IN THE MATTER OF

PRINCESS ANN GIRL COAT, INC., ET AL.

COMPLAINT, FINDINGS, AND ORDERS IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914, AND AN ACT OF CONGRESS APPROVED OCT. 14, 1940

Docket 5877. Complaint, May 3, 1951—Decision, Sept. 21, 1951

The use of different labels on the same product, subject to the Wool Products Labeling Act, which show conflicting fiber content information, such as a label on one place of a garment showing the content as "100 percent reprocessed wool," and another showing it as "100 percent wool," constitute false and deceptive labeling of such products in violation of said act and the rules and regulations promulgated thereunder, since the product cannot be composed entirely of reprocessed wool and wool at one and the same time.

Where a corporation and its two officers, engaged in the manufacture and introduction into commerce, and in the sale and distribution therein in commerce, of wool products as defined in the Wool Products Labeling Act—

(*a*) Misbranded certain of said products within the intent and meaning of said act and the rules and regulations promulgated thereunder in that they placed thereon conflicting fiber content information, such as labeling the garment at one place as "100 percent reprocessed wool," and at another place as "100 percent wool;" with effect of confusing the purchasing public as to the fiber content of said products; and

(*b*) Further misbranded certain of said products in that the constituent fibers and the percentages thereof, as well as the name of the manufacturer or its registered identification number, were not set out on the labels attached thereto in the manner and form required by said rules and regulations:

Held, That such acts and practices, under the circumstances set forth, were in violation of said act and the rules and regulations promulgated thereunder, were to the prejudice and injury of the public and constituted unfair and deceptive acts and practices in commerce.

Before *Mr. Earl J. Kolb*, trial examiner.

Mr. B. G. Wilson and *Mr. Carlo J. Aimone* for the Commission.

Mr. Frederick Silver, of New York City, for respondents.

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 Princess Ann Girl Coat, Inc., a corporation, Jack Horowitz and Seymour Wasserman, individually and as officers of said corporation, have violated the provisions of said acts and 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, Princess Ann Girl Coat, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York; respondent Jack Horowitz is its president and Seymour Wasserman is its secretary-treasurer. The individual respondents formulate, direct, and control the policies, acts, and practices of the corporate respondent. The office and principal place of business of both corporate respondent and individual respondents is located at 225 West Thirty-sixth Street, N. Y.

PAR. 2. Subsequent to January 1, 1949, respondents manufactured for introduction into commerce, introduced into commerce, sold, transported, distributed, delivered for shipment, and offered for sale, in commerce as "commerce" is defined in the Wool Products Labeling Act, wool products, as "wool products" are defined therein.

PAR. 3. Certain of said wool products were misbranded within the intent and meaning of the said act and the rules and regulations promulgated thereunder in that they were falsely and deceptively labeled with respect to the character and amount of their constituent fibers.

Certain of said wool products were misbranded in that they were falsely and deceptively labeled by respondents by placing on said products labels showing conflicting fiber content information. Typical of such practice is the placing of a label on garments at one place showing the content as "100 percent reprocessed wool" and another label on the same product showing the content as "100 percent wool." The use on said products of such conflicting labels has the capacity and tendency to confuse and deceive and does confuse and deceive the purchasing public as to the fiber content of said products and is in violation of the Wool Products Labeling Act and the rules and regulations promulgated thereunder.

Certain of said wool products were further misbranded in that the constituent fibers and the percentages thereof, as well as the name of the manufacturer or its registered identification number as required by said act and the rules and regulations thereunder were not set out on labels attached to such products, in the manner and form as required by the said rules and regulations.

PAR. 4. The acts and practices of respondents, as herein alleged, were in violation of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

DECISION OF THE COMMISSION

Pursuant to rule XXII of the Commission's rules of practice, and as set forth in the Commission's "Decision of the Commission and Order to File Report of Compliance," dated September 21, 1951, the initial decision in the instant matter of trial examiner Earl J. Kolb, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY EARL J. KOLB, TRIAL EXAMINER

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 on May 3, 1951, issued and subsequently served its complaint in this proceeding upon the respondents Princess Ann Girl Coat, Inc., a corporation, and Jack Horowitz and Seymour Wasserman, individually and as officers of said corporation, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of those acts. After the service of said complaint upon said respondents, a stipulation as to the facts was entered into whereby it was stipulated and agreed that a statement of facts executed by counsel supporting the complaint and counsel for respondents might be taken as the facts in this proceeding and in lieu of evidence in support of and in opposition to the charges stated in the complaint, and that such statement of facts might serve as the basis for findings as to the facts and conclusion based thereon and an order disposing of the proceeding without presentation of proposed findings and conclusions or oral argument. The stipulation further provided that upon appeal to or review by the Commission such stipulation might be set aside by the Commission and this matter remanded for further proceedings under the complaint. Thereafter, the proceeding regularly came on for final consideration by the above-named trial examiner, theretofore duly designated by the Commission, upon the complaint and stipulation as to the facts, said stipulation having been approved by said trial examiner, who, after duly considering the record herein, finds that this proceeding is in the interest of the public and makes the following findings as to the facts, conclusion drawn therefrom and order:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Princess Ann Girl Coat, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York; respondent Jack Horowitz is its president and Seymour Wasserman is its secretary-treasurer. The individual re-

spondents formulate, direct and control the policies, acts and practices of the corporate respondent. The office and principal place of business of both corporate respondent and individual respondents is located at 225 W. Thirty-sixth Street, New York, N. Y.

PAR. 2. Subsequent to January 1, 1949, respondents manufactured for introduction into commerce, introduced into commerce, sold, transported, distributed, delivered for shipment, and offered for sale, in commerce, as "commerce" is defined in the Wool Products Labeling Act, wool products, as "wool products" are defined therein.

PAR. 3. Certain of said wool products were misbranded within the intent and meaning of the said act and the rules and regulations promulgated thereunder in that they were mislabeled by respondents by placing on said products labels showing conflicting fiber content information. Typical of such practice is the placing of a label on garments at one place showing the content as "100 percent reprocessed wool" and another label on the same product showing the content as "100 percent wool." The use on said products of such conflicting labels has the capacity and tendency to confuse and does confuse the purchasing public as to the fiber content of said products.

As said products cannot be composed entirely of reprocessed wool and composed entirely of wool at one and the same time, the use of conflicting labels designating said products as being "100 percent reprocessed wool" and "100 percent wool" constitutes false and deceptive labeling of such products in violation of the Wool Products Labeling Act and the rules and regulations promulgated thereunder.

Certain of said wool products were further misbranded in that the constituent fibers and the percentages thereof, as well as the name of the manufacturer or its registered identification number as required by said act and the rules and regulations thereunder, were not set out on labels attached to such products in the manner and form required by the said rules and regulations.

CONCLUSION

The acts and practices of the respondents in the manufacture for introduction into commerce and in the sale, transportation and distribution in commerce of wool products which were misbranded, as herein found, were in violation of the provisions of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder and were to the prejudice and injury of the public and constituted unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER

It is ordered, That the respondents Princess Ann Girl Coat, Inc., a corporation, and its officers, and Jack Horowitz and Seymour Wasserman, individually and as officers of said corporation, and their respective representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction into commerce or the offering for sale, sale, or distribution in commerce, as "commerce" is defined in the aforesaid acts, of wool products, as such products are defined in and subject to the Wool Products Labeling Act of 1939, which products contain, purport to contain or in any way are represented as containing "wool," "reprocessed wool," or "reused wool," as those terms are defined in said act, do forthwith cease and desist from misbranding such products:

1. By affixing or attaching to said products labels describing fiber content, one or more of which do not clearly state the correct constituent fibers, as required by the Wool Products Labeling Act.

2. By failing to affix securely to or place on such products a stamp, tag, label, or other means of identification showing in a clear and conspicuous manner:

(*a*) The percentage of the total fiber weight of such wool product, exclusive of ornamentation not exceeding 5 percent of said total fiber weight of (1) wool, (2) reprocessed wool, (3) reused wool, (4) each fiber other than wool where said percentage by weight of such fiber is 5 percent or more, and (5) the aggregate of all other fibers.

(*b*) The name or the registered identification number of the manufacturer of such wool product one or more persons engaged in introducing such wool product into commerce, or in offering for sale, sale, transportation, or distribution thereof in commerce, as "commerce" is defined in the Federal Trade Commission Act and in the Wool Products Labeling Act of 1939.

Provided, That the foregoing provisions concerning misbranding shall not be construed to prohibit acts permitted by paragraphs (a) and (b) of section 3 of the Wool Products Labeling Act of 1939: *And provided further*, That nothing contained in this order shall be construed as limiting any applicable provisions of said act or the rules and regulations promulgated thereunder.

ORDER TO FILE REPORT OF COMPLIANCE

It is ordered, That the respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist [as required by said declaratory decision and order of September 21, 1951].

IN THE MATTER OF

LORRAINE SMART SHOPS, INC. ET AL.

COMPLAINT, FINDINGS, AND ORDERS IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914, AND OF AN ACT OF CONGRESS APPROVED OCT. 14, 1940

Docket 5669. Complaint, June 28, 1949—Decision, Sept. 27, 1951

Where a corporation engaged in the purchase from manufacturers in other States of wearing apparel which it caused to be shipped to its New York address for checking, sorting, and shipment to its approximately 23 retailers in various States, or direct from said manufacturers to said retail stores for sale to the purchasing public, one of said retail stores, and a managerial employee of said corporation;

After delivery to said corporation or its stores of articles of wearing apparel which were wool products subject to the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder, including women's coats, sweaters, and suits, and before offer for sale thereof to the general public, and with intent to violate the provisions of said act and rules—

Removed and partcipated in, and caused, the removal of the stamps, tags, labels, or other means of identification required by said act and which has been affixed to said products by the manufacturer, and did not replace them with substitute stamps, etc.,

With the result that said wool products when offered for sale and sold by them to the general public at their said stores did not have affixed thereto stamps, etc., required by said act and rules:

Held, That said acts and practices of respondents, under the circumstances set forth, were in violation of the Wool Products Labeling Act of 1939 and to the prejudice and injury of the public, and constituted unfair and deceptive acts and practices in commerce.

As respects the allegations of the complaint that respondents offered for sale and sold wool products in commerce which were misbranded with the intent and meaning of said act and said rules and regulations: there was no evidence that they manufactured, delivered for shipment, shipped, sold, or offered for sale in commerce any wool products which were thus misbranded, so that said allegations were not sustained.

Before *Mr. John W. Addison*, trial examiner.

Mr. DeWitt T. Puckett and *Mr. Randolph W. Branch* for the Commission.

Conrad & Smith, of New York City, for respondents.

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 Lorraine Smart Shops, Inc., a corporation, Lorraine Roanoke Shop, Inc., a corporation, and Mrs. Ruby Shepherd, individually and as a managerial employee of Lorraine Smart Shops, Inc., 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 Lorraine Smart Shops, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York and has an office or place of business at 270 West Thirty-ninth Street, New York, N. Y. It also maintains an office or place of business at 260 West Forty-first Street in New York City.

Respondent Lorraine Roanoke Shop, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Virginia and has its office and place of business at 12 West Campbell Avenue, Roanoke, Va.

Respondent Mrs. Ruby Shepherd is a managerial employee of respondent Lorraine Smart Shops, Inc., and is vested with authority to dictate policies and practices engaged in by the aforesaid corporate respondents.

PAR. 2. Respondent Lorraine Smart Shops, Inc., is now, and for more than 1 year last past has been engaged in purchasing wearing apparel from various manufacturers thereof located in various States of the United States and having said apparel shipped either to said respondent's New York address where said apparel is checked, sorted, prepared for shipment, and shipped from said address in New York to approximately 23 retail stores, including respondent Lorraine Roanoke Shop, Inc., located in various States of the United States, all of which retail stores are owned by respondent Lorraine Smart Shops, Inc., or its stockholders, or the merchandise is shipped direct from said manufacturers to said retail stores at which place said merchandise is offered for sale and sold to the ultimate purchasing public by respondent's said stores.

PAR. 3. Respondent Lorraine Roanoke Shop, Inc., is one of the aforesaid retail stores and is engaged in offering for sale and selling said wearing apparel to the ultimate purchasing public.

PAR. 4. A substantial portion of the articles of wearing apparel offered for sale and sold to the purchasing public by the respondents, as aforesaid, are wool products as such products are defined in the Wool Products Labeling Act of 1939 in that said products are com-

posed in whole or in part of wool, reprocessed wool, or reused wool, as those terms are defined in said act.

PAR. 5. Among the wool products purchased and transported in commerce as aforesaid and also among the wool products manufactured for introduction into said commerce and thereafter offered for sale and sold by respondents as aforesaid since July 15, 1941, were women's coats, sweaters, and suits and other garments. All of said wool products purchased and transported in commerce as aforesaid, and all of said wool products manufactured for introduction into said commerce, were subject to the provisions of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder.

PAR. 6. Some of the aforesaid wool products were misbranded within the intent and meaning of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder when offered for sale and sold by respondents, in that said products, when offered for sale and sold by respondents, did not have affixed thereto a stamp, tag, label, or other means of identification showing (*a*) the percentage of the total fiber weight of the wool product, exclusive of ornamentation, not exceeding 5 percent of said total fiber weight of (1) wool, (2) reprocessed wool, (3) reused wool, (4) each fiber other than wool where said percentage by weight of such fiber was 5 percentum or more, and (5) the aggregate of all other fibers; (*b*) the maximum percentage of the total weight of the wool product of nonfibrous loading, filling, or adulterating matter; (c) the name of the manufacturer of the wool product, or the manufacturer's registered identification number and the name of a subsequent seller or reseller of the product, as provided for in the rules and regulations promulgated under such act, or the name of one or more persons subject to section 3 of said act with respect to such wool product; (*d*) the percentages in words and figures plainly legible, by weight of the wool contents of said wool product where said wool product contained a fiber other than wool.

PAR. 7. The aforesaid wool products, when received by respondent Lorraine Smart Shops, Inc., at its New York address or at the said retail stores, direct from the manufacturers thereof, had affixed thereto stamps, tags, labels, or other means of identification purporting to contain the information required by the Wool Products Labeling Act of 1939. After said wool products were delivered to the respondent's said stores, as aforesaid, and before said wool products were offered for sale or sold by respondents to the general public, said respondents, with intent to violate the provisions of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder,

did remove, and participate in and cause removal of, the stamps, tags, labels, or other means of identification which purported to contain the information required by the provisions of said act and said rules and regulations affixed to said wool products by the manufacturer thereof or by some person authorized or required by said act to affix such stamps, tags, labels, or other means of identification to said wool products.

PAR. 8. Said respondents did not replace said stamps, tags, labels, or other means of identification with substitute stamps, tags, labels, or other means of identification containing the information required under the provisions of the Wool Products Labeling Act of 1939 and the rules and regulations thereunder. As a result of respondents' said acts and practices in removing said stamps, tags, labels, or other means of identification affixed to said wool products, said wool products, when offered for sale and sold by respondents to the general public at their said stores and places of business, did not have affixed thereto stamps, tags, labels, or other means of identification containing the information required by said act and said rules and regulations.

PAR. 9. The aforesaid acts, practices, and methods of the respondents, as herein alleged, were and are in violation of the Wool Products Labeling Act of 1939, and the rules and regulations promulgated thereunder, and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

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, on June 28, 1949, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said acts and the rules and regulations promulgated under the Wool Products Labeling Act of 1939, in connection with the sale of women's wearing apparel. After the filing of respondents' answer, hearings were held before a trial examiner of the Commission theretofore duly designated by it, at which testimony and other evidence in support of and in opposition to the allegations of the complaint were introduced, and said testimony and other evidence were duly recorded and filed in the office of the Commission. On May 14, 1951, the trial examiner filed his initial decision.

The Commission, having reason to believe that the initial decision did not constitute an adequate disposition of the matter, subsequently placed this case on its own docket for review, and on August 17, 1951, it issued, and thereafter served upon the parties, its order affording the respondents an opportunity to show cause why said initial decision should not be altered in the manner and to the extent shown in a tentative decision of the Commission attached to said order. Respondents having filed no objections in response to the leave to show cause, the proceeding regularly came on for final consideration by the Commission upon the record herein on review; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts, conclusion drawn therefrom, and order, the same to be in lieu of the initial decision of the trial examiner.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Lorraine Smart Shops, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, and has an office or place of business at 270 West Thirty-ninth Street, New York, N. Y. It also maintains an office or place of business at 260 West Forty-first Street in New York City.

Respondent Lorraine Roanoke Shop, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Virginia, and has its office and place of business at 12 West Campbell Avenue, Roanoke, Va.

Respondent Mrs. Ruby Shepherd is a managerial employee of respondent Lorraine Smart Shops, Inc., and is vested with authority to fire and hire employees and to dictate policies and practices engaged in by the aforesaid corporate respondents, but is now closely supervised.

PAR. 2. Respondent Lorraine Smart Shops, Inc., is now, and for more than 1 year last past has been, engaged in purchasing wearing apparel from various manufacturers thereof located in various States of the United States and having said apparel shipped either to said respondent's New York address where said apparel is checked, sorted, prepared for shipment, and shipped from said address in New York to approximately 23 retail stores, including respondent Lorraine Roanoke Shops, Inc., located in various States of the United States, all of which retail stores are owned by respondent Lorraine Smart Shops, Inc., or its stockholders, or direct from said manufacturers to said retail stores at which places said merchandise is offered for sale and sold to the ultimate purchasing public by respondent's said stores.

PAR. 3. Respondent Lorraine Roanoke Shop, Inc., is one of the aforesaid retail stores and is engaged in offering for sale and selling said wearing apparel to the ultimate purchasing public.

PAR. 4. A substantial portion of the articles of wearing apparel offered for sale and sold to the purchasing public by the respondents as aforesaid, are wool products as such products are defined in the Wool Products Labeling Act of 1939, in that said products are composed in whole or in part of wool, reprocessed wool, or reused wool, as these terms are defined in said act.

PAR. 5. Among the wool products purchased and transported in commerce as aforesaid and also among the wool products manufactured for introduction into said commerce and thereafter offered for sale and sold by respondents as aforesaid since July 15, 1941, were women's coats, sweaters, and suits, and other garments. All of said wool products purchased and transported in commerce as aforesaid, and all of said wool products manufactured for introduction into said commerce, were subject to the provisions of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder.

PAR. 6. The aforesaid wool products when received by respondent Lorraine Smart Shops, Inc., at its New York address, or at the said retail stores direct from the manufacturers thereof, had affixed thereto stamps, tags, labels, or other means of identification purporting to contain the information required by the Wool Products Labeling Act of 1939. After said wool products were delivered to the respondent's said stores as aforesaid, and before said wool products were offered for sale or sold by respondents to the general public, said respondents, with intent to violate the provisions of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder, did remove, and participate in and cause the removal of, the stamps, tags, labels, or other means of identification which purported to contain the information required by the provisions of said act and said rules and regulations, affixed to said wool products by the manufacturer thereof or by some person authorized or required by said act to affix such stamps, tags, labels, or other means of identification to said wool products.

PAR. 7. Said respondents did not replace said stamps, tags, labels, or other means of identification with substitute stamps, tags, labels, or other means of identification containing the information required under the provisions of the Wool Products Labeling Act of 1939 and the rules and regulations thereunder. As a result of respondents' said acts and practices in removing said stamps, tags, labels, or other means of identification affixed to said wool products, said wool prod-

ucts when offered for sale and sold by respondents to the general public at their said stores and places of business did not have affixed thereto stamps, tags, labels, or other means of identification containing the information required by said act and said rules and regulations.

PAR. 8. There is no evidence that the respondents manufactured, delivered for shipment, shipped, sold, or offered for sale in commerce any wool products which were misbranded within the intent and meaning of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder. Consequently, the allegations of the complaint that the respondents offered for sale and sold wool products in commerce which were misbranded within the intent and meaning of said act and said rules and regulations are not sustained.

