VII

As used in this Order, the word "person" shall include all members of the immediate family of the individual specified and shall include corporations, partnerships, associations and other legal entities as well as natural persons.

Commissioner Elman dissented and has filed a dissenting opinion.

IN THE MATTER OF

S. DEAN SLOUGH TRADING AS STATE CREDIT CONTROL BOARD

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

Docket 8661. Complaint, June 16, 1965—Decision, Nov. 16, 1966

Order requiring a Quincy, Ill., seller of debt collection forms to cease using forms which imply an official government connection, that the sender of the forms is a third party collector, and that delinquent accounts are turned over to a State agency for collection.

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 S. Dean Slough, an individual, trading and doing business as State Credit Control Board, hereinafter referred to as the 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 S. Dean Slough is an individual trading and doing business as State Credit Control Board. His address is 1302 Royal Road, Quincy, Illinois.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the advertising, offering for sale, sale and distribution of collection forms to dealers for resale to businessmen and to businessmen directly. Respondent is also engaged in the operation of a remailing service with respect to such forms.

PAR. 3. In the course and conduct of his aforesaid business, re-

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

PAR. 4. Respondent's forms are designed and intended to be used, and are used, by businessmen and others to whom they are sold for the purpose of inducing the payment of alleged delinquent accounts, with the aid and assistance of the respondent as hereinafter set forth.

Respondent's forms are of two types: (1) those which are designed to accompany a statement of account made by the creditor under his own name; and (2) those which are designed to be inserted in envelopes provided by the respondent, which envelopes show a return address in the capital city of one of the States of the United States.

Among the forms of the first type is one which contains the following statement: "Unless we hear from you within Ten Days with payment, we shall turn your account in for collection to, STATE CREDIT CONTROL BOARD."

All of the forms of the second type bear the letterhead of "State Credit Control Board" together with a post office box number in the capital city of one of the States of the United States. A user of this type of form fills in the appropriate data in the spaces provided, including the name and address of the alleged debtor or other addressee, together with the amount of the alleged indebtedness, and sends the completed form to respondent's agent in the capital city of the appropriate State. Respondent's agent then mails the form from that location.

Among and illustrative of respondent's forms, although not all inclusive thereof, are the following:

CREDIT PROTECTION
An Independent Collection Service
[Encircling a seal of Justice]

Referred to file of County Agent
_____
County of _____

STATE CREDIT CONTROL BOARD
P.O. Box 1626 – Springfield, Illinois 62700

Creditor _____
Address _____
_____

FOR COUNTY AGENT USE ONLY
IF APPLICABLE
Date Serving Writ _____
Writ Returnable _____

Amount Claimed _____ Date of Judgment _____
Collection Charges _____ Name of Court Judge _____
M _____ Date Sheriff's Notice _____
_____ Date _____

You have been notified that the above claim has been handed to us for immediate attention by the above named creditor.
This claim is a legal and just obligation and we have guaranteed to collect or he will *prosecute.*
We are withholding action in this matter for ten days, giving you ample time to communicate with *your creditor.*
If you fail to get in touch with *your creditor* within the time limit, it will be evident that this claim is not only a just one, but that you are attempting to avoid payment of a legal obligation.
He shall then order legal proceedings brought against you involving judgment, levy or garnishment forthwith.

Very truly yours,
/s/ E. Dean Slough
E. Dean Slough
District Director

CORRESPONDING ATTORNEYS THROUGHOUT THE UNITED STATES

CREDIT PROTECTION
An Independent Collection Service
[Encircling a seal of Justice]

Referred to file of County Agent
_____
County of _____

STATE CREDIT CONTROL BOARD
P.O. Box 1626 – Springfield, Illinois 62700
Notice to Employer

_____ 19____

To_____
_____
Gentlemen:

It may become necessary to Garnishee your Employee, M_____ _____ Said party is indebted to _____ of _____

Should he be compelled to Garnishee said Employee, it will be compulsory to make you a party to the suit. However, we desire to save you all unnecessary trouble, annoyance and expense of such proceedings and therefore trust you will bring influence to bear, causing said Employee to adjust said claim at once, direct with the Creditor.

