material to us, apparently to us wasn't the same material" (Tr. 1262). Mr. Reese applied the Aqua-Chek paint to firebrick, letting it dry

a couple of minutes, three minutes, and on up to thirty minutes in several sequences to see what would make it work, we even soaked it in the material, it still wouldn't work. \* \* \* It still wasn't waterproof as it was demonstrated to us. We also tried the Kleenex and the tea strainer and where Aqua-Chek was used in Mr. Wichita's demonstrations (Tr. 1263).

The firebrick and the Kleenex absorbed water (Tr. 1263). Mr. Reese applied Aqua-Chek paint to a piece of screen and water would run through the screen. Mr. Reese also applied Aqua-Chek to aluminum, outside, in the weather, and the paint cracked. He also tried it on wooden surfaces, and they were not "waterproofed" (Tr. 1265). Eventually, Mr. Reese worked out an arrangement with Mr. Glantz, an attorney for the respondent, Walmart Discount Corporation, whereby Mr. Reese paid a portion of the amount of the trade acceptances in full satisfaction of the total amount thereof (Tr. 1268-1270).

33. Mr. Ben R. Fleming, Jr., operator of the Fleming Floor Covering Company, Landis, North Carolina, testified at a session of the hearings held in Greensboro, North Carolina. Mr. Fleming testified as follows: During the month of October 1964, Mr. Fleming received a telephone call from Mr. Mike Hirsch, requesting an appointment for 9 o'clock on the following morning (Tr. 1381). Mr. Hirsch stated that he was a representative of Thermochemical Products, Inc., and wished to establish Mr. Fleming as a franchised dealer in the Landis territory for Aqua-Chek paint, one of Thermochemical's products. Mr. Hirsch appeared for his appointment at the specified time. Mr. Hirsch had in his possession a