CONCLUSION

The acts and practices and methods of respondents as found in paragraphs 6 and 7 hereof were and are in violation of the Wool Products Labeling Act of 1939, and are to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER

It is ordered, That the respondent Lorraine Smart Shops, Inc., a corporation, its officers, respondent Lorraine Roanoke Shop, Inc., a corporation, its officers, and respondent Mrs. Ruby Shepherd, individually and as a managerial employee of Lorraine Smart Shops, Inc., trading under the name of Lorraine Smart Shops, Inc., Lorraine Roanoke Shop, Inc., or any other name, their respective representatives, agents, and employees, directly or through any corporate or other device, in connection with the purchase, offering for sale, sale, or distribution of wearing apparel or any other "wool products" as such products are defined in and subject to the Wool Products Labeling Act of 1939, do forthwith cease and desist from causing or participating in the removal or mutilation of any stamp, tag, label, or other means of identification affixed to any such "wool product" pursuant to the Wool Products Labeling Act of 1939, with intent to violate the provisions of said Wool Products Labeling Act, and which stamp, tag, label, or other means of identification purports to contain all or any part of the information required by said act.

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

Syllabus

IN THE MATTER OF

MORRIS HESSEL, INC., ET AL.

COMPLAINT, FINDINGS, AND ORDERS IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 5870. Complaint, Apr. 4, 1951—Decision, Sept. 27, 1951

Many members of the purchasing public are unaware of the fact that "mouton" is the French word for lamb and believe that said word stands for the fur for some other animal—a belief enhanced by the fact that the fur, correctly designated as "mouton dyed lamb", is dyed so that it resembles other furs.

Where a corporation and its three officers, engaged in the interstate sale and distribution of fur, fur coats, jackets, scarfs, and related fur garments, in competition with many similarly engaged, who do not misrepresent their business status or the prices charged for their merchandise; in advertising in newspapers, circulars, and other media—

(*a*) Represented that said corporation was a manufacturer of fur products, manufactured such products sold by it, and had been in the fur business continuously for a period of 37 years, through such statements as "Manufacturing furrier," "Over 30 years in fur manufacturing," etc.;

The facts being that while its president had 38 years of experience in the fur business, said corporation had been in business only since its incorporation in 1940; and while it did for a limited period manufacture a small portion of the fur products sold by it, the great majority of its products had been at all times bought from others;

(*b*) Represented falsely that said corporation was a wholesaler and sold at wholesale prices, and that its prices were 30 percent less than those charged by any retail store, through such statements as "He conceived the plan of selling furs directly to the individual at the wholesale level available to big store buyers * * *," "Wholesale to you," "You know our regular prices are 30 percent below those of any retail furrier * * *," etc.;

(*c*) Represented falsely that its said products were sold at special sales at prices as much as 50 percent less than the regular prices, that certain of its sales were private and for selected customers only; and that the merchandise offered at such sales was not available for purchase by the public generally, through such statements as "Please keep this private sale a secret! This is a private sale for regular Morris Hessel patrons only. It is not open to the general public * * *," etc.; and

(*d*) Represented that its president was the author of books entitled "Fur Book of Knowledge" and "Facts You Should Know About Furs," and by reason thereof an outstanding authority on furs;

The facts being that while he supplied the material for the former and caused its publication, and distributed the latter, he was the author of neither; and

(*e*) Advertised as "mouton" certain of their furs correctly described as "mouton dyed lamb";

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to their products and thereby cause its purchase thereof:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice of the public and their competitors, and constituted unfair methods of competition in commerce and unfair and deceptive acts and practices therein.

Before *Mr. William L. Pack*, trial examiner.

Mr. Charles S. Cox for the Commission.

Mr. Jacob H. Goldshein, of New York City, and *Mr. Howard M. Lawn*, of Newark, N. J., for respondents.

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 Morris Hessel, Inc., a corporation; and Morris Hessel, Lee Hessel, and Tillie Hessel, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Morris Hessel, 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 231 West Twenty-ninth Street, New York, N. Y. Morris Hessel, Lee Hessel, and Tillie Hessel are president, secretary-treasurer and vice president of corporate respondent. All of the individual respondents also have offices and a principal place of business at 231 West Twenty-ninth Street, New York, N. Y. The individual respondents in their official capacities as officers of corporate respondent have acted and now act in conjunction and cooperation with each other in formulating, directing, and controlling the business, acts, practices, and policies of corporate respondent including the advertising claims made by said corporate respondent in connection with the sale of its products.

PAR. 2. Respondents have for several years last past been engaged in the sale and distribution of furs, fur coats, jackets, scarfs, and related fur garments. Respondents cause and have caused the aforesaid products, when sold, to be transported from their aforesaid place of business in the State of New York to purchasers thereof at their respective points of location in various States of the United States, and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said products in commerce among and between the various States of the

United States and in the District of Columbia. Their volume of business in said commerce has been and is substantial.

PAR. 3. Respondents, during the period herein stated, in the course and conduct of their aforesaid business and for the purpose of inducing the purchase of their said merchandise have made many statements and representations with regard to the quality and price thereof, the character of their said business and the method and plans employed by them in connection with the sale of their said merchandise. The statements and representations so made by respondent have appeared in advertisements published in newspapers, circulars, and other advertising media of general circulation in various States of the United States. Typical of said advertising representations of respondents, but not all inclusive, are the following:

Manufacturing Furrier

A manufacturing furrier who sells direct to the public.

MANUFACTURER'S CLOSE-OUT . . .

100 Hollander Blended

LET-OUT MUSKRATS . . . * * *

Over 30 years in fur manufacturing

We were able to buy the raw skins of these furs at prices 25% less than they now cost to replace.

* * * So I beat the gun by buying fresh, beautiful skins while the market was low, and making them into coats so typical of Morris Hessel quality.

He conceived the plan of selling furs directly to the individual at the wholesale level available to big store buyers, of saving on the many expensive operations between manufacturers and customers. Thus, he became one of the first manufacturing furriers to throw open his door to all women.

Wholesale-To-You

America's foremost manufacturing furrier now celebrating our 37th anniversary WITH THE GREATEST AUGUST FUR SALE IN OUR HISTORY!

Of course, you know our normal low prices are 30% less than any retail store.

Introductory card * * * The bearer of this card is interested in buying a coat at 30% below retail.

You know our regular prices are 30% below those of any retail furrier * * *

FUR Manufacturer's

ENTIRE STOCK

REDUCED 50%

Right now, we must make room for the Spring furs soon to be rushed in from our workrooms—AND WE ARE CLOSING OUT HUNDREDS OF BEAUTIFUL FUR COATS BELOW OUR COST! * * *

Please keep this Private Sale a secret! This is a private sale for regular Morris Hessel patrons only. It is not open to the general public—so please keep it a secret.

Hessel has written several books on furs . . . One of them "Facts You Should Know About Furs" is available. A penny postcard or a phone call will get you a FREE copy!

Morris Hessel is the author of books used by both the trade and by the customer who wants to learn about furs in order to make the best possible investment. These books, "The Fur Book of Knowledge" * * *

PAR. 4. Through the use of the statements aforesaid and others of the same import but not specifically set out herein, respondents represented that Morris Hessel, Inc., is a manufacturer of fur products and manufactured all of the fur products sold by it; that it buys the raw skins used in the manufacture of its fur products; that it is a wholesaler and sells at wholesale prices; that it has been in the fur business continuously for a period of 37 years; that the prices charged for its fur products are 30% less than those charged by any retail store; that its fur products are sold at sales prices as much as 50% less than regular prices and at times below cost; that certain of its sales are private and for selected customers only and the merchandise offered at such sales is not available for purchase by the public generally; and that respondent Morris Hessel is the author of the books entitled "Fur Book of Knowledge" and "Facts You Should Know About Furs," and by reason thereof is an outstanding authority on furs.

PAR. 5. The aforesaid statements and representations are false, misleading and deceptive. In truth and in fact, while corporate respondent for a limited time manufactured some fur coats sold by it, the great majority of its fur products were at all times bought from others. It bought raw furs only during the limited time when the small portion of its fur products were manufactured by it. Corporate respondent is a retailer and not a wholesaler and does not sell at wholesale prices. Morris Hessel, Inc., was incorporated in 1940 and has been in business only since that time. It does not sell its fur products for less than many retailers and its sale prices are not 50 percent less than its regular prices and it does not sell at prices below its costs. Sale represented as being private and for selected customers only are in fact open to the public generally. Respondent Morris Hessel is not the author of the books Fur Book of Knowledge or Facts You Should Know About Furs.

PAR. 6. Respondent advertises certain of its furs as "mouton." This is the word in the French language for lamb. Many members of the purchasing public are unaware of this fact and believe that this is the fur of an animal other than a lamb. This belief is enhanced by the fact that the fur is dyed so that it resembles other furs. The correct designation of such fur is "mouton dyed lamb." The failure of respondents to designate the said fur by its proper English name confuses and misleads the public and constitutes an unfair and deceptive practice.

PAR. 7. Respondents, in the conduct of said business, as aforesaid, have been and are in substantial competition, in commerce, with other corporations, individuals, partnerships and others engaged in the sale of the same kinds of merchandise as that sold by respondents. Among such competitors are many who do not make any misrepresentations concerning their practices, the prices charged for their merchandise or otherwise.

PAR. 8. The use by respondents of the foregoing false, misleading and deceptive statements and representations has had, and now has, the tendency and capacity to mislead and deceive the purchasing public into the erroneous and mistaken belief that such representations were and are true and has caused and causes the purchasing public, because of such erroneous and mistaken belief, to purchase substantial quantities of respondents' merchandise.

PAR. 9. The aforesaid acts and practices of respondents, as herein alleged, are all to the prejudice and injury of the public and 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 OF THE COMMISSION

Pursuant to rule XXII of the Commission's rules of practice, and as set forth in the Commission's "Decision of the Commission and Order to File Report of Compliance," dated September 27, 1951, the initial decision in the instant matter of trial examiner William L. Pack, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY WILLIAM L. PACK, TRIAL EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on April 4, 1951, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof, charging them with the use of unfair methods of competition and unfair and deceptive acts and practices in commerce in violation of the provisions of that act. No answer was filed by respondents to the complaint. Thereafter, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts executed by counsel supporting the complaint and the respondents might be taken as the facts in this proceeding and in lieu of evidence in support of and in opposition to the charges stated in the complaint, and that the trial examiner might proceed upon such statement of facts to make his initial decision, stating his

findings as to the facts including inferences which he might draw from the stipulated facts, and his conclusion based thereon and enter his order disposing of the proceeding without the filing of proposed findings and conclusions or the presentation of oral argument. The stipulation further provided that upon appeal to or review by the Commission, the stipulation might be set aside by the Commission and this matter remanded for further proceedings under the complaint. Subsequently, the proceeding regularly came on for final consideration by the trial examiner, theretofore duly designated by the Commission, upon the complaint and stipulation, the stipulation having been approved by the trial examiner, who, after duly considering the record herein, finds that this proceeding is in the interest of the public and makes the following findings as to the facts, conclusion drawn therefrom, and order:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Morris Hessel, 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 231 West Twenty-ninth Street, New York, N. Y. Respondents Morris Hessel, Lee Hessel, and Tillie Hessel are president, secretary-treasurer and vice president, respectively, of the corporate respondent. The individual respondents in their capacities as officers of the corporate respondent have acted and now act in conjunction and cooperation with each other in formulating, directing and controlling the business, acts, practices, and policies of the corporation, including the advertising claims made by it in connection with the sale of its products.

PAR. 2. Respondents have for several years last past been engaged in the sale and distribution of furs, fur coats, jackets, scarfs, and related fur garments. Respondents cause and have caused their products, when sold, to be transported from their place of business in the State of New York to purchasers thereof at their respective points of location in various States of the United States and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in their products in commerce among and between the various States of the United States and in the District of Columbia. Their volume of business in such commerce has been and is substantial.

PAR. 3. In the course and conduct of their business and for the purpose of inducing the purchase of their merchandise, respondents have made various statements with respect to themselves and their

merchandise, such statements being disseminated among prospective purchasers by means of newspaper advertisements, circulars, and other advertising media. Typical of such statements are the following:

Manufacturing Furrier
A manufacturing furrier who sells direct to the public
MANUFACTURER'S CLOSE-OUT . . .
100 Hollander Blended
LET-OUT MUSKRATS . . . * * *
Over 30 years in fur manufacturing
We were able to buy the raw skins of these furs at prices 25% less than they now cost to replace.
* * * So I beat the gun by buying fresh, beautiful skins while the market was low, and making them into coats so typical of Morris Hessel quality.
He conceived the plan of selling furs directly to the individual at the wholesale level available to big store buyers, of saving on the many expensive operations between manufacturers and customers. Thus, he became one of the first manufacturing furriers to throw open his door to all women.
Wholesale-To-You
America's foremost manufacturing furrier now celebrating our 37th anniversary WITH THE GREATEST AUGUST FUR SALE IN OUR HISTORY!
Of course, you know our normal low prices are 30% less than any retail store.
Introductory card * * * The bearer of this card is interested in buying a coat at 30% below retail.
You know our regular prices are 30% below those of any retail furrier * * *
FUR Manufacturer's
ENTIRE STOCK
REDUCED 50%
Right now, we must make room for the spring furs soon to be rushed in from our workrooms—AND WE ARE CLOSING OUT HUNDREDS OF BEAUTIFUL FUR COATS BELOW OUR COST! * * *
Please keep this Private Sale a secret! This is a private sale for regular Morris Hessel patrons only. It is not open to the general public—so please keep it a secret.
Hessel has written several books on furs . . . One of them "Facts You Should Know About Furs" is available. A penny postcard or a phone call will get you a FREE Copy!
Morris Hessel is the author of books used by both the trade and by the customer who wants to learn about furs in order to make the best possible investment. These books, "The Fur Book of Knowledge" * * *

PAR. 4. Through the use of these statements and others of the same import, respondents have represented that Morris Hessel, Inc., is a manufacturer of fur products and manufactures all of the fur products sold by it; that it is a wholesaler and sells at wholesale prices; that it has been in the fur business continuously for a period of 37 years; that the prices charged for its fur products are 30 percent less than those charged by any retail store; that its fur products are sold at special sales at prices as much as 50 percent less than regular prices;

that certain of its sales are private and for selected customers only and the merchandise offered at such sales is not available for purchase by the public generally; and that respondent Morris Hessel is the author of the books entitled "Fur Book of Knowledge" and "Facts You Should Know About Furs," and by reason thereof is an outstanding authority on furs.

PAR. 5. These representations were erroneous and misleading. The corporate respondent Morris Hessel, Inc., was not incorporated until 1940 and has been in business only since that time, although the record indicates that the individual respondent Morris Hessel has personally had some 38 years of experience in the fur business. While the corporation did for a limited period of time manufacture a small portion of the fur products sold by it, the great majority of its products have been at all times bought from others. The corporation is a retailer and not a wholesaler. It does not sell at wholesale prices, nor are its products normally sold at special sales at prices 50 percent less than its regular prices. Its prices are not lower than those of all other retailers. Sales represented as being private and for selected customers only were in fact open to the public generally. Respondent Morris Hessel is not the author of the book, Facts You Should Know About Furs, but merely distributed it. The book, Fur Book of Knowledge, was not written by respondent Morris Hessel but was written by Anna Bird Stewart, although the record indicates that respondent Hessel supplied the material for the book and caused the publication of the book.

PAR. 6. Respondents advertise certain of their furs as "mouton." This is the word in the French language for lamb. Many members of the purchasing public are unaware of this fact and believe that this is the fur of an animal other than a lamb. This belief is enhanced by the fact that the fur is dyed so that it resembles other furs. The correct designation of such fur is "mouton dyed lamb." The failure of respondents to designate such fur by its proper English name confuses and misleads the public.

PAR. 7. In the course and conduct of their business respondents are and have been in substantial competition in commerce with other corporations and individuals and with partnerships engaged in the sale of merchandise similar to that sold by respondents. Among such competitors are many who do not misrepresent their business status or the prices charged for their merchandise.

PAR. 8. The use by respondents of the representations set forth above has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to respondents' products, and the tendency and capacity to cause such portion of the

public to purchase such products as a result of the erroneous and mistaken belief so engendered.

CONCLUSION

The acts and practices of the respondents, as hereinabove set out, are all to the prejudice of the public and of respondents' competitors, and 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.

ORDER

It is ordered, That the respondents, Morris Hessel, Inc., a corporation, and its officers, and Morris Hessel, Lee Hessel, and Tillie Hessel, individually and as officers of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of furs and fur garments in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication:

(*a*) That respondents manufacture all of the products sold by them; or that respondents manufacture any of such products, unless respondents do in fact manufacture the products in connection with which such representation is made.

(*b*) That respondents are wholesalers, or that the prices of respondents' products are wholesale prices or are lower than the prices of all other retailers.

(*c*) That the prices at which respondents' products are offered at special sales are lower by 50 percent, or any other designated percentage or amount, than the regular prices of such products, unless such is the fact.

(*d*) That any sale conducted by respondents is a private sale and for selected customers only, or that the merchandise offered is not available for purchase by the general public, when such sale is in fact open to the public generally.

(*e*) That respondent corporation was organized or began business prior to 1940; provided however, that this shall not prohibit the individual respondent Morris Hessel from representing truthfully that he personally has had a longer period of experience in the fur business.

(*f*) That respondent Morris Hessel is the author of the books, Facts You Should Know About Furs or the Fur Book of Knowledge.

2. Using the word "mouton" to designate or describe furs or fur products made from lamb peltries, unless such word is immediately followed by the words "dyed lamb," as mouton dyed lamb."

ORDER TO FILE REPORT OF COMPLIANCE

It is ordered, That the respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist [as required by said declaratory decision and order of September 27, 1951].

IN THE MATTER OF

ARNOLD A. SALTZMAN AND IRVING SALTZMAN TRADING AS PREMIER KNITTING CO.

MODIFIED CEASE AND DESIST ORDER

Docket 4659. Order, September 28, 1951

Order modifying original order of July 20, 1951 (48 F. T. C. 72), so as to require respondent, in connection with the offer, etc., of sweaters or other knitwear in commerce, to cease and desist from the use of the word "Shetland," or the use of the word "Kittn-Gora," or any simulations of said words, etc., as in said order below set forth and subject to the qualifications there noted.

Before *Mr. John W. Addison*, trial examiner.
Mr. R. A. McOuat and *Mr. Jesse D. Kash* for the Commission.
Rothstein & Korzenik, of New York City, for respondents.

MODIFIED ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the respondents' answer thereto, testimony and other evidence in support of and in opposition to the allegations of the complaint introduced before a trial examiner of the Commission theretofore duly designated by it, the trial examiner's recommended decision and exceptions thereto by counsel for respondents, and briefs and oral argument of counsel, and the Commission having ruled on the exceptions to the trial examiner's recommended decision and having made its findings as to the facts and its conclusion that the respondents had violated the provisions of the Federal Trade Commission Act, on July 20, 1951, issued and subsequently served upon the respondents said findings as to the facts, conclusion, and its order to cease and desist.

Thereafter, this matter came on for reconsideration by the Commission upon its own motion to reopen this proceeding for the purpose of modifying the order to cease and desist herein, an order to show cause why the order to cease and desist should not be modified, served upon respondents by the Commission, and respondents' answer thereto, and the Commission having reconsidered the matter and being of the opinion that its order to cease and desist issued herein should be modified in certain respects:

It is ordered, That the respondents, Arnold A. Saltzman and Irving Saltzman, individually and trading under the name of Premier Knitting Co., or trading under any other name, and their agents, repre-

sentatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of sweaters or other knitwear in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the word "Shetland," or any simulation thereof, either alone or in connection with other words, to designate, describe, or refer to any product which is not composed entirely of wool of Shetland sheep raised on the Shetland Islands or the contiguous mainland of Scotland:

Provided, however, That in the case of a product composed in part of wool of Shetland sheep and in part of other fibers or materials, such word may be used as descriptive of the Shetland wool content if there are used in immediate connection therewith, in letters of at least equal conspicuousness, words truthfully describing such other constituent fibers or materials.