We assure you the Creditor will be fair and accept reasonable payments, within the Debtor's means.

We hope that suit will not be necessary. However, if he is compelled to Garnishee said Employee, a complete disclosure may be demanded, compelling you to bring all books, records and vouchers into court for examination and evidence.

This notice is sent you as a courtesy. We desire to protect your interests, and trust our action will be appreciated.

All communications in this matter should be addressed direct to Creditor.

Yours Truly,

STATE CREDIT CONTROL BOARD

Certified Statement of Account

I hereby certify that I have examined the record in the matter of the above mentioned claim, and have found the account to be true and correct to the best of my knowledge and belief.

_____

Creditor

Address_____

Date_____196___Amt_____

FINAL NOTICE

BEFORE ENTERING SUIT

Creditor _____
Name Address

Debtor _____

TO THE ABOVE NAMED DEBTOR:

FIRST: *Take notice that the above named creditor claims that you are indebted to him in the sum of $*_____.

SECOND: *Although duly demanded, the same has not been paid.*

THIRD: *Now therefore, unless you remit to* _____

_____

on or before the _____ *day of* _____*A.D., 19*_____ *for payment of said claim, or make provision for adjustment thereof, suit may be brought for the total amount with interest together with the costs and disbursements of the action.*

This demand is made according to law for the purpose of laying a foundation for legal action if not paid before the above date.

Dated this _____ *day of* _____, *19*_____

CERTIFIED STATEMENT OF ACCOUNT

The above creditor hereby certifies that he has examined the matter in the above mentioned claim and has found the account to be true and correct to the best of his knowledge and belief.

_____

Creditor

CREDIT PROTECTION
An Independent Collection Service
[Encircling a seal of Justice]

STATE CREDIT CONTROL BOARD
P.O. Box 1626, Springfield, Ill. 62700

MAKE PAYMENTS DIRECT TO CREDITOR

County Agent _____
County of _____

PAR. 5. By and through the use of the aforesaid statements and representations, and others of similar import but not specifically set forth herein, the respondent represents, and places in the hands of others the means and instrumentalities by and through which they may represent, directly or by implication, that:

(a) A request for payment or other request regarding an allegedly delinquent account is being made by an agency of state government.

(b) A request for payment or other request regarding an allegedly delinquent account originates with a party other than the creditor.

(c) An allegedly delinquent account has been or is about to be referred to "State Credit Control Board" for collection.

(d) Legal action with respect to an allegedly delinquent account has been or is about to be initiated.

PAR. 6. In truth and in fact:

(a) The request for payment or other request regarding an allegedly delinquent account is not being made by an agency of state, federal or local government.

(b) The request for payment or other request regarding an allegedly delinquent account originates with the creditor.

(c) The allegedly delinquent account has not been, nor is it about to be referred to "State Credit Control Board" for collection.

(d) Legal action with respect to the allegedly delinquent account has not been, nor in many cases is it about to be, initiated.

Therefore, the statements and representations referred to in Paragraphs Four and Five hereof were and are false, misleading and deceptive.

PAR. 7. The use by respondent of the aforesaid false, misleading and deceptive statements and representations has had, and now has, the capacity and tendency to mislead members of the public into the erroneous and mistaken belief that said statements and representations were and are true and into the payment of substantial sums of money by reason of said erroneous and mistaken belief.

PAR. 8. The aforesaid acts and practices of the respondent, as herein alleged, were and are all to the prejudice and injury of the public and constituted, and now constitute, unfair and deceptive acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

Mr. David J. Eden supporting the complaint.

Mr. Fredric T. Suss, Wash., D.C., for respondent.