2. Using the term "Kittn-Gora," or any other form or simulation of the word "Angora," to designate, describe or refer to any product which is not composed entirely of hair of the Angora goat: *Provided, however*, That such term may be used (*a*) in the case of a product composed in substantial part of hair of the Angora goat and in part of other fibers or materials if such other fibers or materials are truthfully described in immediate connection therewith; or (*b*) in the case of a product composed in whole or in substantial part of hair of the Angora rabbit if the fact that such part consists of Angora rabbit hair and a truthful description of the other fibers or materials in the product are clearly stated in immediate connection therewith.

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

Note: The modification has to do with the proviso which follows paragraph two prohibiting the use of the term "Kittn-Gora" etc. Said proviso in the original order of July 20, 1951, read:

Provided, however, That in the case of a product composed in part of hair of the Angora goat and in part of other fibers or materials, such term or word may be used as descriptive of the Angora fiber content if there are used in immediate connection or conjunction therewith, in letters of at least equal size and conspicuousness, words truthfully describing such other constituent fibers or materials.

IN THE MATTER OF

NEW YORK FEATHER COMPANY, INC. ET AL.

COMPLAINT, FINDINGS, AND ORDERS IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 5840. Complaint, Jan. 18, 1951—Decision, Oct. 2, 1951

Where a corporation and its two officers, engaged in the manufacture and interstate sale and distribution of pillows—

Inaccurately and misleadingly labeled certain of their said products in that, as illustrative, a pillow labeled "10% Down, 90% Duck Feathers," actually contained no down and only 24 percent duck feathers, with chicken and turkey feathers, chicken and turkey feather fiber and other materials as the remainder; one labeled "50% Down, 50% Duck Feathers" contained only 6.7 percent down and about 82 percent duck feathers; and a third labeled "White Goose Down" contained 46.7 percent thereof, about 47 percent white goose feathers, and 6 percent feather fiber;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public and thereby induce it to purchase their products:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice of the public and constituted unfair and deceptive acts and practices in commerce.

Before *Mr. William L. Pack*, trial examiner.
Mr. Russell T. Porter for the Commission.
Mr. Harry Heller, of Brooklyn, N. Y., for respondents.

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 New York Feather Co., Inc., a corporation, and Joseph Yurkowitz and Mandel Yurkowitz, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent New York Feather Company, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York with its principal office and place of business located at 62–76 Rutledge Street, Brooklyn 11, New York.

Respondents Joseph Yurkowitz and Mandel Yurkowitz are now, and at all times mentioned herein have been, the president and secretary-treasurer, respectively, of the corporate respondent and as such officers have formulated, directed and controlled the policies and practices of the corporate respondent, including the practices hereinafter set forth.

PAR. 2. Respondents are now and for several years last past have been engaged in the manufacture and sale of pillows to dealers for resale to the public. In the course and conduct of such business respondents cause their said pillows when sold to be shipped from their place of business in the State of New York to dealers in various other States of the United States and maintain, and at all times mentioned herein have maintained, a course of trade in said pillows in commerce among and between the various States of the United States. Their business in such trade has been substantial.

PAR. 3. Respondents in the course and conduct of their business cause labels to be attached to their pillows purporting to state and set out the percentage of down and feathers and the kind of feathers therein. Typical of the statements appearing on these labels are the following:

"10% Down—90% Duck Feathers," said pillow being designated as "Daisy"
"50% Down—50% Duck Feathers," said pillow being designated as "Lily"
"White Goose Down," said pillow being designated as "Gardenia"

PAR. 4. Through the use of the statements and representations appearing on the labels aforesaid respondents represented that the filling in the pillow designated as "Daisy" is composed of 10% down, the undercoatting of waterfowl, and 90% duck feathers; that the filling of the pillow designated as "Lily" is composed of 50% down, the undercoating of waterfowl, and 50% duck feathers; and that the filling of the pillow designated as "Gardenia" is composed entirely of white goose down, the undercoating of a waterfowl.

PAR. 5. Said statements are false, misleading and deceptive. In truth and in fact, the filling of the pillow designated as "Daisy" was composed of 24% duck feathers, approximately 20% chicken and turkey feathers and approximately 51% chicken and turkey feather fiber, the balance being other material. The filling of the pillow designated "Lily" was composed of 6.7% down, approximately 82% duck feathers and approximately 9% turkey and chicken feather fiber, the bal-

ance being other material. The filling of the pillow designated as "Gardenia" was composed of 46.7% white goose down, approximately 47% white goose feathers and approximately 7% feather fiber.

PAR. 6. By attaching the false, misleading and deceptive labels to their pillows, respondents placed in the hands of dealers means and instrumentalities by and through which they may mislead the purchasing public as to the content of said pillows.

PAR. 7. The use by respondents of the foregoing false, misleading and deceptive representations on the labels of their products has had and now has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public as to the content of their said pillows and to induce members of the public to purchase substantial quantities of their said pillows because of such mistaken and erroneous belief.

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

DECISION OF THE COMMISSION

Pursuant to Rule XXII of the Commission's Rules of Practice, and as set forth in the Commission's "Decision of the Commission and Order to File Report of Compliance," dated October 2, 1951, the initial decision in the instant matter of trial examiner William L. Pack, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY WILLIAM L. PACK, TRIAL EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on January 18, 1951, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act. After the filing by respondents of their answer to the complaint, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts executed by counsel supporting the complaint and counsel for respondents might be taken as the facts in this proceeding and in lieu of evidence in support of and in opposition to the charges stated in the complaint, and that such statement of facts might serve as the basis for findings as to the facts and conclusion based thereon and an order disposing of the proceeding. While counsel for respondents reserved in the stipula-

tion the right to file proposed findings and conclusions and to argue the matter orally before the trial examiner, such reservations were subsequently waived. The stipulation further provided that upon appeal to or review by the Commission such stipulation might be set aside by the Commission and this matter remanded for further proceedings under the complaint. Thereafter the proceeding regularly came on for final consideration by the trial examiner upon the complaint, answer and stipulation, the stipulation having been approved by the trial examiner, who, after duly considering the record herein, finds that this proceeding is in the interest of the public and makes the following findings as to the facts, conclusion drawn therefrom and order.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent New York Feather Co., Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York, with its office and principal place of business located at 62–76 Rutledge Street, Brooklyn, N. Y. Respondents Joseph Yurkowitz and Mandel Yurkowitz are president and secretary-treasurer, respectively, of respondent corporation. The individual respondents formulate, direct and control the policies and practices of the corporation.

PAR. 2. Respondents are now and for several years last past have been engaged in the maufacture and sale of pillows, the pillows being sold to dealers for resale to the public. Respondents cause and have caused their pillows, when sold, to be shipped from their place of business in the State of New York to purchasers in various other States of the United States. Respondents maintain and have maintained a course of trade in their pillows in commerce among and between the various States of the United States.

PAR. 3. In the course and conduct of their business respondents attach to their pillows labels purporting to state or set forth the materials of which such pillows are made. In some instances such labels have been inaccurate and misleading. In one instance a pillow labeled "10% Down, 90% Duck Feathers" actually contained no down, the undercoating of waterfowl, and only 24 percent duck feathers, the remaining content being chicken and turkey feathers and chicken and turkey feather fiber and other materials. In another instance a pillow labeled "50% Down, 50% Duck Feathers" was found to contain only 6.7 percent down, and approximately 82 percent duck feathers and approximately 9 percent turkey and chicken feather fiber, the remaining content being other materials. In a third instance a pillow labeled "White Goose Down" actually contained only 46.7 percent white goose

down, approximately 47 percent white goose feathers and approximately 6 percent feather fiber.

PAR. 4. The acts and practices of respondents as set forth above have the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to respondents' products, and the tendency and capacity to cause such portion of the public to purchase respondents' products as a result of the erroneous and mistaken belief so engendered.

CONCLUSION

The acts and practices of the respondents as hereinabove set out are all to the prejudice of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER

It is ordered, That the respondents, New York Feather Co., Inc., a corporation, and its officers, and Joseph Yurkowitz and Mandel Yurkowitz, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of pillows in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Misrepresenting in any manner or by any means, directly or by implication, the materials of which respondents' pillows are made.

ORDER TO FILE REPORT OF COMPLIANCE

It is ordered, That the respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist [as required by said declaratory decision and order of October 2, 1951].

IN THE MATTER OF

ARABIAN TOILET GOODS COMPANY

MODIFIED ORDER TO CEASE AND DESIST

Docket 2981. Order, Oct. 4, 1951

Order further modifying prior modified order in said matter—in which findings and cease and desist order issued on January 20, 1938, 26 F. T. C. 441, and prior modified order issued on December 16, 1939, 30 F. T. C. 76—

So as to require respondent and its representatives, in connection with the offer, etc., of cosmetics in interstate commerce, to cease and desist from using the term "Certified Cosmetic" or other term of similar import, etc., to refer to cosmetic products "unless the identity of the certifier is clearly disclosed in direct connection therewith"; and from otherwise misrepresenting its "Wrinkle Creme" or any similar skin cream, as in said order below set out.

Before *Mr. John L. Hornor*, trial examiner.

Mr. DeWitt T. Puckett and *Mr. Joseph Callaway* for the Commission.

Mr. George J. Crane, of Chicago, Ill., for respondent.

MODIFIED ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, testimony and other evidence taken before a trial examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, and briefs in support of the complaint and in opposition thereto (no oral argument having been requested), the Commission, having made its findings as to the facts and its conclusion that said respondent had violated the provisions of the Federal Trade Commission Act, on January 20, 1938, issued and subsequently served upon the respondent said findings as to the facts, conclusion and its order to cease and desist. Thereafter, upon motion of the Chief Counsel for the Commission to modify the order to cease and desist in certain respects, proper notice and opportunity to be heard having been given to respondent, the Commission on December 16, 1939 issued and subsequently served upon the respondent its modified order to cease and desist.

Thereafter, this matter came on for reconsideration by the Commission upon its own motion to reopen this proceeding for the pur-

pose of further modifying the order to cease and desist herein, no answer having been filed by respondent in response to an order served on it by the Commission notifying respondent of the Commission's said motion and granting to it leave to show cause why the order to cease and desist should not be so modified, and the Commission having reconsidered the matter and being of the opinion that its modified order to cease and desist issued on December 16, 1939 should be further modified in certain respects:

It is ordered, That the respondent, Arabian Toilet Goods Co., Inc., a corporation, its officers, representatives, agents, and employees, in connection with the offering for sale, sale and distribution of cosmetics in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

(1) Using the term "Certified Cosmetic" or any other term of similar import or meaning to describe or refer to cosmetic products unless the identity of the certifier is clearly disclosed in direct connection therewith.

(2) Representing that its skin cream now designated as Wrinkle Creme, or any other cream containing substantially the same ingredients or possessing the same properties, sold under that name or any other name

(*a*) will nourish or rejuvenate the skin;

(*b*) will remove wrinkles and lines from the skin;

(*c*) contains turtle oil or is guaranteed by the United States Government to contain pure turtle oil.

(3) Representing that turtle oil has been successfully used by the United States Government in removing scar tissue and wrinkles from wounded soldiers.

(4) Representing that the use of turtle oil has been indorsed or approved by the United States Government as a skin food and rejuvenator.

IN THE MATTER OF

PENNSYLVANIA OIL TERMINAL, INC. ET AL.

COMPLAINT, FINDINGS, AND ORDERS IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 5868. Complaint, Mar. 27, 1951—Decision, Oct. 4, 1951

The term "Pennsylvania oil" is recognized throughout the trade and by a substantial portion of the purchasing public as meaning oil refined from crude oil produced in the geographic area known as the Pennsylvania oil field, which includes the western portion of Pennsylvania and contiguous portions of New York, Ohio, and West Virginia.

Pennsylvania oil has for some time been well and favorably known to the purchasing public, and there is the preference on the part of a substantial portion of the public for such oil over oils refined from crude oil produced in other localities.

Where oil, with the appearance of the new and unused product, is sold in containers of the same general size, kind and appearance as those used for new oil, the general understanding and belief on the part of dealers and the purchasing public, in the absence of a disclosure on the container that the oil is reclaimed or reprocessed, is that it is in fact new.

There is a marked preference on the part of a substantial portion of the purchasing public for new and unused oil over used and reclaimed or reprocessed oil, due in part to the belief that new and unused oil is superior in quality to oil that has been used and reclaimed or reprocessed.

Where a corporation, its president, and its former president, holder of an exclusive franchise to sell its products within a certain territory, engaged in the interstate sale and distribution to retail distributors under the brand name "Penolube Motor Oil," of a product which consisted in whole or in part of used oil, reclaimed from drainings of motor crankcases and other sources—

(*a*) Falsely represented by the use of its corporate name including the words "Pennsylvania Oil Terminal," in conjunction with the word "Penolube" in their brand name, through statements in trade journals and other advertising and on the labels, that the said lubricating oil, packaged and sold by them, was refined and processed entirely from oil produced in the Pennsylvania oil field;

(*b*) Sold said oil, which had the appearance of new and unused oil, in containers of the same general size, kind and appearance as those used for new oil, with no markings of any kind indicating that it was reclaimed or reprocessed;

With the result of placing in the hands of retailers a means of misleading the purchasing public, and with capacity and tendency to mislead a substantial number of retailers and members of the purchasing public, and

with effect of thereby causing purchase of substantial quantities of their said product:

Held, That such acts and practices, under the circumstances set forth, were all to the injury and prejudice of the public, and constituted unfair and deceptive acts and practices in commerce.

As respects respondents' contention that the brand name "Penolube" was not of itself misleading or deceptive, since it did not alone connote oil derived from crude oil produced in the Pennsylvania field—while admitting that the corporate name was misleading and deceptive and that the representations and container labels were likewise so by reason of the use of the brand name and the corporate name together—there was no charge in the complaint that said brand name alone was false, deceptive or misleading, the charge being confined to the use of both names in conjunction.

Before *Mr. Frank Hier*, trial examiner.
Mr. Jesse D. Kash for the Commission.

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 Pennsylvania Oil Terminal, Inc., a corporation, Douglas Price, Clara Price, Muriel C. Johnson, individually and as officers of said corporation, and Eugene K. Johnson, an individual, 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. Pennsylvania Oil Terminal, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its office and principal place of business located at 3500 Branch Avenue, Silver Hill, Md. Respondents Douglas Price, Clara Price, and Muriel C. Johnson are president, vice president and secretary, respectively, of said corporate respondent, with their business address the same as that of corporate respondent. Respondent Eugene K. Johnson, an individual, was formerly the president of corporate respondent and now holds an exclusive franchise to sell corporate respondents' product within a fifty-mile radius of Washington, D. C. His office and resident address is located at 1009 Eleventh Street, NW., Washington, D. C. The said officers, together with respondent Eugene K. Johnson, formulate and direct the policies and practices of the corporate respondent.

PAR. 2. Respondents are now and for more than one year last past have been engaged in the sale and distribution of motor oil to retail

distributors for resale to the public. Respondents sell said product under the brand name "Penolube Motor Oil."

PAR. 3. Respondents cause and have caused their said product, when sold, to be transported from their place of business in the State of Maryland to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondents maintain and have maintained a course of trade in their product in commerce among and between the various States of the United States. Their volume of business in the sale of said product in commerce has been substantial.

PAR. 4. In the course and conduct of their aforesaid business and for the purpose of inducing the purchase of their said product in commerce, as "commerce" is defined in the Federal Trade Commission Act, the respondents have made and now make certain representations regarding the origin and quality of their oil, in advertisements inserted in trade journals and in other advertising media and on the label of their product. Among and typical of said representations are the following:

Representations in advertising:

PENOLUBE Motor Oil is *not* just an ordinary motor oil.

PENOLUBE carries a high fire and flash and is over *100 V. I.*

A PREMIUM OIL THAT MEANS *EXTRA PROFITS TO YOU*

Label on product:

Penolube

A High Quality

MOTOR OIL

PENNSYLVANIA OIL TERMINAL, INC.

Main Office

WASHINGTON, D. C.

PAR. 5. Through the use of the abbreviation "Pen" as a part of the brand name "Penolube," and the word "Pennsylvania" as a part of the corporate name, respondents have represented and now represent that their oil product is refined and processed entirely from oil produced in the Pennsylvania oil field.

PAR. 6. The aforesaid representations were and are false, misleading and deceptive. In truth and in fact, respondents' Penolube oil

was not and is not refined entirely from oil produced in the Pennsylvania oil field, and consists entirely or in substantial part of oil produced in oil fields other than the Pennsylvania field.

PAR. 7. The term "Pennsylvania Oil" is recognized throughout the trade and by a substantial portion of the purchasing public as meaning oil refined from crude oil produced in a geographical area known as the Pennsylvania oil field which includes the western portion of Pennsylvania and contiguous portions of New York, Ohio, and West Virginia. Pennsylvania oil has for some time been well and favorably known to the purchasing public and there is a preference on the part of a substantial portion of the public for such oil over oils refined from crude oil produced in other localities.

PAR. 8. Respondents' oil consists in whole or in substantial part of used oil obtained from drainings of motor crank cases and from other sources which is thereafter reclaimed or reprocessed. Said oil is sold in containers of the same general size, kind and appearance as those used for new oil and has the appearance of new and unused oil. The containers bear no markings of any kind indicating that said product is reclaimed or reprocessed oil. In the absence of a disclosure on the containers that the oil therein is reclaimed or reprocessed, the general understanding and belief on the part of dealers and the purchasing public is that oil sold in containers such as are used by respondents is, in fact, new oil and not reclaimed or reprocessed oil. There is a marked preference on the part of a substantial portion of the purchasing public for new and unused oil over used and reclaimed or reprocessed oil, such preference being due in part to the belief that new and unused oil is superior in quality to oil that has been used and reclaimed or reprocessed.

PAR. 9. The respondents' said acts and practices further serve to place in the hands of retailers a means and instrumentality whereby such persons may mislead the purchasing public in respect to the origin and quality of respondents' product.

PAR. 10. The use by respondents of the aforesaid false, deceptive and misleading statments and representations with respect to their product and the failure to disclose that their oil is composed in whole or in part of used oil which has been reclaimed or reprocessed, has had and now has, the tendency and capacity to mislead and deceive a substantial number of retailers and members of the purchasing public into the erroneous and mistaken belief that such statements and representations were and are true and causes and has caused a substantial number of the purchasing public to purchase substantial quantities of respondents' product because of such erroneous and mistaken belief.

PAR. 11. The aforesaid acts and practices of the respondents, as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDERS AND DECISION OF THE COMMISSION

Order denying appeal from initial decision of trial examiner and decision of the Commission and order to file report of compliance, Docket 5868, October 4, 1951, follows:

This matter coming on to be heard by the Commission upon the motion of counsel supporting the complaint that the initial decision of the trial examiner issued on June 11, 1951, be placed on the Commission's own docket, that said initial decision be vacated and set aside, and that Paragraph Five of the complaint herein be amended and the case thereafter be remanded to the trial examiner for the purpose of receiving proof in support of the complaint as amended, which motion the Commission has considered an appeal by counsel supporting the complaint from the trial examiner's initial decision; and

It appearing that the grounds relied upon in support of said appeal are that the trial examiner construed the allegations of Paragraph Five of the complaint in a manner different from that which was intended and that the public interest requires the action requested; and

The Commission having duly considered said appeal and the record herein and being of the opinion that the trial examiner was not in error in construing the complaint herein as not charging that respondents' use of the brand name "Penolube" alone is false, misleading, or deceptive, and that it would not be proper to amend the complaint at this stage of the proceeding to include such a charge, and being of the further opinion that the trial examiner's initial decision is appropriate in all respects to dispose of all the issues in this proceeding:

It is ordered, That the appeal of counsel supporting the complaint from the initial decision of the trial examiner and the request therein be, and they hereby are, denied.

It is further ordered, That the attached initial decision of the trial examiner shall, on the 4th day of October, 1951, become the decision of the Commission.

It is further ordered, That the respondents, except Clara Price and Muriel C. Johnson, shall, within sixty (60) days from the service of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist.