INITIAL DECISION BY JOSEPH W. KAUFMAN, HEARING EXAMINER

JANUARY 19, 1966

The complaint herein alleges false representations in violation of Section 5 of the Federal Trade Commission Act. The alleged misrepresentations are contained in printed forms, prepared and sold by the respondent for the purpose of assisting creditors in the collection of debts. The forms, after being filled out by the creditors, are, most of them, then sent to respondent, who mails them to the debtors as coming from State Credit Control Board, his trade name.

Misrepresentation is predicated largely on the theory of placing in the hands of creditors, who are the direct or ultimate purchasers of the forms, the means and instrumentalities whereby the alleged misrepresentations may be made by them to the debtors.

The complaint contains no charge of unfair competition.

SUMMARY

Except for three preliminary small "slip" forms, each mailed out by the creditor directly, attached to a bill or statement, the forms with which this case is concerned are captioned or subscribed by STATE CREDIT CONTROL BOARD, respondent's trade name, as aforestated. Moreover, when such a form is mailed to a debtor by respondent, acting in behalf of the creditor, it is mailed out in an envelope apparently carrying the State Credit Control Board name, and carrying a box number address in the capital city of the particular State in which the debtor is located, from which capital city it is mailed by respondent.

Each of the forms (except the preliminary "slip" forms) carefully and prominently instructs the debtor to deal only with the creditor directly and to make all payments to the creditor. Thus, although the forms purport to come from State Credit Control Board, all dealings or collections are designed to be strictly between the debtor and his creditor, who actually initiates the sending out of the form to the debtor, as already stated.

It is admitted and conceded that the accounts are not sent to the respondent for collection, even though respondent's trade name is used to attempt to obtain collection, and even though at least one of the preliminary slip forms expressly states that the account is to be sent to State Credit Control Board for collection.

As to respondent's use of the name State Credit Control Board, it may be said at once that the charge that this is a representation that a state agency is involved hardly presents a question of great difficulty. The present decision holds that alleged qualifying words (printed upside down beneath a symbol of Justice) do not cure the misrepresentation.—Respondent's defense of discontinuance (and lack of likelihood of resumption), which is limited to this representation, is disallowed by the decision herein. The claim, in large part, is that respondent now uses the name State's Credit Control Service, having changed his first name to State—which actually seems to disclose a stubborn intent to continue misrepresentation.

As to the allegation in the complaint that there is misrepresentation because the creditor represents, by the forms, or is enabled to represent, that the account has been sent in for collection, there is likewise little difficulty. For one thing, as already indicated, one of the three preliminary "slip" forms (to wit, the final one) used under this system states that the account has been sent in for collection to State Credit Control Board—although, concededly, it has not been sent in for collection. Accordingly, the decision holds that there is a misrepresentation that the account has been sent to respondent, or to State Credit Control Board, for collection. The cease and desist order expressly forbids this practice, entirely apart from the use of the name State Credit Control Board.

As to the allegation that, by additional wording in the forms, the creditor misrepresents that a legal action is about to be started if payment is not made, there is a measure of difficulty. This is so, perhaps, because of the question of how respondent, a seller of forms, can know what a particular creditor, at the time of using the forms, has in mind about possible legal action.

However, after due deliberation, the issue has been resolved by the consideration that the forms comprise a system which has as its very purpose the elimination of the necessity of immediate legal action (or referral to a collection agency) while the forms are in use by a creditor, and that the forms by their very wording, and the instructions which go with them, are eminently fitted for this purpose. Complaint counsel, however, adduced actual proof by testimony from a random sample of users of the forms that many of the creditors, indeed, as alleged in the complaint, were not about to commence legal action. The decision herein holds that misrepresentation has been proved, particularly considering the

purpose and wording of the forms as a system cleverly designed to obviate immediate legal action although threatening it. The cease and desist order has a suitable provision as to this.