Said initial decision, thus adopted by the Commission as its decision, follows:

INITIAL DECISION BY FRANK HIER, TRIAL EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act the Federal Trade Commission on March 27, 1951, issued and subsequently served its complaint in this proceeding upon respondents Pennsylvania Oil Terminal, Inc., Douglas Price, Muriel C. Johnson, and Eugene K. Johnson (no service on respondent named as Clara Price), charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said Act. No answers thereto were filed by any respondent. On the date fixed in the complaint, May 22, 1951, a hearing was held at which respondent Douglas Price appeared, individually and as president of the corporate respondent; and respondent Eugene K. Johnson appeared, both without counsel. Thereat they agreed with counsel for the Commission that certain allegations of fact made in the complaint were the facts, and gave testimony at their own request as to certain other allegations, which testimony was duly recorded and filed in the office of the Commission. Although time was allowed therefor no proposed findings of fact were filed. Thereafter, the proceeding regularly came on for final consideration by the trial examiner, theretofore duly designated by the Commission, on the complaint and the testimony, and said trial examiner, having duly considered the record herein, finds that this proceeding is in the interest of the public and makes the following findings as to the facts, conclusion drawn therefrom, and order:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Pennsylvania Oil Terminal, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its office and principal place of business located at 3500 Branch Avenue, Silver Hill, Md. Respondent Douglas Price is president of said corporate respondent with his business address the same as that of the corporate respondent. Respondent Eugene K. Johnson formerly was the president of the corporate respondent and presently holds an exclusive franchise to sell corporate respondent's products within a 50 mile radius of Washington, D. C. His office and resident address is Capitol Heights, Md., Post Office Box 118.

There is no person by the name of Clara Price having or having had any connection with the corporate respondent. Florence Price, wife of Douglas Price, is an officer of such corporate respondent, and Muriel

Clara Johnson, wife of Eugene K. Johnson, is an officer of corporate respondent but neither were or are active in its business nor exercised any control over its policies and practices. The latter have been and are formulated and directed by respondents Douglas Price and Eugene K. Johnson.

PAR. 2. Respondents are now and for more than 1 year last past have been engaged in the sale and distribution of motor oil to retail distributors for resale to the public. Respondents sell said product under the brand name "Penolube Motor Oil."

PAR. 3. Respondents cause and have caused said product, when sold, to be transported from their place of business in the State of Maryland to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondents maintain and have maintained a course of trade in their product in commerce among and between the various States of the United States. Their volume of business in the sale of said product in commerce has been substantial.

PAR. 4. In the course and conduct of their aforesaid business and for the purpose of inducing the purchase of their said product in commerce, as "commerce" is defined in the Federal Trade Commission Act, the respondents have made and now make certain representations regarding the origin and quality of their oil, in advertisements inserted in trade journals and in other advertising media and on the label of their product. Among and typical of said representations are the following:

Representations in advertising:

PENOLUBE Motor Oil is *not just an ordinary motor oil.*

PENOLUBE carries a high fire and flash and is over *100 VI.*

A PREMIUM OIL THAT MEANS *EXTRA PROFITS TO YOU*

Label on product:

Penolube

A High Quality

MOTOR OIL

PENNSYLVANIA OIL TERMINAL, INC.

Main Office

Washington, D. C.

PAR. 5. Through the use of the corporate respondent's name, in conjunction with the word "Penolube," respondents have represented that the lubricating oil packaged and sold by them is refined and processed entirely from oil produced in the Pennsylvania oil field.

PAR. 6. The aforesaid representations were and are false, misleading and deceptive. In truth and in fact, respondents' Penolube oil was not and is not now refined entirely from oil produced in the Pennsylvania oil field, but consists entirely or in substantial part of oil produced in oil fields other than the Pennsylvania field.

PAR. 7. The term "Pennsylvania Oil" is recognized throughout the trade and by a substantial portion of the purchasing public as meaning oil refined from crude oil produced in a geographical area known as the Pennsylvania oil field which includes the western portion of Pennsylvania and contiguous portions of New York, Ohio, and West Virginia. Pennsylvania oil has for some time been well and favorably known to the purchasing public and there is a preference on the part of a substantial portion of the public for such oil over oils refined from crude oil produced in other localities.

PAR. 8. Respondents admit that the corporate respondent's name is misleading and deceptive and that the representations and container labels are likewise misleading and deceptive by reason of the use of the brand name and the name of the corporate respondent together. They contend, however, that the brand name "Penolube" is not of itself misleading or deceptive, because they contend it does not, alone, connote oil derived from crude oil produced in the Pennsylvania field. There is no charge in the complaint that the brand name "Penolube" alone, is false, deceptive or misleading. The charge is confined to the use of both names in conjunction with each other. The finding of fact is likewise similarly confined.

PAR. 9. Respondents' oil consists in whole or in substantial part of used oil obtained from drainings of motor crankcases and from other sources which is thereafter reclaimed or reprocessed. Said oil is sold in containers of the same general size, kind, and appearance as those used for new oil and has the appearance of new and unused oil. The containers bear no markings of any kind indicating that said product is reclaimed or reprocessed oil. In the absence of a disclosure on the containers that the oil therein is reclaimed or reprocessed, the general understanding and belief on the part of dealers and the purchasing public is that oil sold in containers such as are used by respondents is, in fact, new oil and not reclaimed or reprocessed oil. There is a marked preference on the part of a substantial portion of the purchasing public for new and unused oil over used and reclaimed or

reprocessed oil, such preference being due in part to the belief that new and unused oil is superior in quality to oil that has been used and reclaimed or reprocessed.

PAR. 10. The respondents' said acts and practices further serve to place in the hands of retailers a means and instrumentality whereby such persons may mislead the purchasing public in respect to the origin and quality of respondents' product.

PAR. 11. The use by respondents of the aforesaid false, deceptive and misleading statements and representations with respect to their product and the failure to disclose that their oil is composed in whole or in part of used oil which has been reclaimed or reprocessed, has had and now has, the tendency and capacity to mislead and deceive a substantial number of retailers and members of the purchasing public into the erroneous and mistaken belief that such statements and representations were and are true and causes and has caused a substantial number of the purchasing public to purchase substantial quantities of respondents' product because of such erroneous and mistaken belief.

CONCLUSION

The aforesaid acts and practices of the respondents, as hereinabove found, are all to the injury and prejudice of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER

It is ordered, That Pennsylvania Oil Terminal, Inc., a corporation, its officers, employees, agents and representatives, Douglas Price, individually and as an officer of such corporation, and Eugene K. Johnson, their agents, employees and representatives, through any corporate or other device, in connection with the sale, offering for sale, and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of lubricating oil, do forthwith cease and desist from:

1. Using the name "Pennsylvania Oil Terminal, Inc." or any other name containing the word "Pennsylvania" or any abbreviation, derivation or simulation of the word "Pennsylvania" in conjunction with the brand name "Penolube," to designate or describe lubricating oil, any part of which is not derived from crude oil which has been extracted from that portion of western Pennsylvania, and contiguous portions of Ohio, New York, and West Virginia, generally known as the Pennsylvania oil field;

2. Advertising, selling, or offering for sale, any lubricating oil, which has been previously used for lubricating purposes, without disclosing such prior use to the purchaser or potential purchaser, either directly or by clear and conspicuous appropriate statement to that effect on the container.

It is further ordered, That the complaint be and the same hereby is dismissed as to respondents Clara Price and Muriel C. Johnson.

ORDER TO FILE REPORT OF COMPLIANCE

It is further ordered, That the respondents, except Clara Price and Muriel C. Johnson, shall, within sixty (60) days from the service of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist [as required by aforesaid order and decision of the Commission].

IN THE MATTER OF

CONTINENTAL RADIO TUBE COMPANY ET AL.

COMPLAINT, MODIFIED FINDINGS, AND ORDERS IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 5725. Complaint, Dec. 20, 1949—Decision, Oct. 5, 1951

Many radio repairmen and service dealers are prejudiced against the purchase of war surplus tubes, and have a preference for the current commercial tubes.

As respects the removal of numbers or symbols placed on radio tubes by manufacturers or others for identification, and the substitution by sellers of others, the fact that many of the tubes on which substitute numbers or symbols were placed may have been identical with radio tubes generally so identified is no justification for such incorrect identification.

Where a corporation and its four officers, engaged in the interstate sale and distribution of radio tubes—

(*a*) Incorrectly identified tubes purchased by them from the manufacturers or others, by removing the identification numbers or symbols placed thereon and substituting others, and delivered them in commerce as and for the tubes identified in the trade by the substitutions;

(*b*) Incorrectly identified war surplus tubes purchased by them by buffing away the service numbers or symbols and substituting therefor commercial numbers or symbols, and causing them to be delivered to their customers in commerce as and for the tubes identified by such commercial numbers or symbols; and

(*c*) Falsely represented that they had been licensed by Radio Corporation of America to make or distribute radio tubes, through statements to such effect on cartons packaging their said products;

With capacity and tendency to mislead and deceive the trade and public in said respects and thereby induce purchasers of their said products, and with the result of placing in the hands of the purchasers for resale a means whereby they might pass on incorrectly identified products to the ultimate users:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public, and constituted unfair and deceptive acts and practices in commerce.

As respects respondents' objection to the last clause in paragraph one of the proposed modified order, namely, "1. Removing any identification number or symbol placed on radio tubes by the manufacturer thereof or others, and substituting therefor any other number or symbol, *or otherwise incorrectly identifying such radio tubes*," respondents contending that the order with said clause included is indefinite and uncertain, that it seeks to adjudicate as violations undefined future action of respondents, and that it goes beyond the facts found by the Commission:

Said objections were held without merit, since the complaint was aimed, among other things, at respondents' practice of incorrectly identifying the radio tubes sold by them, and an order limited in its application to the specific ways in which their tubes had been incorrectly identified in the past would not be adequate to prohibit a continuation or resumption of the practice by some other means.

Before *Mr. Clyde M. Hadley*, trial examiner.
Mr. Randolph W. Branch for the Commission.
KixMiller, Baar & Morris, of Chicago, Ill., for respondents.

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 Continental Radio Tube Co., a corporation, P. D. Jackson, Jacob L. Gaber, Erwin F. Rempert, and Martin Gaber, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of the said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating as its charges in that respect as follows:

PARAGRAPH 1. Respondent, Continental Radio Tube Co., is an Illinois corporation and has its principal office and place of business at 1800 Winnemac Avenue, Chicago, Ill. Respondents, P. D. Jackson, Jacob L. Gaber, Erwin F. Rempert and Martin Gaber, are president, vice president, secretary and treasurer, respectively, of the respondent, Continental Radio Tube Co. Said respondents are now, and for several years last past have been, engaged in selling radio supplies. In the course and conduct of said business, respondents use the trade names Concert Master Radio Tube Co., and Premier Radio Tube Co.

Respondents cause said products, when sold, to be transported from their aforesaid place of business to purchasers thereof located in various States of the United States and in the District of Columbia. Respondents maintain, and at all times mentioned herein, have maintained a course of trade in said products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. Respondents advertise their said products in trade publications, and sell the bulk of their products to jobbers, retail dealers, and repairmen.

PAR. 3. In the course and conduct of their business as aforesaid, and in promoting the sale of their products, the respondents have en-

gaged in various deceptive and misleading practices. Among those practices, respondents purchase radio tubes from various sources, remove therefrom the identification number or symbol placed on the tubes by the manufacturer thereof, and substitute, in lieu of said number or symbol, another number or symbol signifying a more expensive tube or a tube of current manufacture. Respondents purchase war surplus tubes, buff away the service marking thereon, and substitute therefor a commercial number or symbol, and stamp thereon the legend "Made in U. S. A., CC." The carton in which respondents package their aforesaid tubes for shipment to the purchasers thereof, are marked by respondents, "Licensed by Radio Corporation of America," or "Licensed by RCA," when in truth and in fact, respondents were never licensed by the Radio Corporation of America.

PAR. 4. By and through the aforesaid acts and practices, the respondents have sold their radio tubes and supplies to the purchasers thereof throughout the United States, who bought said tubes in the erroneous and mistaken belief that said tubes and supplies were correctly marked, and that they were buying current stock of the latest manufacture from a dealer duly licensed by the Radio Corporation of America. By said acts and practices, respondents have also placed in the hands of the purchasers of their tubes for resale, a means or instrumentality whereby said purchasers may and do pass on to the ultimate users of the tubes and supplies incorrectly marked and identified products.

PAR. 5. The aforesaid acts and practices of respondents, as herein alleged, are all to the prejudice and injury of the public and constitute unfair or deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER REOPENING PROCEEDING AND MODIFYING FINDINGS AS TO THE FACTS AND ORDER [1]

Pursuant to the provisions of the Federal Trade Commission Act the Federal Trade Commission, on December 20, 1949, issued and subsequently served its complaint in this proceeding upon the respondents, Continental Corporation (incorrectly designated in the complaint as Continental Radio Tube Company), a corporation, and P. D. Jackson, Jacob L. Gaber, Erwin F. Rempert, and Martin Gaber, individually and as officers of said corporation, charging them with the use of unfair and deceptive acts and practices in commerce, in violation of the provisions of said Act. After respondents filed their

[1] See 47 F. T. C. 1277.

answer to the complaint, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by counsel for the respondents and counsel supporting the complaint may be taken as the facts in this proceeding and in lieu of testimony in support of and in opposition to the charges stated in the complaint, and that the said statement of facts may serve as the basis for findings as to the facts and conclusion based thereon and order disposing of the proceeding, counsel having waived presentation of proposed findings and conclusions and oral argument. The trial examiner thereafter filed his initial decision, which, on April 19, 1951, became the decision of the Commission.

Thereafter the Commission, acting upon its own motion, reconsidered its aforesaid decision and, it appearing that said decision is deficient in certain respects and that the public interest may require that this proceeding be reopened and the findings as to the facts and order modified, issued its rule to show cause why the public interest does not require that this proceeding be reopened and the findings as to the facts and order modified in the respects indicated in said rule to show cause. The respondents, in answer to said rule to show cause, objected to the last clause in paragraph 1 of the proposed modified order, contending that the order with said clause included is indefinite and uncertain; that it seeks to adjudicate as violations undefined future actions of the respondents; and that it goes beyond the facts found by the Commission.

Respondents' objections to the proposed modified order are without merit. The complaint in this proceeding was aimed at, among other things, the respondent's practice of incorrectly identifying the radio tubes they sell. An order limited in its application to the specific ways in which their tubes have been incorrectly identified in the past would not be adequate to prohibit a continuation or resumption of the practice by some other means.

The Commission having duly considered the matter and being of the opinion that the public interest requires that this proceeding be reopened and the findings as to the facts and order to cease and desist modified:

It is ordered, That this proceeding be, and it hereby is, reopened for the purpose of modifying the findings as to the facts and order to cease and desist previously issued herein.

It is further ordered, That said findings as to the facts and order to cease and desist be, and they hereby are, modified to read as follows:

MODIFIED FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Continental Corp. (incorrectly named in the complaint as Continental Radio Tube Co.) is an Illinois corporation with its principal office and place of business now at 551–553 West Randolph Street, Chicago, Ill. During all the times mentioned herein, respondent P. D. Jackson was the president, respondent Jacob L. Gaber the vice president, respondent Erwin F. Rempert the secretary and treasurer, of said corporation; and until March 31, 1950, respondent Martin Gaber was its manager to carry out the policies formulated by the officers as to advertising and other operations, and since then has been its vice president and participates in formulation of policies. At the present time, neither P. D. Jackson nor Erwin F. Rempert is in any way connected with such Continental Corporation.

PAR. 2. Respondents, during all the times mentioned herein, were engaged in selling radio supplies, including radio tubes, causing the same, when sold, to be transported from their place of business in the State of Illinois to purchasers thereof in other States and in the District of Columbia, maintaining a course of trade in said products in commerce between and among the various States of the United States and in the District of Columbia. In conducting said business, respondents have also used the trade names Concert Master Radio Tube Co. and Premier Radio Tube Co. They have advertised their said products in trade publications and sold the bulk of such products to jobbers, dealers, and repairmen.

PAR. 3. In the course and conduct of their business, and in promoting the sale of their products, respondents have purchased radio tubes from various sources, removed the identification numbers or symbols placed thereon by the manufacturers or by others prior to their acquisition by respondents, and have substituted in lieu thereof other numbers or symbols and delivered them in commerce as and for the tubes which are commonly and usually identified in the trade by the numbers and symbols thus substituted.

Respondents have also purchased war surplus tubes, buffed away the service numbers or symbols thereon, substituted therefor commercial numbers or symbols, and caused them to be delivered to their customers in commerce as and for the tubes which are commonly and usually identified by such commercial numbers or symbols. Thus, a tube originally bearing the Army number "V T–131" is marked and offered commercially by them as "12S.K7." Many radio repairmen and service dealers are prejudiced against the purchase of war surplus tubes, and have a preference for the current commercial tubes.

Various cartons used by respondents in packaging their tubes shipped in commerce bear the following:

"Concert Master"
matched
Radio Tubes
Uniformly consistent
Licensed by R. C. A.
Concert Master Radio Tube Co.
Chicago, Ill. U. S. A.

Continental Radio Tubes
Licensed by
Radio Corporation of America

PAR. 4. The numbers or symbols placed on the aforesaid radio tubes by the manufacturers or others prior to their acquisition by the respondents were placed thereon for the purpose of identification, and, although the record herein does not disclose the significance of such numbers or symbols to purchasers, other than that of identification, by removing such identification numbers or symbols and substituting in lieu thereof other numbers or symbols the respondents caused such radio tubes to be incorrectly identified. The fact that many of the radio tubes on which substitute numbers or symbols were placed may have been identical with radio tubes generally so identified, although in some instances they were not, is no justification for such incorrect identification. The war surplus radio tubes from which the respondents removed the service numbers or symbols as aforesaid were also incorrectly identified as current commercial radio tubes. The Commission finds that the acts and practices of the respondents of incorrectly identifying, as aforesaid, radio tubes sold by them are misleading and deceptive.

By the use of the aforesaid statements on cartons in which their radio tubes were packaged for shipment, the respondents represented that they have been licensed by Radio Corporation of America to make or distribute radio tubes. The respondents do not hold, and never have held, any license from Radio Corporation of America, and the aforesaid representations are, therefore, false, misleading, and deceptive.

PAR. 5. The aforesaid acts and practices of respondents have had and now have the capacity and tendency to mislead and deceive the trade and the public as to their radio tubes, inducing purchasers to buy the same in the erroneous and mistaken belief that said tubes were correctly identified by the numbers or symbols appearing thereon, were of current commercial stock, and that the respondents were

licensed by the Radio Corporation of America to make or distribute radio tubes. By said acts and practices, respondents have also placed in the hands of the purchasers of their radio tubes for resale, a means or instrumentality whereby said purchasers may pass on to the ultimate users thereof incorrectly identified products.

CONCLUSION

The acts and practices of the respondents as herein found are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

MODIFIED ORDER

It is ordered, That the respondent Continental Corporation, a corporation, trading under its own or under any other name, its officers, and the respondents P. D. Jackson, Jacob L. Gaber, Erwin F. Rempert, and Martin Gaber, individually, and their respective agents, representatives, and employees directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of radio tubes in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Removing any identification number or symbol placed on radio tubes by the manufacturer thereof or others, and substituting therefor any other number or symbol, or otherwise incorrectly identifying such radio tubes.

2. Removing the service number or symbol from war surplus radio tubes and substituting therefor any other number or symbol, or otherwise representing that such war surplus radio tubes are current commercial tubes.

3. Representing that the respondents have been licensed by Radio Corporation of America to make or distribute radio tubes, or for any other purpose.

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

IN THE MATTER OF

BEN SELVIZ, INC. ET AL.

COMPLAINT, SETTLEMENT, FINDINGS AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914, AND OF AN ACT OF CONGRESS APPROVED OCT. 14, 1940

Docket 5905. Complaint, July 9, 1951—Decision, Oct. 9, 1951

Where a corporation and its two officers, engaged in the manufacture, introduction into commerce, and distribution of wool products as defined in the Wool Products Labeling Act—

Misbranded ladies' coats within the intent and meaning of said act and the rules and regulations promulgated thereunder in that, (1) labeled 100% wool, they contained no "wool" but were composed, exclusive of ornamentation, of "reprocessed wool," together with small amounts of rayon and cotton; and (2) their constituent fibers and the percentages thereof were not shown on the tags or labels thereon as required by said act and rules, etc.:

Held, That such acts and practices, under the circumstances set forth, were in violation of said act and said rules and regulations, and constituted unfair and deceptive acts and practices in commerce.