Insofar as the complaint alleges that there is misrepresentation because the creditor also represents by the form that the request for payments "originates" with a party other than the creditor, rather than with the creditor, there is also difficulty. First, the respondent, as State Credit Control Board, may be said to originate the request, *i.e.*, as co-originator with the creditor; the respondent performs actual services in this connection, apart from supplying the forms. Second, the gravamen of the alleged misrepresentation as to origin of the request for payment is realistically that the request comes from a State agency or a collection agency (private or public), not that it comes from a third "party" merely assisting in collections by the creditor directly. Third, even the rather recent Guides Against Debt Collection Deception, issued by the Commission, do not disapprove, in its examples, of a creditor's use of an independent agency or organization merely to make demands that the debtor pay the creditor. Respondent adduced some testimony herein that this may be a legitimate and desirable service, particularly for small business concerns unable to afford to hire collection agencies or attorneys for small accounts. For one thing, debtors who will pay no attention to a letter or inquiry from the creditor himself are apt at least to read what is sent by a third party.

Complaint counsel seems to recognize some merit to this contention by allowing the use of third party authority as a defense, in his proposed cease and desist order, although under quite impossible conditions. The decision herein holds that this alleged misrepresentation in respect to a generalized third party authority has not been proved, considering the pleadings, the proof generally, and perhaps the issue of public interest. It further holds that, in any event, this alleged misrepresentation does not, on this record and under all the circumstances, warrant the issuance of a separate prohibition in the cease and desist order issued herein.

Respondent also urges that there is no showing of sufficient public interest or sufficient injury to the public to support sanctions which in effect prevent local small business concerns from making some of the representations restrained herein, more particularly, that they have retained or about to retain collection agencies, or are about to retain attorneys for collection purposes, although such may not be precisely the fact. Respondent has also

produced evidence that the States in which he operates, or counsel retained by him in each State, have not questioned the forms in connection with these particular representations. Respondent argues that, on balance, these representations are a desirable weapon against "deadbeats." The decision herein does not sustain respondent's contention or defense, which seems to be directed more at the Commission itself than the hearing examiner.

In concluding this Summary it may be pointed out that this case, for all practical purposes, is pretty well one of first impression. In general, prior cases have been directed against interstate creditors who did not purchase forms, and, with one inconclusive exception, the cases went no further than consent orders. There is also one case against an interstate seller of forms, but the case also terminated in a consent order.

All these cases are an aftermath, so to speak, of the "skip tracing" cases initiated by the Commission, which established, after litigation and appeal, the Commission's power to restrain misrepresentation, in interstate commerce, designed to obtain the addresses of elusive debtors. Complaint counsel also relies on the "lottery-device" cases.

FINDINGS OF FACT

The following are the findings of fact herein. All proposed findings of fact not incorporated therein, or not treated as facts elsewhere in this decision, are disallowed.

1. Respondent S. Dean Slough is an individual trading and doing business as State Credit Control Board. His address is 1302 Royal Road, Quincy, Illinois. (Admitted by answer.)

2. Respondent is now, and for some time last past has been, engaged in the advertising, offering for sale, sale and distribution of collection forms—to dealers for resale to businessmen, and to businessmen directly. Respondent is also engaged in the operation of a remailing service with respect to such forms. (Admitted by answer.)

The so-called "remailing" service is a mailing service whereby, upon receipt of the forms, properly filled out, from the businessmen-creditors, respondent mails them to the debtors as coming from State Credit Control Board, respondent's trade name. (Not disputed.)

3. In the course and conduct of his aforesaid business, respondent now causes, and for some time last past has caused, his said forms, when sold, to be shipped from his place of business

in the State of Illinois to purchasers thereof located in various other States of the United States, and maintains, and at all times mentioned herein has maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act. (Admitted by answer, as amended by order dated October 1, 1965.)

4. Respondent's forms are designed and intended to be used, and are used, by businessmen and others to whom they are sold for the purpose of inducing the payment of allegedly delinquent accounts, with the aid and assistance of the respondent as hereinafter set forth. (Admitted by answer.)

Respondent's forms are of two types: (1) those which are designed to accompany a statement of account made by the creditor under his own name; and (2) those which are designed to be inserted in envelopes provided by the respondents, which envelopes show a return address in the capital city of one of the States of the United States. (Admitted by answer.)

Among the forms of the first type is one which contains the following statement:

Unless we hear from you within Ten Days with payment, we shall turn your account in for collection to,

STATE CREDIT CONTROL BOARD

(Admitted by answer.)

All of the forms of the second type bear the letterhead of "State Credit Control Board," together with a post office box number in the capital city of one of the States of the United States. A user of this type of form fills in the appropriate data in the spaces provided, including the name and address of the alleged debtor or other addressee, together with the amount of the alleged indebtedness, and sends the completed form to respondent's agent in the capital city of the appropriate State. Respondent's agent then mails the form from that location. (Admitted by answer.)

The following findings are also appropriate at this point and are not deemed to be in dispute:

Forms of the first type referred to above are small colored slips ordinarily attached to a bill or statement of account of the creditor and mailed out by the creditor himself in his own envelope. The last and third of this series reads as quoted above, to wit, that the account will be turned over for collection to STATE CREDIT CONTROL BOARD. Forms of the second type (designed to be mailed out by respondent or respondent's agent from the capital of the

state in which the debtor is located) are the principal subject matter of the present litigation. They are formal-looking documents, printed on heavy, glossy paper, prominently displaying the name STATE CREDIT CONTROL BOARD. As already indicated, these forms, after being filled out by the creditor, are forwarded to respondent by the creditor and mailed by the respondent or his agent to the debtor. The forms are each distinguished by a cut or likeness of Justice, by the use of the capital name of the State in which the debtor is located, and by the use of titles like "County Agent" and "District Director."

Although all of these forms (of the second type) purport to come to the debtor from STATE CREDIT CONTROL BOARD, they all call upon the debtor to deal directly with the creditor and to make payments directly to the creditor.

These forms (and also the preliminary "slip" forms, of the first type) are part of a comprehensive system designed to enable the creditor to collect debts owing to him directly. The forms, starting with the preliminary "slip" forms of the first type, and particularly the more formal forms of the second type, are designed to be used by the creditor consecutively on a more or less fixed time schedule. (See printed Instructions, inside front cover, CX 1 and 5; also see RX B.)

The first three forms, of the second type, are demands for payment, containing, directly and indirectly, threats of legal action. There is a fourth form with much the same threats, although its use is indicated to be optional. There are three other forms—a notice to Employer, a Past Due Notice, and, finally, a very formidable-looking one entitled Final Notice Before Entering Suit.

The following are copies of all seven forms, of the second type. (Authenticity thereof is admitted by answer or established by testimony of the respondent in connection with the introduction into evidence of CX 1, 2, 5, 8, 9, 10, and 18.)

CREDIT PROTECTION
An Independent Collection Service
[Encircling a seal of Justice]

Referred to file of County Agent

County of _____

STATE CREDIT CONTROL BOARD
P.O. Box 186 – Indianapolis, Indiana 46206

Creditor _____
Address _____
_____

1318 Initial Decision

Amount Claimed _____
Collection Charges _____
M_____
_____

FOR COUNTY AGENT USE ONLY
IF APPLICABLE
Date Serving Writ _____
Writ Returnable _____
Date of Judgment _____
Name of Court Judge _____
Date Sheriff's Notice _____
Date _____

Our Representative is making a preliminary examination of the delinquent accounts for the above named creditor previous to considering the taking of legal action to effect settlement on delinquent claims.
An unpaid account in the above amount, which our client says is just and legally due appears against you.
As this may be an oversight on your part, we are mailing this notice ten days in advance of any proceedings, so that you may have an opportunity to make settlement with *your creditor* before costs are added.
This account must be paid or satisfactory arrangements for payment must be made with your creditor immediately.