Before *Mr. James A. Purcell*, trial examiner.

Mr. J. M. Doukas and *Mr. C. J. Aimone* for the Commission.

Cohn, Riemer & Pollack, of Boston, Mass., for respondents.

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 Ben Selviz, Inc., a corporation and Robert J. Seder and Leonard Freeman, individually and as officers of said corporation 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 thereto would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Ben Selviz, Inc. is a corporation organized and existing under the laws of the Commonwealth of Massachusetts; Robert J. Seder is its president and Leonard Freeman is its treasurer. The individual respondents formulate, direct, and control the policies, acts and practices of the corporate respondent. The office and principal place of business of both corporate respondent and the individual respondents is located at 763 Washington Street, Newtonville, Mass.

PAR. 2. Subsequent to July 15, 1941, respondents manufactured for introduction into commerce, introduced into commerce, sold, transported, distributed, delivered for shipment, and offered for sale in commerce, as "commerce" is defined in the Wool Products Labeling Act, wool products as "wool products" are defined therein.

PAR. 3. Certain of said wool products were misbranded in that they were not stamped, tagged or labeled as required under the provisions of section 4(a) (2) of the Wool Products Labeling Act of 1939 in the manner and form as prescribed by the Rules and Regulations promulgated under such act.

PAR. 4. Certain of said wool products, to wit, ladies' coats, were misbranded within the intent and meaning of said act and the rules and regulations promulgated thereunder in that they were falsely and deceptively labeled with respect to the character and amount of their constituent fibers. Typical of the foregoing was the labeling of ladies' coats as 100 percent wool, whereas, in truth and in fact, said products contained no wool, as "wool" is defined in said act, but were composed, exclusive of ornamentation not exceeding 5 per centum of their total fiber weight, of reprocessed wool as "reprocessed wool" is defined in the Wool Products Labeling Act, together with small amounts of rayon and cotton. The said wool products so labeled were further misbranded in that their constituent fibers and the percentage thereof were not shown on the tags or labels thereon as required by said act and in the manner and form required by the said rules and regulations.

PAR. 5. The aforesaid acts and practices of respondents as herein alleged are in violation of the Wool Products Labeling Act of 1939, and the rules and regulations promulgated thereunder and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

CONSENT SETTLEMENT [1]

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, the Federal Trade Commission, on July 9, 1951, issued and subsequently served its complaint on the respondents named in the caption hereof, charging them with the violations of the Wool Products Labeling Act of 1939, and

[1] The Commission's "Notice" announcing and promulgating the consent settlement as published herewith, follows:

The consent settlement tendered by the parties in this proceeding, a copy of which is served herewith, was accepted by the Commission on October 9, 1951, and ordered entered of record as the Commission's findings as to the facts, conclusion, and order in disposition of this proceeding.

the rules and regulations promulgated thereunder which constituted unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

The respondents, desiring that this proceeding be disposed of by the consent settlement procedure provided in rule V of the Commission's rules of practice, solely for the purpose of this proceeding, any review thereof, and the enforcement of the order consented to, and conditioned upon the Commission's acceptance of the consent settlement hereinafter set forth, and in lieu of the answer to said complaint heretofore filed and which, upon acceptance by the Commission of this settlement, is to be withdrawn from the record, hereby:

1. Admit all the jurisdictional allegations set forth in the complaint.

2. Consent that the Commission may enter the matters hereinafter set forth as its findings as to the facts, conclusion, and order to cease and desist. It is understood that the respondents, in consenting to the Commission's entry of said findings as to the facts, conclusion, and order to cease and desist, specifically refrain from admitting or denying that they have engaged in any of the acts or practices stated therein to be in violation of law.

3. Agree that this consent settlement may be set aside in whole or in part under the conditions and in the manner provided in paragraph (f) of rule V of the Commission's rules of practice.

The admitted jurisdictional facts, the statement of the acts and practices which the Commission had reason to believe were unlawful, the conclusion based thereon, and the order to cease and desist, all of which the respondents consent may be entered herein in final disposition of this proceeding, are as follows:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Ben Selviz, Inc., is a corporation organized and existing under the laws of the Commonwealth of Massachusetts; Robert J. Seder is its president and Leonard Freeman is its treasurer. The individual respondents formulate, direct, and control the policies, acts and practices of the corporate respondent. The office and principal place of business of both corporate respondent and the individual respondents is located at 763 Washington Street, Newtonville, Mass.

PAR. 2. Subsequent to July 15, 1941, respondents manufactured for introduction into commerce, introduced into commerce, sold, transported, distributed, delivered for shipment, and offered for sale in commerce, as "commerce" is defined in the Wool Products Labeling Act, wool products as "wool products" are defined therein.

PAR. 3. Certain of said wool products were misbranded in that they were not stamped, tagged or labeled as required under the provisions of section 4 (a) (2) of the Wool Products Labeling Act of 1939 in the manner and form as prescribed by the rules and regulations promulgated under such act.

PAR. 4. Certain of said wool products, to wit, ladies' coats, were misbranded within the intent and meaning of said act and the rules and regulations promulgated thereunder in that they were falsely and deceptively labeled with respect to the character and amount of their constituent fibers. Typical of the foregoing was the labeling of ladies' coats as 100 percent wool, whereas, in truth and in fact, said products contained no wool, as "wool" is defined in said act, but were composed, exclusive of ornamentation not exceeding 5 per centum of their total fiber weight, of reprocessed wool as "reprocessed wool" is defined in the Wool Products Labeling Act, together with small amounts of rayon and cotton. The said wool products so labeled were further misbranded in that their constituent fibers and the percentages thereof were not shown on the tags or labels thereon as required by said act and in the manner and form required by the said rules and regulations.

CONCLUSION

The aforesaid acts and practices of respondents as herein alleged are in violation of the Wool Products Labeling Act of 1939, and the rules and regulations promulgated thereunder and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

It is ordered, That the respondent Ben Selviz, Inc., a corporation, and its officers, and the respondents Robert J. Seder and Leonard Freeman, individually and as officers of said respondent corporation, and said respondents' respective representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction or manufacture for introduction into commerce, or the sale, transportation or distribution in commerce, as "commerce" is defined in the aforesaid acts, of ladies' coats or other wool products, as such products are defined in and subject to the Wool Products Labeling Act of 1939, which products contain, purport to contain or in any way are represented as containing "wool," "reprocessed wool" or "reused wool," as those terms are defined in said act, do forthwith cease and desist from misbranding such products:

1. By representing on any stamp, tag, label or other means of identification the character or amount of the constituent fibers of any of said products.

2. By failing to securely affix or to place on such products a stamp, tag, label or other means of identification showing in a clear and conspicuous manner:

(*a*) The percentage of the total fiber weight of such wool product, exclusive of ornamentation not exceeding 5 percent of said total fiber weight, of (1) wool, (2) reprocessed wool, (3) reused wool, (4) each fiber other than wool where said percentage by weight of such fiber is 5 percent or more, and (5) the aggregate of other fibers.

(*b*) The maximum percentage of the total weight of such wool product of any nonfibrous loading, filling, or adulterating matter.

(*c*) The name or the registered identification number of the manufacturer of such wool product or of one or more persons engaged in introducing such wool product into commerce, or in the offering for sale, sale, transportation, or distribution thereof in commerce, as "commerce" is defined in the Federal Trade Commission Act and in the Wool Products Labeling Act of 1939.

Provided, That the foregoing provisions concerning misbranding shall not be construed to prohibit acts permitted by paragraphs (a) and (b) of section 3 of the Wool Products Labeling Act of 1939; *and provided further*, That nothing contained in this order shall be construed as limiting any applicable provisions of said Act or the Rules and Regulations promulgated thereunder.

BEN SELVIZ, INC.

By (sgd) Robert J. Seder,
ROBERT J. SEDER, *President*,
Ben Selviz, Inc.

(sgd) Robert J. Seder,
ROBERT J. SEDER.

(sgd) Leonard Freeman,
LEONARD FREEMAN.

The foregoing consent settlement is hereby accepted by the Federal Trade Commission and ordered entered of record on this the 9th day of October 1951.

IN THE MATTER OF

R. E. NYE DOING BUSINESS AS INTERNATIONAL SERVICE BUREAU & ASSOCIATES

COMPLAINT, FINDINGS, AND ORDERS IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 5912. Complaint, Aug. 8, 1951—Decision, Oct. 9, 1951

Where an individual engaged under the trade name "International Service Bureau and Associates," in locating delinquent debtors, for his clients, involving business intercourse among persons in various states;

In attempting to secure information concerning their addresses, which he might in turn sell to his clients, through a form letter sent to debtors, together with a form for their use in supplying their address, occupation, etc., and return envelope addressed to "Disbursement Office, International Service Bureau and Associates" at his Washington address—

Falsely represented through said form letters, mailed to the persons concerning whom information was sought at their last known address, that he was holding a sum of money for the recipients or persons of identical name, and that the information was requested in order to positively identify the recipients so that said money might be paid to them;

The facts being nothing of value, except.ng a few postage stamps, was sent to the addressees; the whole plan was designed and intended to obtain information by subterfuge; and the addresses' understanding that he was holding money for them was enhanced by the misleading and deceptive expression "Disbursement Office";

With capacity and tendency to mislead and deceive many persons to whom said form letters were sent into the erroneous belief that said representations were true and thereby induce them to supply information which they otherwise would not have supplied:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public, and constituted unfair and deceptive acts and practices in commerce.

Before *Mr. Frank Hier*, trial examiner.

Mr. J. W. Brookfield, Jr. for the Commission.

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 R. E. Nye, an individual trading and doing business as International Service Bureau & Associates, hereinafter referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a pro-

ceeding 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 R. E. Nye is an individual trading and doing business under the name International Service Bureau & Associates, with his office and principal place of business located at 400 Fifth Street, NW., in the city of Washington, D. C. Respondent is now and for more than one year last past has been engaged in the business of locating delinquent debtors, obtaining information concerning them and in selling such information to his clients.

PAR. 2. In the course and conduct of his business respondent causes letters and other material to be transported by the United States mails in the District of Columbia to the recipients thereof located in the District of Columbia and also in various States of the United States and the recipients of said letters in turn cause letters and other materials to be transported by the United States mails from their respective locations in the District of Columbia and various other States to respondent at his place of business in the District of Columbia. Respondent's business as thus conducted involves intercourse of a business and commercial nature between himself and his clients and the persons from whom information is sought located in various States of the United States and in the District of Columbia.

PAR. 3. The form letter sent by respondent to debtors and the form to be used in supplying information are as follows:

International Service Bureau & Associates
400 FIFTH STREET, NORTHWEST—WASHINGTON 1, D. C.

Date

Addressee

Dear Mr: ----------

There has come into our custody a sum of money which we believe should be paid to a person of your name. Will you kindly fill out and return to us the enclosed form to assist us in determining if you are the person to whom payment should be made.

If identification is satisfactory, you will receive our check within fifteen days. A self-addressed envelope is enclosed for convenience in making reply.

Very truly yours,

(Signed) R. E. Nye,
R. E. NYE,
Disbursement Officer.

Claim No. 012860
REN: lg

DISBURSEMENT OFFICE
INTERNATIONAL SERVICE BUREAU & ASSOCIATES
400 5th Street, N. W.
Washington 1, D. C.

Below is the requested information. Please send the check.

Name_____
Street and No_____
City_____ State_____
Occupation_____
Employer_____
Employer's Address_____
Home Phone_____ Business Phone_____
Husband or Employer_____
Address_____
Bank_____
Address_____
Reference_____
Address_____
Reference_____
Address_____
Claim Number_____

Fill in and return this blank within 30 days.
Allow two weeks for mailing the check.

Please Type or Print Information

Give Complete Information to Expedite Mailing of Check

PAR. 4. Respondent mails the said form letters to the persons concerning whom information is sought at their last-known address, together with an envelope addressed to International Service Bureau & Associates, 400 Fifth Street N. W., Washington, D. C. for use in returning said information form, if and when completed.

PAR. 5. Through the use of the said form letters, respondent represents, directly and by implication, that he is holding a certain sum of money or other funds for the recipients of the form letters or persons of identical names and that the information requested in the form letters is desired by him in order to positively identify the recipients of the letters as the persons for whom he is holding the money so that said money may be paid to them.

Said representations are misleading and deceptive. In truth and in fact, respondent does not receive money and does not hold any money in his custody for the recipient of the form letters . On the contrary, the sole and only purpose in mailing said letters with enclosures is to secure information concerning the addressee which in turn may be sold to respondent's clients. No check, money, or anything of value except a few postage stamps is sent to the addressee of said letters and respondent's whole plan is designed for the purpose of and intended to obtain information by subterfuge. The use of the expression "Disbursement Office" on the form to be returned enhances the

understanding in the minds of the addressees that respondent is holding money or other funds for them and is misleading and deceptive in and of itself.

PAR. 6. The use of the foregoing misleading and deceptive statements, representations, and designations has the capacity and tendency to mislead and deceive many persons to whom the said form letters are sent into the erroneous and mistaken belief that the said statements and representations are true and to induce them to supply information to respondent which they otherwise would not have supplied.

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

DECISION OF THE COMMISSION

Pursuant to rule XXII of the Commission's Rules of Practice, and as set forth in the Commission's "Decision of the Commission and Order to File Report of Compliance," dated October 9, 1951, the initial decision in the instant matter of trial examiner Frank Hier, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY FRANK HIER, TRIAL EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on August 8, 1951, issued and subsequently served its complaint in this proceeding upon the respondent, R. E. Nye, an individual trading and doing business as International Service Bureau & Associates, charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On August 22, 1951, respondent filed his answer, in which answer he admitted all the material allegations of facts set forth in said complaint and waived all intervening procedure and and further hearing as to the said facts. Thereafter, the proceeding regularly came on for final consideration by the above-named trial examiner theretofore duly designated by the Commission upon said complaint and answer thereto, all intervening procedure having been waived, and said trial examiner, having duly considered the record herein, finds that this proceeding is in the interest of the public and makes the following findings as to the facts, conclusion drawn therefrom, and order:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent R. E. Nye is an individual trading and doing business under the name International Service Bureau & Associates, with his office and principal place of business located at 400 Fifth Street, NW., in the city of Washington, D. C. Respondent is now and for more than one year last past has been engaged in the business of locating delinquent debtors, obtaining information concerning them and in selling such information to his clients.

PAR. 2. In the course and conduct of his business respondent causes letters and other material to be transported by the United States mails in the District of Columbia to the recipients thereof located in the District of Columbia and also in various States of the United States and the recipients of said letters in turn cause letters and other materials to be transported by the United States mails from their respective locations in the District of Columbia and various other States to respondent at his place of business in the District of Columbia. Respondent's business as thus conducted involves intercourse of a business and commercial nature between himself and his clients and the persons from whom information is sought located in various States of the United States and in the District of Columbia.

PAR. 3. The form letter sent by respondent to debtors and the form to be used in supplying information are as follows

International Service Bureau & Associates

400 FIFTH STREET, NORTHWEST—WASHINGTON 1, D. C.

Date

Addressee
Dear Mr_____:

There has come into our custody a sum of money which we believe should be paid to a person of your name. Will you kindly fill out and return to us the enclosed form to assist us in determining if you are the person to whom payment should be made.

If identification is satisfactory, you will receive our check within fifteen days. A self-addressed envelope is enclosed for convenience in making reply.

Very truly yours,

Claim No. 012860
REN: lg

(Signed) R. E. Nye,
R. E. NYE,
Disbursement Officer.

DISBURSEMENT OFFICE

INTERNATIONAL SERVICE BUREAU & ASSOCIATES

400 5th Street, N. W.

Washington 1, D. C.

Below is the requested information. Please send the check.

Name _____
Street and No _____
City _____ State _____
Occupation _____
Employer _____
Employer's Address _____
Home phone _____ Business Phone _____
Husband or employer _____
Address _____
Bank _____
Address _____
Reference _____
Address _____
Reference _____
Address _____
Claim Number _____

Fill in and return this blank within 30 days. Allow two weeks for mailing the check.

Please Type or Print Information

Give complete Information to Expedite Mailing of Check

PAR. 4. Respondent mails the said form letters to the persons concerning whom information is sought at their last-known address, together with an envelope addressed to International Service Bureau & Associates, 400 Fifth Street, NW., Washington, D. C., for use in returning said information form, if and when completed.

PAR. 5. Through the use of the said form letters, respondent represents, directly and by implication, that he is holding a certain sum of money or other funds for the recipients of the form letters or persons of identical names and that the information requested in the form letters is desired by him in order to positively identify the recipients of the letters as the persons for whom he is holding the money so that said money may be paid to them.

PAR. 6. Said representations are misleading and deceptive. In truth and in fact, respondent does not receive money and does not hold any money in his custody for the recipient of the form letters. On the

contrary, the sole and only purpose in mailing said letters with enclosures is to secure information concerning the addressee which in turn may be sold to respondent's clients. No check, money or anything of value except a few postage stamps is sent to the addressee of said letters and respondent's whole plan is designed for the purpose of and intended to obtain information by subterfuge. The use of the expression "Disbursement Office" on the form to be returned enhances the understanding in the minds of the addressees that respondent is holding money or other funds for them and is misleading and deceptive in and of itself.

PAR. 7. The use of the foregoing misleading and deceptive statements, representations and designations has the capacity and tendency to mislead and deceive many persons to whom the said form letters are sent into the erroneous and mistaken belief that the said statements and representations are true and to induce them to supply information to respondent which they otherwise would not have supplied.

CONCLUSION

The aforesaid acts and practices of respondent, as herein found, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER

It is ordered, That the respondent, R. E. Nye, an individual, trading as International Service Bureau & Associates, or any other name, his agents, representatives and employees, directly or through any corporate or other device, in connection with the use in commerce, as "commerce" is defined in the Federal Trade Commission Act, of form letters, reply forms, or any other printed or written material of a substantially similar nature, do forthwith cease and desist from:

(1) Representing directly or by implication that respondent is holding a sum of money or any other thing of value for the recipients of said form letters, or other letters, or that the information requested is desired by respondent for the purpose of enabling respondent to make delivery of any such sum of money;

(2) Using form letters or other material which represents directly or by implication that respondent's business is other than that of locating delinquent debtors.

ORDER TO FILE REPORT OF COMPLIANCE

It is ordered, That the respondent herein shall, within sixty (60) days after service upon him of this order, file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with the order to cease and desist [as required by said declaratory decision and order of October 9, 1951].

IN THE MATTER OF

ELBERT W. BISHOP ET AL. TRADING AS SILOGERM COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 5136. Complaint, Mar. 6, 1944—Decision, Oct. 19, 1951

Where four partners engaged in the interstate sale and distribution, under the trade name "Silogerm," of a culture containing lactic acid-producing bacteria for use in making silage; in advertising their said product in newspapers and periodicals and through circulars, leaflets and other advertising material—

(*a*) Represented that the treatment of silage with their product prevented mold and decay; notwithstanding the fact that lactic acid bacteria will not prevent mold or decay in silage which is not properly packed, or prevent spoilage due to putrifactive organisms in the absence of sufficient carbohydrate material—which is available in many forage crops and can be added to others—for said bacteria to feed on; formation of mold and resultant decay is prevented by proper packing of the chopped forage to exclude air and prevention of the growth of putrifactive organisms is insured by the presence of sufficient acid, furnished in the fermenting process, when sufficient carbohydrate materials are available;

(*b*) Falsely represented that both grain and corn silage were substantially improved by its use, that it made corn silage more palatable, and rendered more minerals in such silage available to animals; and

(*c*) Falsely represented that the use of their said product substantially increased the feed value of silage and was of significant value in keeping animals in good condition;

The facts being that neither lactic acid nor lactic acid-producing bacteria in silage increase its value except to the extent that they prevent spoilage as above described; and use of said culture would not result in the final product having a higher lactic acid content than untreated silage;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that said representations were true and thereby induce its purchase of their said product:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public, and constituted unfair and deceptive acts and practices in commerce.

Before *Mr. Earl J. Kolb*, trial examiner.

Mr. Edward L. Smith and *Mr. George M. Martin* for the Commission.

Darby & Darby, of New York City, for respondents.

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 Elbert W. Bishop, Willard R. Bishop, Harold S. Bishop and Evelyn M. Heigis, copartners trading as Silogerm Co., 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. Elbert W. Bishop, Willard R. Bishop, Harold S. Bishop, and Evelyn M. Heigis are individuals and copartners, trading as the Silogerm Co., with their office and principal place of business located at 82 Washington Street in the city of Bloomfield, State of New Jersey.

PAR. 2. Said respondents are now, and for more than 1 year last past have been, engaged in the sale and distribution of bacteria cultures for the treatment of ensilage and designated as Silogerm. In the course and conduct of their aforesaid business, respondents cause their product when sold to be transported from their place of business in the State of New Jersey to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondents maintain and at all times mentioned herein have maintained a course of trade in said product in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their aforesaid business, the respondents have disseminated, and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning their said product by the United States mails and by various other means in commerce as commerce is defined by the Federal Trade Commission Act. Respondents have also disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning their said product, by various means, for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of their said product in commerce, as commerce is defined in the Federal Trade Commission Act.

Among and typical of the false, misleading and deceptive statements and representations contained in said false advertisements, disseminated and caused to be disseminated as herein set forth, by United States mails, by advertisements inserted in newspapers and periodi-

cals, and by means of circulars, leaflets and other advertising material are the following:

SILOGERM—For the prevention of mould and decay in upright or trench silos.

CORN SILAGE—Silogerm Makes Good Corn Silage Better. More minerals Available. More Palatable, and more valuable as a feed—Helps keep animals in good condition.

GREEN SILAGE—Farmers who use Silogerm say that it helps make Better Silage out of Green Hay, Mixed Grass, Alfalfa, Soy Beans, Clovers, Green Grain or any green crops, than any other method they know of and besides it costs only very little for enough Silogerm to treat a ton on ensilage.

PAR. 4. Through the use of the foregoing statements and representations and others of similar import not specifically set forth herein, respondents represent that the treatment of ensilage with their product prevents mold and decay; that both green and corn ensilage are substantially improved by its use; that treatment therewith makes corn ensilage more palatable, renders more minerals in such ensilage available to animals, substantially increases the value of such ensilage as feed and is of significant value in keeping animals in good condition.

PAR. 5. The foregoing statements and representations are false, misleading and deceptive. In truth and in fact, the treatment of ensilage with respondents' product will not prevent mold or decay. Neither green nor corn ensilage will be substantially improved by the use of said product. Its use will not make corn ensilage more palatable nor will more minerals in such ensilage be made available to animals. The value of corn ensilage will not be improved to any substantial degree by the use of said product, and it will be of no value as a conditioner of animals.

PAR. 6. The use by respondents of the aforesaid false, misleading and deceptive statements and representations has had and now has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations are true and to induce a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondents' said product.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on March 6, 1944, issued and subse-

quently served its complaint in this proceeding upon the respondents named in the caption hereof charging said respondents with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act. After the filing of respondents' answer, testimony and other evidence in support of and in opposition to the allegations of the complaint were introduced before a trial examiner of the Commission theretofore duly designated by it, and such testimony and other evidence was duly recorded and filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission upon the aforesaid complaint, the respondents' answer thereto, the testimony and other evidence, the recommended decision of the trial examiner and exceptions thereto by counsel for respondents and counsel supporting the complaint and the briefs and oral argument of counsel; and the Commission, having duly considered the matter and having entered its order ruling on the exceptions to the recommended decision of the trial examiner, and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents Elbert W. Bishop, Willard R. Bishop, Harold S. Bishop, and Evelyn M. Heigis are individuals and copartners trading as Silogerm Company with their place of business located at 82 Washington Street in the city of Bloomfield, State of New Jersey.

PAR. 2. Since 1942 the respondents have been engaged in the sale and distribution, under the trade name "Silogerm," of a culture containing lactic acid producing bacteria, designed for use in the process of making silage. The respondents do not manufacture Silogerm but purchase it from the Earp Laboratories located at Hampton, New Jersey. In the course and conduct of their business, respondents cause said product, when sold, to be transported from their place of business in the State of New Jersey or from the place of business of the Earp Laboratories in the State of New Jersey to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondents maintain and at all times mentioned herein have maintained a course of trade in said product in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their aforesaid business, and for the purpose of inducing the purchase of their said product, re-

spondents have circulated among their prospective purchasers throughout the United States, by means of advertisements inserted in newspapers and periodicals and by means of circulars, leaflets, and other advertising materials, many statements and representations. Among and typical of such statements and representations are the following:

SILOGERM—For the prevention of mold and decay in upright or trench silos

CORN SILAGE—Silogerm Makes Good Corn Silage Better. More Minerals Available. More palatable, and more valuable as a feed—Helps keep animals in good condition.

GREEN SILAGE—Farmers who use Silogerm say that it helps make Better Silage out of Green Hay, Mixed Grass, Alfalfa, Soy Beans, Clovers, Green Grain or any green crops, than any other method they know of and besides it costs only very little for enough Silogerm to treat a ton of ensilage.

PAR. 4. Through the use of the foregoing statements and representations and others of similar import not specifically set forth herein, respondents have represented that the treatment of silage with their product prevents mold and decay; that both green and corn silage are substantially improved by its use; that treatment therewith makes corn silage more palatable, renders more minerals in such silage available to animals, substantially increases the value of such silage as feed and is of significant value in keeping animals in good condition.

PAR. 5. One of the most important considerations in the process of making silage is the proper packing of the chopped forage in the silo so as to exclude as much air as possible. The exclusion of air prevents the formation of molds in the silage and resultant decay, but it does not prevent spoilage caused by the growth of certain putrefactive organisms in the silage. Therefore, another important consideration is to insure that there is sufficient acid present in the silage to prevent the growth of such putrefactive organisms. In the fermenting process of ensiling, acid is furnished by lactic acid producing bacteria. Where a sufficient amount of carbohydrate materials are readily available these bacteria will produce an adequate amount of acid to prevent the growth of putrefactive organisms in the silage. Sufficient carbohydrate material is readily available in many forage crops, such as corn, and can be added to or made available in others, such as alfalfa and soy beans. The presence of lactic acid bacteria will not prevent mold or decay in silage which is not properly packed, as the presence of air will permit mold to grow. This will not only spoil silage by causing it to become moldy but in addition the mold will destroy the acid content of the silage and thus permit spoilage due to the action of putrefactive organisms. Nor will the presence of lactic acid producing bacteria prevent spoilage of silage due to the action of

putrefactive organisms, even if air is excluded by proper packing, if there is insufficient carbohydrate material available for the lactic acid producing bacteria to feed on. But if the silo is properly packed and if sufficient carbohydrate material is available, these lactic acid producing bacteria will produce sufficient acid to prevent such spoilage.

Neither lactic acid nor lactic acid producing bacteria in silage render more minerals available to animals or have any value in keeping animals in good condition; nor do they make silage more palatable or increase the value of silage as feed, except to the extent that they prevent spoilage as above described.

PAR. 6. Adding Silogerm, a culture of lactic acid producing bacteria, to the forage used in making silage originally increases the bacterial count of lactobacilli on such forage. There are, however, millions of such bacteria already naturally present on such forage which, in the ensiling process, increases rapidly, reaching a bacterial count as high as one-half billion or more per gram of silage in a very short period of time. This increase is so great as to very shortly reduce to a negligible amount the difference between the bacterial count of the silage treated with Silogerm and that of the untreated silage. Thus the use of Silogerm has no practical effect during the fermenting process and does not result in the final product having a higher lactic acid content than untreated silage.

Therefore, the use of Silogerm in making silage will not prevent mold or decay, render minerals in silage available to animals, increase the value of the silage as feed, make the silage more palatable, improve the silage, or have any value in keeping animals in good condition. Respondents' statements and representations as hereinabove set forth are, therefore, false, misleading and deceptive.

PAR. 7. The use by the respondents of the aforesaid false, misleading, and deceptive statements and representations has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations are true and to induce a substantial portion of the purchasing public, because of such erroneous and and mistaken belief, to purchase respondents' said product.

CONCLUSION

The aforesaid acts and practices of the respondents, as herein found, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the respondents' answer thereto, testimony and other evidence in support of and in opposition to the allegations of the complaint introduced before a trial examiner of the Commission theretofore duly designated by it, the trial examiner's recommended decision and the exceptions thereto, and briefs and oral argument of counsel; and the Commission having made its findings as to the facts and its conclusion that respondents have violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondents Elbert W. Bishop, Willard R. Bishop, Harold S. Bishop and Evelyn M. Heigis, individually and as copartners trading as Silogerm Company, or trading under any other name, and their representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of said respondents' product Silogerm, or any other product of substantially similar composition or possessing substantially similar properties, whether sold under the same name or any other name, do forthwith cease and desist from representing, directly or by implication:

1. That the use of the said product will prevent the formation of mold or decay in silage.

2. That the use of the said product in making silage will improve the silage, make such silage more palatable or render more minerals available to animals.

3. That the use of the said product in making silage increases the value of such silage as feed or has any value in keeping animals in good condition.

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

IN THE MATTER OF

MILTON SELBST ET AL. TRADING AS EXCELSIOR CLOAK MANUFACTURING CO.

COMPLAINT, FINDINGS, AND ORDERS IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914, AND OF AN ACT OF CONGRESS APPROVED OCT. 14, 1940

Docket 5803. Complaint, Sept. 1, 1950—Decision, Oct. 30, 1951

Where three individuals engaged in the manufacture, introduction into commerce, and sale therein of wool products as defined in the Wool Products Labeling Act of 1939—

Misbranding coats and other wool products in that they did not have affixed thereto stamps, tags or labels or other means of identification showing there constituent fibers, name or registered identification numbers of the manufacturer or other persons subject to said act, and other information required by said act and the Rules and Regulations promulgated thereunder:

Held, That such acts, practices and methods were in violation of said Act and the Rules and Regulations promulgated thereunder, and constituted unfair and deceptive acts and practices in commerce.

Before *Mr. John W. Addison*, trial examiner.

Mr. Jesse D. Kash for the Commission.

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 Milton Selbst, Hyman Selbst, and Jacob Selbst, individually and as partners trading as Excelsior Cloak Manufacturing Co., 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. The respondents, Milton Selbst, Hyman Selbst, and Jacob Selbst, are partners trading as Excelsior Cloak Manufacturing Co., with their office and principal place of business located at 240 Market Street, Philadelphia, Pa.

PAR. 2. The respondents are engaged in the introduction and manufacture for introduction into commerce and in offering for sale, sale, transportation, and distribution of wool products, as such products are defined in the Wool Products Labeling Act of 1939, in commerce,

as "commerce" is defined in said act and in the Federal Trade Commission Act. Many of respondents' said products are composed in whole or in part of wool, reprocessed wool, or reused wool, as those terms are defined in the Wool Products Labeling Act of 1939, and such products are subject to the provisions of said act and the rules and regulations promulgated thereunder. Since July 15, 1941, respondents have violated the provisions of said act and said Rules and Regulations in the introduction and manufacture for introduction into commerce, and in the sale, transportation and distribution of said wool products in said commerce, by causing said wool products to be misbranded within the intent and meaning of said act and the rules and regulations.

PAR. 3. Among the wool products introduced and manufactured for introduction into commerce, and sold, transported, and distributed in said commerce as aforesaid, were coats and other products. Exemplifying respondents' practice of violating said act and the rules and regulations promulgated thereunder is their misbranding of the aforesaid products in violation of the provisions of said act and the rules and regulations by failing to affix to said garments a stamp, tag, label or other means of identification, or a substitute in lieu thereof, as provided by said act, showing (*a*) the percentage of the total fiber weight of the wool product, exclusive of ornamentation not exceeding five per centum of said total fiber weight of (1) wool, (2) reprocessed wool, (3) reused wool, (4) each fiber other than wool where said percentage by weight of such fiber was five per centum or more, and (5) the aggregate of all other fibers; (*b*) the maximum percentage of the adulterating matter; (*c*) the percentages in words and figures plainly legible by weight of the wool contents of such wool product where said total weight of the wool product of nonfibrous loading, filling or wool product contains a fiber other than wool; (*d*) the name of the manufacturer of the wool product or the name or one or more persons subject to section 3 of said act with respect to such wool product, or the registered identification number of such person or persons, as provided for in rule 4 of the regulations as amended.

PAR. 4. The aforesaid acts, practices, and methods of respondents as alleged were and are in violation of the Wool Products Labeling Act of 1939, and the rules and regulations promulgated thereunder, and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

DECISION OF THE COMMISSION

Pursuant to rule XXII of the Commission's Rules of Practice, and as set forth in the Commission's "Decision of the Commission and Order to File Report of Compliance," dated October 30, 1951, the initial decision in the instant matter of trial examiner John W. Addison, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY JOHN W. ADDISON, TRIAL EXAMINER

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 on September 1, 1950, issued and subsequently served its complaint upon respondents Milton Selbst, Hyman Selbst, and Jacob Selbst, individually and as partners trading as Excelsior Cloak Manufacturing Co., charging them with the use of acts, practices and methods in violation of the Wool Products Labeling Act of 1939, and the Rules and Regulations promulgated thereunder, and constituting unfair and deceptive acts and practices within the intent and meaning of the Federal Trade Commission Act, in connection with the sale of coats and other wool products. On October 4, 1950, respondents filed their answer, in which answer they admitted all material allegations of facts set forth in said complaint and waived all intervening procedure and further hearing as to said facts. Thereafter, the proceeding regularly came on for final consideration by the above-named trial examiner theretofore duly designated by the Commission upon said complaint and answer thereto (all intervening procedure having been waived, proposed findings and conclusions not having been presented by counsel and oral argument not having been requested); and said trial examiner, having considered the record herein, finds that this proceeding is in the interest of the public and makes the following findings as to the facts, conclusion drawn therefrom, and order:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondents, Milton Selbst, Hyman Selbst, and Jacob Selbst, are partners trading as Excelsior Cloak Manufacturing Co., with their office and principal place of business located at 240 Market Street, Philadelphia, Pa.

PAR. 2. The respondents are engaged in the introduction and manufacture for introduction into commerce and in offering for sale, sale, transportation and distribution of wool products, as such products are

defined in the Wool Products Labeling Act of 1939, in commerce, as "commerce" is defined in said act and in the Federal Trade Commission Act. Many of respondents' said products are composed in whole or in part of wool, reprocessed wool, or reused wool, as those terms are defined in the Wool Products Labeling Act of 1939, and such products are subject to the provisions of said act and the rules and regulations promulgated thereunder. Since July 15, 1941, respondents have violated the provisions of said act and said rules and regulations in the introduction and manufacture for introduction into commerce, and in the sale, transportation and distribution of said wool products in said commerce, by causing said wool products to be misbranded within the intent and meaning of said act and the rules and regulations.

PAR. 3. Among the wool products introduced and manufactured for introduction into commerce, and sold, transported and distributed in said commerce as aforesaid, were coats and other products. Exemplifying respondents' practice of violating said act and the rules and regulations promulgated thereunder is their misbranding of the aforesaid products in violation of the provisions of said act and the rules and regulations by failing to affix to said garments a stamp, tag, label, or other means of identification, or a substitute in lieu thereof, as provided by said act, showing (*a*) 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 where said percentage by weight of such fiber was 5 per centum or more, and (5) the aggregate of all other fibers; (b) the maximum percentage of the total weight of the wool product of nonfibrous loading, filling or adulterating matter; (*c*) the percentages in words and figures plainly legible by weight of the wool contents of such wool product where said wool product contains a fiber other than wool; (*d*) the name of the manufacturer of the wool product or the name of one or more persons subject to section 3 of said act with respect to such wool product, or the registered identification number of such person or persons, as provided for in rule 4 of the regulations as amended.

CONCLUSION

The aforesaid acts, practices, and methods of respondents as found were and are in violation of the Wool Products Labeling Act of 1939, and the rules and regulations promulgated thereunder, and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER

It is ordered, That respondents Milton Selbst, Hyman Selbst, and Jacob Selbst, individually and as partners trading as Excelsior Cloak Manufacturing Co., or under any other name, jointly or severally, their representatives, agents, and employees, directly or through any corporate or other device, in connection with the introduction or manufacture for introduction into commerce, as "commerce" is defined in the acts aforesaid, do forthwith cease and desist from misbranding coats or other wool products as defined in and subject to the Wool Products Labeling Act of 1939, which contain, purport to contain, or in anyway are represented as containing "wool," "reprocessed wool," or "reused wool," as those terms are defined in said act, by failing to securely affix or place on such products a stamp, tag, label, or other means of identification showing in a clear and conspicuous manner:

(*a*) 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 where said percentage by weight of such fiber is 5 per centum or more, and

(5) the aggregate of all other fibers.

(*b*) The maximum percentage of the total weight of such wool product of any nonfibrous loading, filling, or adulterating matter.

(*c*) The name or the registered identification number of the manufacturer of such wool product or of one or more persons engaged in introducing such wool product into commerce, or in the offering for sale, sale, transportation, or distribution thereof in commerce, as "commerce" is defined in the Federal Trade Commission Act and in the Wool Products Labeling Act of 1939.

Provided, That the foregoing provisions concerning misbranding shall not be construed to prohibit acts permitted by paragraphs (a) and (b) of section 3 of the Wool Products Labeling Act of 1939; *and provided further*, That nothing contained in this order shall be construed as limiting any applicable provisions of said act or the rules and regulations promulgated thereunder.

ORDER TO FILE REPORT OF COMPLIANCE

It is ordered, That the respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist [as required by said declaratory decision and order of October 30, 1951].

Syllabus

IN THE MATTER OF

EDWARD GOLDSTEIN ENTERPRISES, INC., ET AL.

COMPLAINT, FINDINGS, AND ORDERS IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 5792. Complaint, June 28, 1950—Decision, Nov. 3, 1951

Where a corporation and the officer in control thereof, engaged through four subsidiaries in the operation of ladies' furnishings stores in Washington, Baltimore, Upper Darby, Pa., and New York City, and in the sale in commerce, among other things, of women's fur and cloth coats, dresses and suits;

In advertising their prices and operations in newspapers, by circulars, and through radio continuities, in connection with which they mailed several hundred thousand letters to residents living in the various cities in which said retail stores were located and in surrounding trade territories, and in which they enclosed as a "valuable gift" a trade check or coupon good for a "$50 down payment" on any fur coat, cape or jacket at the store, with an attached stub "good for a $20 down payment" on any cloth coat or suit or scarf—

(*a*) Represented that a store was going out of business, and that all of its merchandise was offered at a discount or savings of 50 percent or more from the usual or regular prices and that many articles were offered at less than wholesale cost;

The facts being that no merchandise was thus sold at a discount or saving of 50 percent or any other percent from the usual prices, and any articles which might have been offered at less than wholesale cost, were old, soiled and outmoded;

(*b*) Represented that the recipients of said coupons were entitled to use them as payments of $50 or $20 on the articles set forth, with a resulting saving or discount of said amounts;

The facts being that while the recipients of said trade checks or coupons were allowed to apply the amounts designated as a part of the price charged for the garments purchased, the prices of the garments were increased by adding to the regular prices the amount set out in the coupon, so that purchases made in connection therewith were actually at regular prices; and

(*c*) Falsely represented that the recipients of such coupons had been specially selected, when in fact letters containing the checks or coupons were mailed to all individuals listed in the telephone directories for the cities concerned and adjoining areas;

With capacity and tendency to mislead and deceive a substantial portion of the purchasing public in the aforesaid respects and thereby induce its purchase of their said products; and with the result that substantial trade was unfairly diverted to them from their competitors, many of whom do not misrepresent their practices or prices to their injury in commerce:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public and constituted unfair methods of competition in commerce, and unfair and deceptive acts and practices therein.

213840—54——29

As concerns the charge of the complaint that respondent retailer advertised falsely that it was going out of business: while it was still operated as a going concern when respondent's answer was filed, the record hardly formed sufficient basis for a conclusion that the representation was not made in good faith.

Before *Mr. John W. Addison*, trial examiner.
Mr. Jesse D. Kash for the Commission.
Schaeffer, Goldstein & Esbitt, of New York City, for respondents.

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 corporation and individuals set out in the caption hereof, hereinafter referred to as respondents, have violated the provisions of the said Act and it appearing to the Commission that a proceeding by it in respect thereof will be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Corporate respondent, Edward Goldstein Enterprises, Inc., is a corporation organized under the laws of the State of New York and having its office and principal place of business located at 315 Seventh Avenue, New York, New York. Respondent, Brentley's, Inc., is a corporation organized under the laws of the State of New York and having its office and principal place of business at 315 Seventh Avenue, New York. It is a subsidiary corporation owned and controlled by Edward Goldstein Enterprises, Inc. Brentley-Edwards is a trade name sometimes employed by Edward Goldstein Enterprises, Inc., and Brentley's, Inc. In addition to Brentley's, Inc., respondent Edward Goldstein Enterprises, Inc., controls and operates three subsidiary corporations, to-wit: Dranow's, Inc., Baltimore, Maryland, Dranow's of Upper Darby, Inc., Upper Darby, Pennsylvania, and Ben Dranow Furs, Inc., New York City, New York.

Respondent Edward Goldstein and Benjamin H. Dranow are the president and secretary-treasurer of said corporate respondents and other subsidiary corporations. The post office address of Edward Goldstein and Benjamin H. Dranow are Jacksonville, Illinois, and 315 Seventh Avenue, New York, New York, respectively. The principal office of said corporate respondents and subsidiary corporations and the records and accounts of their businesses are kept in corporate respondent's place of business in New York, New York. During all the times mentioned herein the individual respondents formulated,

directed, controlled and put into operation the practices of the corporate respondents.

PAR. 2. The corporate respondent Edward Goldstein Enterprises, Inc., and individual respondents are now and have been for more than one year last past operating ladies' furnishings stores under the name of Brentley's, Inc., and Brentley-Edwards located at 425 Seventh Street, N. W., Washington, D. C., and under the names of the subsidiary corporations at the locations set out in Paragraph One, and selling, among other things, fur and cloth coats, women's dresses and suits in commerce, as "commerce" is defined in the Federal Trade Commission Act. Their volume of business in such commerce is and has been substantial.

PAR. 3. In the course and conduct of their business and for the purpose of inducing the purchase of their products in commerce, respondents, in circulars and advertisements inserted in newspapers and by means of radio continuities, made various representations concerning the prices of their said merchandise and their business operations, among and typical of which, but not all inclusive, are the following:

GOING OUT OF BUSINESS
EVERYTHING MUST GO
OUR LOSS IS YOUR GAIN
SAVE 50% OR MORE

* * *

Brentley's, 425 7th Street, N. W.

GOING OUT OF BUSINESS
50% and more OFF ENTIRE STOCK!
Thousands and Thousands of Dollars
Worth of Fur Coats, Suits & Dresses
To Be Sacrificed
EVERYTHING MUST GO!
OUR LOSS IS YOUR GAIN
SALE NOW ON!

* * *

Brentley's, 425 7th Street, N. W.

Both of the aforesaid advertisements enumerate various fur products and other wearing apparel with stated regular and sale prices.

BRENTLEY-EDWARDS
FINE FURS AND FINE FASHIONS
425 Seventh St., N. W.
New Partnership Consolidates Huge
Stocks of Five Big Stores to Bring
Sensational Values in This Great
Opening Event
TOPPERS—COATS—FUR SCARFS—
FUR COATS—SUITS—DRESSES—
FUR CAPES—FUR JACKETS
Many below Original Wholesale Cost!
WALL TO WALL CLOSEOUT
A CLEAN SWEEP!
EVERYTHING GOES!

In connection with this advertisement various fur products and other wearing apparel are listed showing former prices and sale prices.

In conjunction with their radio advertising on behalf of the various retail stores respondents mailed several hundred thousand letters to residents living in the various cities in which said retail stores are located and surrounding trade territories, typical of which is the following:

CONGRATULATIONS!
here is your
RADIO
SURPRISE

LISTEN TO . . . WWDC . . .
1450 on your dial
You have been selected to
receive this valuable gift.

Yes, your name has been chosen by Brentley Fur's Melody Man to receive this surprise gift.

This gift is good for a $50 down payment on any fur coat, fur cape, or fur jacket at Brentley Fur Store. Also, note the attached stub, which is good for a $20 down payment on any cloth coat, cloth suit, or fur scarf in the store.

Brentley Furs are now starting one of the most tremendous promotion sales in the history of the fur business. To meet the demand, they have brought in hundreds of extra fine 1949 style furs for you to choose from.

The fur coats, capes, and jackets are priced from $99 to $1,500. The cloth coats, cloth suits, and fur scarfs start at $39.95.

Cordially,
(S) BENJAMIN DRANOW.

BRENTLEY FURS
425 Seventh St. N. W.,
Washington, D. C.

So-called checks or coupons were enclosed in these letters, a typical copy of which is as follows:

Brentley's
WILL ACCEPT THIS STUB AS
A CASH PAYMENT OF
Twenty Dollars

ON ANY CLOTH COAT, SUIT OR
FUR SCARF PURCHASED BETWEEN
Feb. 1 and Mar. 1

Do Not Detach

WWDC . . . "Cowboy Hank's Rhythm Roundup"

Brentley's Fine Furs

425 Seventh Street, N. W., Washington, D. C.

TO THE ORDER OF THE SUM OF $50.00

Brentley's Agrees to Accept as a Money Payment of

THE SUM OF * * * * * 50 DOL'S 00 CTS.

On any Fur Coat, Cape, Jacket or Stole Purchased in the Store Between Feb. 1 and March 1

ONLY ONE CHECK GOOD ON ANY ONE PURCHASE

Brentley's Fine Furs
Benjamin Dranow

PAR. 4. By means of the statements and representations set out in the aforesaid advertisements, respondents represented that the store operated at different times under the names of Brentley's, Inc., and Brentley-Edwards was going out of business; that all the merchandise in the store operated as Brentley's, Inc., was offered for sale at a discount or savings of 50% or more from the usual or regular prices; that many of the articles for sale in the store operated as Brentley-Edwards were offered for sale at less than wholesale cost; that the recipients of the coupons were entitled to use them as payments of $50 on the regular price of a fur coat, jacket, cape or stole and $20 on a cloth coat, suit or fur scarf on presentation of the coupons during a specific time, thereby resulting in a savings or discount of $50 or $20 as the case might be from the usual and regular prices of the garments purchased and that the recipients had been especially selected to receive such coupons.

PAR. 5. The aforesaid statements and representations were false, misleading and deceptive. In truth and in fact, the store operated as Brentley's, Inc., and Brentley-Edwards did not go out of business and said store has continued to operate and now operates as a going concern. The merchandise offered for sale by Brentley's, Inc., was not sold at a discount or savings of 50% or any other percent from the usual or regular prices. No significant portion of the stock of the store operated as Brentley-Edwards was offered for sale at less than wholesale cost. Such articles as may have been so offered were old,

soiled and outmoded merchandise. While the recipients of the checks or coupon were allowed to apply the appropriate amounts designated therein as a part of the price charged for the garments purchased, such applications did not result in any savings or discounts from the usual, customary or regular prices for such garments since such prices were increased by adding thereto the amount set out in the coupon, with the result that purchases made in connection with the coupons were actually at regular or usual prices. Persons receiving said checks or coupons were not especially selected. On the contrary, the letters containing the checks or coupons were mailed to all individuals listed in the telephone directories for the cities in which the various retail stores were located, and adjoining areas.

PAR. 6. Respondents, in the conduct of their various retail stores, have been and are in substantial competition, in commerce, with corporations, individuals, and others engaged in the sale of the same kinds of merchandise as that sold by respondents. Among such competitors are many who do not make any misrepresentations concerning their practices, the prices charged for their merchandise or otherwise.

PAR. 7. The use by the respondents of the foregoing false and misleading representations had the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the mistaken and erroneous belief that said representations were true, and caused a substantial portion of the purchasing public, because of such mistaken and erroneous belief, to purchase respondents' said products. As a result thereof, substantial trade has been unfairly diverted to respondents from their competitors. In consequence thereof, injury has been and is being done to respondents' competitors in commerce.

PAR. 8. The acts and practices of the respondents, as herein alleged, were all to the prejudice and injury of the public and 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 OF THE COMMISSION

Pursuant to Rule XXII of the Commission's Rules of Practice, and as set forth in the Commission's "Decision of the Commission and Order to File Report of Compliance", dated November 3, 1951, the initial decision in the instant matter of trial examiner John W. Addison, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY JOHN W. ADDISON, TRIAL EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act and pursuant to the authority vested in it by said Act, the Federal Trade Commission on June 28, 1950, issued and subsequently served its complaint upon the corporations and individuals named in the foregoing caption, charging them with the use of unfair methods of competition and unfair and deceptive acts and practices in commerce in violation of the provisions of said Act. On September 8, 1950, Benjamin H. Dranow, individually and as Secretary and Treasurer of Edward Goldstein Enterprises, Inc., and of Brentley's Inc., filed his answer, in which answer he admitted all of the material allegations of facts set forth in said complaint and waived all intervening procedure and further hearing as to the said facts, upon condition, however, that the complaint be dismissed as to respondent Edward Goldstein. Thereafter, the proceeding regularly came on for final consideration by the above-named trial examiner theretofore duly designated by the Commission upon said complaint and answer thereto and motion by counsel supporting the complaint to dismiss the complaint as to respondent Edward Goldstein (all intervening procedure having been waived, proposed findings and conclusions by counsel not having been presented and oral argument not having been requested); and the trial examiner, having duly considered the record herein, finds that this proceeding is in the interest of the public and makes the following findings as to the facts, conclusion drawn therefrom, and order:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Edward Goldstein Enterprises, Inc., is a corporation organized under the laws of the State of New York and having its office and principal place of business located at 315 Seventh Avenue, New York, New York. Respondent Brentley's, Inc., is a corporation organized under the laws of the State of New York and having its office and principal place of business at 315 Seventh Avenue, New York, New York. It is a subsidiary corporation owned and controlled by Edward Goldstein Enterprises, Inc. Brentley-Edward is a trade name sometimes employed by Edward Goldstein Enterprises, Inc., and Brentley's, Inc. In addition to Brentley's Inc., respondent Edward Goldstein Enterprises, Inc., controls and operates three subsidiary corporations, to-wit: Dranow's Inc., Baltimore, Maryland, Dranow's of Upper Darby, Inc., Upper Darby, Pennsylvania, and Ben Dranow Furs, Inc., New York, New York.

Respondents Edward Goldstein and Benjamin H. Dranow are the President and Secretary-Treasurer of said corporate respondents and other subsidiary corporations. The post office address of Edward Goldstein and Benjamin H. Dranow are Jacksonville, Illinois, and 315 Seventh Avenue, New York, New York, respectively. The principal office of said corporate respondents and subsidiary corporations and the records and accounts of their businesses are kept in corporate respondents' place of business in New York, New York. During all the times mentioned herein the individual respondent Benjamin H. Dranow has formulated, directed, controlled and put into operation the practices of the corporate respondents. Respondent Edward Goldstein took no part in the practices found herein. His only interest in the corporate respondents is as an investor. He put the money in but Benjamin H. Dranow runs the businesses.

PAR. 2. Corporate respondent Edward Goldstein Enterprises, Inc., and individual respondent Benjamin H. Dranow are now and have been for more than one year last past operating ladies' furnishings stores under the name of Brentley's, Inc., and Brentley-Edwards located at 425 Seventh Street, N. W., Washington, D. C., and under the names of the subsidiary corporations at the locations set out in Paragraph One, and selling, among other things, fur and cloth coats and women's dresses and suits in commerce, as "commerce" is defined in the Federal Trade Commission Act. Their volume of business in such commerce is and has been substantial.

PAR. 3. In the course and conduct of their business and for the purpose of inducing the purchase of their products in commerce, respondents, in circulars and advertisements inserted in newspapers and by means of radio continuities, made various representations concerning the prices of their said merchandise and their business operations, among and typical of which, but not all-inclusive, are the following:

GOING OUT OF BUSINESS
EVERYTHING MUST GO
OUR LOSS IS YOUR GAIN
SAVE 50% OR MORE

* * *

Brentley's, 425 7th Street, N. W.

GOING OUT OF BUSINESS
50% and more OFF ENTIRE STOCK!
Thousands and Thousands of Dollars
Worth of Fur Coats, Suits & Dresses
To Be Sacrificed
EVERYTHING MUST GO!
OUR LOSS IS YOUR GAIN
SALE NOW ON!

* * *

Brentley's, 425 7th Street, N. W.

Both of the aforesaid advertisements enumerate various fur products and other wearing apparel with stated regular and sale prices.

BRENTLEY-EDWARDS
FINE FURS AND FINE FASHIONS
425 Seventh St., N. W.
New Partnership Consolidates Huge
Stocks of Five Big Stores to Bring
Sensational Values in This Great
Opening Event
TOPPERS—COATS—FUR SCARFS—
FUR COATS—SUITS—DRESSES—
FUR CAPES—FUR JACKETS
Many below Original Wholesale Cost!
WALL TO WALL CLOSEOUT
A CLEAN SWEEP!
EVERYTHING GOES!

In connection with this advertisement various fur products and other wearing apparel are listed showing former prices and sale prices.

In conjunction with their radio advertising on behalf of the various retail stores, respondents mailed several hundred thousand letters to residents living in the various cities in which said retail stores are located and surrounding trade territories, typical of which is the following:

CONGRATULATIONS!
here is your
RADIO
SURPRISE

LISTEN TO . . . WWDC
1450 on your dial

You have been selected to receive this valuable gift.

Yes, your name has been chosen by Brentley Fur's Melody Man to receive this surprise gift.

This gift is good for a $50 down payment on any fur coat, fur cape, or fur jacket at Brentley Fur Store. Also, note the attached stub, which is good for a $20 down payment on any cloth coat, cloth suit, or fur scarf in the store.

Brentley Furs are now starting one of the most tremendous promotion sales in the history of the fur business. To meet the demand, they have brought in hundreds of extra fine 1949 style furs for you to choose from.

The fur coats, capes, and jackets are priced from $99 to $1,500. The cloth coats, cloth suits, and fur scarfs start at $39.95.

Cordially,
(S) BENJAMIN DRANOW.

BRENTLEY FURS
425 Seventh St., N. W.,
Washington, D. C.

So-called checks or coupons were enclosed in these letters, a typical copy of which is as follows:

Brentley's
WILL ACCEPT THIS STUB AS
A CASH PAYMENT OF
Twenty Dollars

ON ANY CLOTH COAT, SUIT OF FUR
SCARF PURCHASED BETWEEN Feb. 1
and Mar. 1

Do Not Detach

WWDC . . . "Cowboy Hank's Rhythm Roundup"

Brentley's Fine Furs
425 Seventh Street N. W., Washington, D. C.

TO THE ORDER OF

THE SUM OF $50.00

Brentley's Agrees to Accept as a Money Payment of
THE SUM OF * * * * 50 DOL'S 00 CTS.
On any Fur Coat, Cape, Jacket or Stole Purchased in the Store Between Feb. 1 and March 1

ONLY ONE CHECK GOOD
ON ANY ONE PURCHASE

BRENTLEY'S FINE FURS
Benjamin Dranow

PAR. 4. By means of the statements and representations set out in the aforesaid advertisements, respondents represented that the store operated at different times under the names of Brentley's, Inc., and Brentley-Edwards was going out of business; that all the merchandise in the store operated as Brentley's, Inc., was offered for sale at a discount or saving of 50% or more from the usual or regular prices; that many of the articles for sale in the store operated as Brentley-Edwards were offered for sale at less than wholesale cost; that the recipients of the coupons were entitled to use them as payments of $50 on the regular price of a fur coat, jacket, cape or stole and $20 on a cloth coat,

suit or fur scarf on presentation of the coupons during a specific time, thereby resulting in a saving or discount of $50 or $20 as the case might be from the usual and regular prices of the garments purchased and that the recipients had been especially selected to receive such coupons.

PAR. 5. The aforesaid statements and representations were false, misleading and deceptive. In truth and in fact, the merchandise offered for sale by Brentley's, Inc., was not sold at a discount or saving of 50% or any other percent from the usual or regular prices. No significant portion of the stock of the store operated as Brentley-Edwards was offered for sale at less than wholesale cost. Such articles as may have been so offered were old, soiled and outmoded merchandise. While the recipients of the checks or coupons were allowed to apply the appropriate amounts designated therein as a part of the price charged for the garments purchased, such applications did not result in any savings or discounts from the usual, customary or regular prices for such garments since such prices were increased by adding thereto the amount set out in the coupon, with the result that purchases made in connection with the coupons were actually at regular or usual prices. Persons receiving said checks or coupons were not especially selected. On the contrary, the letters containing the checks or coupons were mailed to all individuals listed in the telephone directories for the cities in which the various retail stores were located, and adjoining areas. Although the store operated as Brentley's, Inc., and as Brentley-Edwards did not go out of business but was still operated as a going concern when the answer herein was filed, the record hardly forms sufficient basis for a conclusion that the representation that it was going out of business was not made in good faith.

PAR. 6. Respondents, in the conduct of their various retail stores, have been and are in substantial competition, in commerce, with corporations, individuals, and others engaged in the sale of the same kinds of merchandise as that sold by respondents. Among such competitors are many who do not make any misrepresentations concerning their practices, the prices charged for their merchandise or otherwise.

PAR. 7. The use by the respondents of the foregoing false and misleading representations had the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the mistaken and erroneous belief that said representations were true, and caused a substantial portion of the purchasing public, because of such mistaken and erroneous belief, to purchase respondents' said products.

As a result thereof, substantial trade has been unfairly diverted to respondents from their competitors. In consequence thereof, injury has been and is being done to respondents' competitors in commerce.

CONCLUSION

The acts and practices of the respondents, as herein found, are all to the prejudice and injury of the public and 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.

ORDER

It is ordered, That respondents Edward Goldstein Enterprises, Inc., a corporation, Brentley's, Inc., a corporation, their officers, representatives, agents and employees, and Benjamin H. Dranow, individually and as an officer of said corporate respondents, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of fur or cloth coats, dresses, suits, or other women's furnishings in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing to customers or prospective customers, by use of trade checks or coupons or otherwise, that suits, coats or other articles of women's furnishings offered by respondents or any respondent have greater selling prices than the prices at which the same are so offered, when such is not the fact;

2. Representing that many coats, suits, dresses or other articles of women's furnishings are offered for sale by any respondent at less than wholesale cost when in fact no substantial portion of the stock in the store making the offer or only old, soiled or outmoded merchandise is so offered and sold;

3. Representing that fifty-dollar, twenty-dollar or other trade checks or coupons are sent only to especially selected persons, when in truth and in fact the trade checks or coupons are mailed to all individuals listed in the telephone directory for the city and adjoining area in which the store sending the trade checks or coupons is located; and

It is further ordered, That this proceeding be, and it is, dismissed hereby as to respondent Edward Goldstein without prejudice to the right of the Commission to institute further proceedings should future facts warrant.

ORDER TO FILE REPORT OF COMPLIANCE

It is ordered, That the respondents Edward Goldstein Enterprises, Inc., a corporation, Brentley's, Inc., a corporation, and Benjamin H. Dranow, individually and as an officer of Edward Goldstein Enterprises, Inc., and Brentley's, Inc., shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist [as required by said declaratory decision and order of November 3, 1951].

IN THE MATTER OF

H. HAROLD BECKO TRADING AS HAROLD'S STUDIO

COMPLAINT, FINDINGS, AND ORDERS IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 5739. Complaint, Feb. 6, 1950—Decision, Nov. 8, 1951

The term "Gold-Tone" has a definite meaning in the profession of photography and connotes that a finishing process which involves the use of a finishing paint containing gold chloride or other gold salts, has been used in producing a picture thus designated.

Where an individual, with a studio and finishing plant at Winona, Minn., and with branch studios at Rochester, Minn., and Fargo, N. Dak., and, formerly at Fond du Lac, Wis., engaged in making photographs, including tinted or colored enlargements and reductions, and in the interstate sale and distribution thereof; and of frames; through advertisements in newspapers, radio broadcasts, circulars, cards, certificates and coupons, and by other means—

(*a*) Represented both directly, and through the contest title itself, that cash awards of $2500 were made to the winner of his "$2500 Charming Child Contest";

The facts being that the prizes consisted of United States Savings Bonds in the face value of $500, forty-eight prizes of hand-colored photographs valued by him at $15 each, and twenty-four merchandise certificates awarded each week for twelve weeks, with a value of $4 each, and good only in exchange for merchandise; the value of all which awards aggregated $2,372, including the bonds at face value and the hand-colored photograph prizes at the value arbitrarily fixed by him;

(*b*) Represented that all children between the ages of six months and ten years whose photographs were taken at his studios were eligible for prizes under said "$2500 Charming Child Contest" and that the contest was conducted in a fair and impartial manner with awards made solely on merit;

The facts being that only those placing orders for photographs were considered (with some early exceptions); and the awarding was influenced by the size of the purchase order and the possibility of obtaining such an order;

(*c*) Represented that various persons were specially selected to receive certain of his offers; when in fact said offers were available to all comers on an equal basis;

(*d*) Represented that certain photographs offered and sold by him were genuine "Gold Tone" photographs; when in fact he had produced no photographs through the use of the gold-tone process since about 1947, and had no facilities for such finishing;

(*e*) Represented that free prizes would be awarded to the three most photogenic children and girls photographed at the place designated in the locality where the customer resided, and that with the purchase of twelve or more pictures he would give a colored photograph free and without cost;

The facts being that purchase of other merchandise was required to receive any of said so-called "free" prizes; prizes were not awarded to the three most

photogenic, but it was his practice to restrict to one the number of winners selected in each community; and the cost of the colored photograph represented as given free with the purchase of twelve or more photographs, was covered by the cost to the purchaser of the photograph order; and

(*f*) Represented that he was a member of the Minnesota State Photographers Association; when in fact there was no such association, and his membership in the Minnesota Professional Photographers Association terminated prior to the period during which his contests were being conducted;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public and thereby cause it to purchase a substantial quantity of his products:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public and constituted unfair and deceptive acts and practices in commerce.

As respects the "$2500 Charming Child Contest," and its advertising (which in some cases contained no reference to the fact that the awards in major part were to be conferred in merchandise, and in others accentuated the aforesaid title through much larger type), it was the opinion of the Commission that the title itself constituted a representation that any and all awards to be made hereunder would be conferred in money, and that such connotation stemmed from the literal meaning of the title itself, and it was its further view that the insertion elsewhere in said advertisement of additional language with respect to merchandise and other articles was as a confusing contradiction to the title, and did not suffice to dispell the erroneous impressions which such a contest title would engender.

As respects additional charges that respondent's photographs were not outstanding, as represented, that various offers were not "special" offers at reduced prices, that certain of the photographs were not "hand colored" or "hand colored with oil paints", that he was not the official photographer for the "Babee National Contest", that samples were of better grade and quality than the product actually used, that frames were shipped to customers without order, that fictitious price lists were employed, and that the word "gold" was misused: the Commission upon consideration of the record, including contentions of respective counsel in support of their appeals from the initial decision, was of the view that dismissal without prejudice was warranted with respect to all said charges, including certain charges which had not been embraced within said initial decision.

Before *Mr. James A. Purcell*, trial examiner.
Mr. Charles S. Cox and *Mr. Lee J. Farnsworth* for the Commission.
Lanier & Lanier, of Fargo, N. Dak., for respondent.

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 H. Harold Becko, an individual trading as Harold's Studio, 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, H. Harold Becko, also known as Harry Becko, Harold Zavatsky and Harold Zavatsho, is an individual trading as Harold's Studio, with main offices and principal place of business, including main studio and finishing plant, located at 111 West Third Street, Winona, Minnesota, with branch studios operated respectively at Rochester, Minnesota; Fargo, North Dakota; and Fond du Lac, Wisconsin. Respondent is now and for more than three years last past has been engaged in the business of making, processing and selling photographs and in the sale of picture frames therefor.

PAR. 2. Respondent, during the period stated herein, has engaged in the sale and distribution of photographs of various types, including tinted or colored enlargements or reductions of photographs, and of frames therefor, in commerce between and among the various States of the United States and in the District of Columbia.

In the course and conduct of his said business, respondent causes and has caused his said products, when sold, to be transported from his place of business in the State of Minnesota to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said products, in commerce, between and among the various States of the United States and in the District of Columbia. Respondent's volume of business in such commerce is and has been substantial.

PAR. 3. In the course and conduct of his business as aforesaid, and for the purpose of inducing the purchase of his wares, respondent has made, through advertisements in newspapers, radio continuities, circulars, cards, certificates, coupons, bonds, and other means, various representations concerning himself, his photographs, the persons to whom they are offered and the terms upon which they may be purchased, a "Charming Child Contest" conducted by him and "Free Prizes" and other "free" goods. Among and typical of the said representations are the following:

Enter your child in the Charming Child Contest today. $2500 in cash prizes * * * have your child's picture taken in one of the Harold's Studios * * * children between the ages of 6 mos. and 10 years are eligible * * *

You have been selected to have a beautiful 5 x 7 enlarged portrait * * * 79¢ * * *

One beautiful 8 x 10 Gold Tone photograph
One of the country's outstanding photographers will be there to take your photograph
Free prizes will be awarded to the three most photogenic children and girls
Members * * * Minnesota Photographers Association
Official photographer Babee National Contest
Special low contest prices
Special contest rate
Special $1.79
Special $1.00
* * * A very special offer
Special graduation bond
Special $35.00 wedding offer
All work guaranteed
With orders of 12 or more 5 x 7 photographs we will give you one beautiful 8 x 10 colored picture FREE
Hand colored photograph
Portrait hand colored in oils

PAR. 4. In the manner aforesaid, respondent represents and has represented that cash awards of $2500 are made to the winners of his Charming Child Contest; that all children between the ages of six months and ten years are eligible for all prizes when the child's picture is taken at Harold's Studio, for which there is no charge, irrespective of whether or not additional pictures are purchased from respondent; that said contest is conducted in a fair and impartial manner and that the awards will be made on merit.

That various persons to whom certain of respondent's offers have been made were specially selected to receive them; that certain of the photographs offered and sold by him are genuine Gold Tone photographs; that respondent's photographers are among the country's outstanding photographers; that free prizes will be awarded to the three most photogenic children and girls; that respondent is a member of the Minnesota Photographers Association; that respondent is the official photographer for the "Babee National Contest."

That various of respondent's offers are "special" and that the prices quoted in such offers are less than the prices regularly charged by respondent for the pictures described in such offers; that all of respondent's photographs are guaranteed; that respondent will give with the purchase of 12 or more 5 x 7 pictures a colored 8 x 10 picture free; that certain of respondent's photographs are hand colored and others are hand colored with oil paints.

PAR. 5. In truth and in fact respondent's statements and representations are false and misleading. Respondent's $2500 Charming Child Contest is not one in which cash awards of $2500 are made, nor is any part of such contest award made in cash; all children between

the ages of six months and ten years, who have their pictures taken by respondent, are not eligible for all or any of the prizes as only those placing orders for pictures are considered; the prizes are not awarded on a merit basis but on the basis of the size of the purchase order or the probability of obtaining an order from the parents or guardian of the child photographed.

The persons represented as having been selected to receive certain of respondent's offers are not specially selected nor are they made to a specially selected limited number of persons. The photographs represented as genuine Gold Tone photographs are not genuine Gold Tone photographs. Respondent's photographers are not in any sense of the word "outstanding," but on the contrary are frequently persons without previous training in photography and their work is on occasion inferior and unskilled. There is no Babee National Contest. Respondent's offers are not "special" in any sense of the word, but on the contrary are made continuously and are his usual offers, available to everyone alike; the pictures represented as "free" are not gifts or gratuities, and the purchase of other pictures is required in order to obtain them. None of respondent's colored photographs are colored by hand, or with oil paints. Respondent does not award free prizes to the three most photogenic children and girls and the only award made is a cheap paper certificate entitled "Contest Winner First Prize." There is no such organization as the Minnesota Photographers Association; there is an organization known as the Minnesota Professional Photographers Association but respondent is not a member thereof, nor was he a member thereof at the time said representations and statements were made.

PAR. 6. In addition to the foregoing statements and representations made in the manner aforesaid, respondent has been and is engaged in the following acts and practices:

(*a*) Displaying samples of photographs and frames to customers and prospective customers of a better grade and quality than those actually shipped to customers when ordered;

(*b*) Shipping customers picture frames which were not ordered and making a charge therefor;

(*c*) Representing by means of fictitious price lists that the regular price of the goods in question is greater than the price being quoted to the customer or prospective customer;

(*d*) Representing goods as "guaranteed" without disclosing the extent and terms of the guarantee.

PAR. 7. The use by respondent of the foregoing false and misleading statements and representations and acts and practices has had the

capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that the said statements and representations are true and into the purchase of substantial quantities of respondent's goods.

PAR. 8. The aforesaid acts and practices of respondent, as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on February 6, 1950, issued and subsequently served its complaint in this proceeding upon the respondent H. Harold Becko, an individual trading as Harold's Studio, charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said Act. After the issuance of said complaint and the filing of respondent's answer thereto, hearings were held at which testimony and other evidence in support of and in opposition to the allegations of the complaint were introduced before a trial examiner of the Commission, theretofore duly designated by it, and such testimony and other evidence were duly recorded and filed in the office of the Commission. On November 20, 1950, the trial examiner filed his initial decision.

This matter thereafter came on to be heard by the Commission upon an appeal from said initial decision filed by counsel for respondent and an appeal filed by counsel supporting the complaint, briefs in support of and in opposition to said appeals, and oral argument, and the Commission having duly considered and ruled upon said appeals and having considered the record herein, and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes the following findings as to the facts, conclusion drawn therefrom, and order, the same to be in lieu of the initial decision of the trial examiner:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, H. Harold Becko, also known as Harry Becko, Harold Zavatsky and Harold Zavatsho, is an individual trading under the name and style of Harold's Studio, with his main office and principal place of business, including his principal studio and finishing plant, located at No. 111 West Third Street, Winona, Minnesota. Respondent also operates and conducts branch studios at

Rochester, Minnesota, and Fargo, North Dakota, and formerly maintained a branch studio at Fond du Lac, Wisconsin. Respondent is now, and for more than three years last past has been, engaged in the business of making, processing and selling photographs and in the sale of frames therefor.

PAR. 2. Among the items sold and distributed by respondent are photographs, tinted or colored enlargements and reductions thereof, and frames. Respondent causes and has caused his products, when sold, to be transported from his place of business in the State of Minnesota to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains and has maintained a course of trade in his products in commerce between and among the various States of the United States and in the District of Columbia. Respondent's volume of business in such commerce is and has been substantial.

PAR. 3. In the course and conduct of his business, as aforesaid, and for the purpose of inducing the purchase of his merchandise, respondent has made through advertisements in newspapers, radio broadcasts, circulars, cards, certificates and coupons, and by other means, various representations concerning himself, his photographs, the persons to whom they are offered, and the conditions under which his photographs may be secured and purchased, and in reference to a "$2,500.00 Charming Child Contest" conducted by him. Among such statements and representations are the following:

WATCH TUESDAY'S PAPER for Harold's Studios' $2500 Charming Child Contest winners for the week. Enter now. Out of town folks need no appointment. Harold's Studios, 508 1st Ave., N., Fargo.

* * * enter Harold Studio's $2,500 Charming Child Contest * * *.

$2,500.00 "Charming Child" CONTEST WINNERS FOR THIS WEEK ARE * * *.

Enter your child in the Charming Child Contest Today. $2,500 in cash prizes * * * have your child's picture taken at one of the Harold's Studios. * * * children between the ages of 6 mo. and 10 years are eligible. * * *.

You have been selected to have a beautiful 5 x 7 enlarged portrait * * * 79¢ * * *.

One Beautiful 8 x 10 Gold Tone Photograph.

We invite you to be our guests at the * * * hotel on * * * between the hours of * * * and * * *. *FREE PRIZES will be awarded* to the three most photogenic children and girls.

With orders of 12 or more 5 x 7 or larger photographs, we will give you one beautiful 8 x 10 colored picture FREE!

Members * * * Minnesota State Photographers Ass'n.

PAR. 4. By and through the use of the statements and representations hereinabove set forth, respondent has represented that cash awards of $2,500.00 are made to the winners of his "$2,500.00 Charming Child Contest," that all children between the ages of six months and ten years whose photographs are taken at respondent's studios are eligible for prizes thereunder, and that respondent's "$2,500.00 Charming Child Contest" is conducted in a fair and impartial manner, with awards being made thereunder solely on the basis of merit.

In the manner aforesaid, respondent has further represented that various persons to whom certain of respondent's offers have been made were specially selected to receive them; that certain of the photographs offered for sale and sold by him are genuine Gold Tone photographs; that free prizes will be awarded to the three most photogenic children and girls appearing to be photographed at the place designated in the locality where the customer resides and that with the purchase of twelve or more pictures respondent will give a colored photograph free and without cost; and that respondent is a member of the Minnesota State Photographers Association.

PAR. 5. In truth and in fact, respondent's statements and representations are false and misleading. Respondent's "$2,500.00 Charming Child Contest" was not one in which cash awards aggregating $2,500.00 were made. On the contrary, respondent's prizes consisted of United States Savings Bonds in the face value of $500.00, forty-eight prizes of hand-colored photographs valued by respondent as being worth $15.00 each and representing a total of $720.00, and twenty-four merchandise certificates awarded each week for a period of twelve weeks, which certificates had a value of $4.00 each, good only in exchange for merchandise, for a total in this category of merchandise prizes of $1,152.00. The aggregate value of all awards for respondent's "$2,500.00 Charming Child Contest" represented $2,372.00, including the United States bonds at face value and the hand-colored photograph prizes at the value arbitrarily fixed by respondent.

The representation that cash awards aggregating $2,500.00 would be made by respondent in connection with such contest has stemmed not only from language appearing in the advertising, which expressly states that $2,500.00 in cash prizes would be awarded, but has been conveyed, by implication as well, in other advertising matter used by respondent. Certain of the advertising identifying the contest by its title contains no reference whatsoever to the fact that the awards in major part were to be conferred in merchandise. In other advertising, the format accentuates in much larger type than that appearing

in the body of the advertisement the words and figures "$2,500.00 Charming Child Contest." It is the opinion of the Commission that this contest title constitutes a representation that any and all awards to be made thereunder will be conferred in money and that such connotation stems not from innuendo or suggestion but from the literal meaning of the title itself. The Commission is of the further view that the insertion, elsewhere in an advertisement for a contest identified as above, of additional language in reference to merchandise and other articles which are to be conferred serves not to explain but merely as a confusing contradiction to the title and does not suffice to dispel the erroneous impressions which a contest title containing no reference to merchandise may engender.

All children between the ages of six months and ten years who were photographed at respondent's studios have not been eligible for all or any of the prizes, as only those placing orders for photographs were considered, with some exceptions during the early stages of respondent's twelve-week "$2,500.00 Charming Child Contest." The prizes were not impartially awarded but such awards were influenced by the size of the purchase order or the probability in instances of obtaining such an order. Those persons to whom the representation was made that they were especially selected to receive certain of respondent's offers have not been especially selected and such offers were available to all comers on an equal basis. Since approximately 1947, respondent has not produced any photographs by use of a finishing bath containing gold chloride or other gold salts and does not have facilities for such finishing. The term "gold-tone" has a definite meaning in the profession of photography and connotes that the aforesaid finishing process has been used in producing a picture thus designated. The photographs which have been offered for sale and sold as Gold Tone photographs are not genuine gold-tone photographs.

The photographs which respondent's advertising states would be awarded as "Free" prizes were not gifts or gratuities, and in order to receive any of such prizes the purchase of other merchandise has been required. Such prizes have not been awarded to the three most photogenic children and girls but, on the contrary, it has been respondent's practice to restrict the number of winners selected in each town or community to but one winner. Respondent, moreover, does not give with the purchase of twelve or more photographs a colored photograph free and without cost, inasmuch as the cost of such photograph is covered in and embraced within the cost to the purchaser of the photographs ordered. There is no such organization as Minnesota State Photographers Association. There is, however, an association

known as Minnesota Professional Photographers Association, of which respondent was formerly a member. Such membership terminated on December 31, 1948. During the periods in which respondent's contests were being conducted and including the period in 1949 when various offers of 5″ x 7″ portraits at prices of 69¢, 79¢, and 89¢ were made in the advertising therefor, respondent was not a member of the Minnesota Professional Photographers Association.

PAR. 6. The use by respondent of the foregoing statements and representations and acts and practices has had the tendency and capacity to mislead and deceive a substantial portion of the purchasing public and the tendency and capacity to cause the public to purchase substantial quantities of respondent's merchandise as a result of the erroneous and mistaken beliefs so engendered.

CONCLUSION

(*a*) The acts and practices of the respondent, as found hereinabove, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

(*b*) Additional charges of the complaint pertain to other statements appearing in respondent's advertising and allege, in such connection, that respondent's photographers are not outstanding photographers as represented by respondent, that various offers are not in fact "special" offers at prices which are reduced from those customarily charged, that certain of the photographs are not "hand-colored" or "hand-colored with oil paints," and that respondent is not, as stated in the advertising, official photographer for the "Babee National Contest." Other charges are that respondent has engaged in unfair and deceptive acts and practices through the displaying of samples of photographs and frames to prospective customers which are allegedly of better grade and quality than those actually used in filling orders and through allegedly shipping frames to customers who ordered no frames, and relate also to alleged use of fictitious price lists and to alleged misuse of the word "guaranteed" without disclosing the extent and term of such warranty of satisfaction as may be offered to purchasers. The provisions of the initial decision of the trial examiner, in effect, provide for dismissal of all but one of these additional charges without prejudice. The Commission is of the view upon consideration of the record, including the contentions of counsel for respondent and counsel supporting the complaint as advanced in support of their appeals from said initial decision, that dismissal without

prejudice is warranted with respect to all of these additional charges, and the other herein contained accordingly thus provides.

ORDER

It is ordered, That the respondent H. Harold Becko, individually and trading as Harold's Studio, or trading under any other name, and his agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of photographs, frames and similar 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 a specified sum of money or monetary amount in awards will be made to winners in a contest unless the specified sum or amount in awards is made in cash.

(2) Failing to disclose in the advertising for any contest conducted by respondent the conditions and requirements which govern the selection of contest winners, including the extent to which such selection is controlled or influenced by the purchase of respondent's merchandise.

(3) Representing, directly or by implication, that recipients of any of respondent's promotional offers are especially selected.

(4) Using the term "Gold Tone" or any other word or words of similar import or meaning, either alone or in combination with any other word or words, to designate, describe or refer to a photographic reproduction which is not a product of a finishing process involving the use of a toning or developing bath which contains chloride of gold or other gold salts.

(5) Representing, directly or by implication, that awards in a specified number or value will be made in any contest unless such awards are actually conferred.

(6) Using the word "Free" or any other word or term of similar import or meaning to designate, describe or refer to any article of merchandise which is not in fact a gift or gratuity or which is not given without requiring the purchase of other merchandise or the performance of some service inuring, directly or indirectly, to the benefit of the respondent.

(7) Representing, directly or by implication, that respondent is a member of the Minnesota Photographers Association, of the Minnesota State Photographers Association or of the Minnesota Professional Photographers Association, or of any association or organization, unless such be true in fact.

It is further ordered, That the charges of the complainant hereinbefore referred to and discussed in paragraph (b) of the Conclusion be, and the same hereby are, dismissed without prejudice to the right of the Commission to take such further or other action in the future as may be warranted by the then existing circumstances.

It is further ordered, That respondent 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.

Commissioner Mason not participating as to inhibition (6) of this order.