Very truly yours,
/s/ E. Dean Slough
E. Dean Slough
District Director

CORRESPONDING ATTORNEYS THROUGHOUT THE UNITED STATES

CREDIT PROTECTION
An Independent Collection Service
[Encircling a seal of Justice]

Referred to file of County Agent
_____
County of _____

STATE CREDIT CONTROL BOARD
P.O. Box 186 - Indianapolis, Indiana 46206

Creditor _____
Address _____
_____
Amount Claimed _____
Collection Charges _____
M_____
_____

FOR COUNTY AGENT USE ONLY
IF APPLICABLE
Date Serving Writ _____
Writ Returnable _____
Date of Judgment _____

Name of Court Judge _____
Date Sheriff's Notice _____
Date _____

You have been notified that the above claim has been handed to us for immediate attention by the above named creditor.
This claim is a legal and just obligation and we have guaranteed to collect or he will *prosecute.*
We are withholding action in this matter for ten days, giving you ample time to communicate with *your creditor.*
If you fail to get in touch with *your creditor* within the time limit, it will be evident that this claim is not only a just one, but that you are attempting to avoid payment of a legal obligation.
He shall then order legal proceedings brought against you involving judgment, levy or garnishment forthwith.

Very truly yours,
/s/ E. Dean Slough
E. Dean Slough
District Director

CORRESPONDING ATTORNEYS THROUGHOUT THE UNITED STATES

CREDIT PROTECTION
An Independent Collection Service
[Encircling a seal of Justice]

Referred to file of County Agent

_____

County of _____

STATE CREDIT CONTROL BOARD
P.O. Box 186 – Indianapolis, Indiana 46206

Creditor _____
Address _____
Amount Claimed _____
Collection Charges _____
M_____

FOR COUNTY AGENT USE ONLY
IF APPLICABLE

Date Serving Writ _____
Writ Returnable _____
Date of Judgment _____
Name of Court Judge _____
Date Sheriff's Notice _____
Date _____

You have been requested on several occasions to adjust this matter with *your creditor* or they would take such remedy as the law permits.
If there is any legitimate reason for your not paying this legal obligation or you find that there should be some adjustment, now is the time you should assert it.
You are aware that court action is expensive, not only in money but time lost.

1318 Initial Decision

To avoid additional cost of expensive litigation, you would do well to communicate with *your creditor* at once, otherwise he shall advise immediate suit involving the taking of judgment, levy and garnishment proceedings.

Very truly yours,
/s/ E. Dean Slough
E. Dean Slough
District Director

CORRESPONDING ATTORNEYS THROUGHOUT THE UNITED STATES

CREDIT PROTECTION
An Independent Collection Service
[Encircling a seal of Justice]

Referred to file of County Agent

County of _____

STATE CREDIT CONTROL BOARD
P.O. Box 186 – Indianapolis, Indiana 46206

Creditor _____
Address _____
M_____

Date _____
Amount Due _____
Collection Charges _____

You were recently notified that an unpaid account for the above named creditor had been handed to us for immediate attention. At that time we requested that you communicate with *your creditor* and make arrangements to settle this account.

We are withholding any further action for ten days to give you every opportunity to pay your creditor.

We hope that it will not become necessary to pursue this matter to the point where we may request the cooperation of your employer.

This account must be paid or satisfactory arrangements made with *your creditor* immediately.

Very truly yours,
/s/ E. Dean Slough
E. Dean Slough
District Director

CORRESPONDING ATTORNEYS THROUGHOUT THE UNITED STATES

CREDIT PROTECTION
An Independent Collection Service
[Encircling a seal of Justice]

Referred to file of County Agent

County of _____

STATE CREDIT CONTROL BOARD
P.O. Box 186 – Indianapolis, Indiana 46206
Notice to Employer

---------- ---------- 19----

To----------

Gentlemen:

It may become necessary to Garnishee your Employee, M---------- ---------- Said party is indebted to ---------- of ----------

Should he be compelled to Garnishee said Employee, it will be compulsory to make you a party to the suit. However, we desire to save you all unnecessary trouble, annoyance and expense of such proceedings and therefore trust you will bring influence to bear, causing said Employee to adjust said claim at once, direct with the Creditor.

We assure you the Creditor will be fair and accept reasonable payments, within the Debtor's means.

We hope that suit will not be necessary. However, if he is compelled to Garnishee said Employee, a complete disclosure may be demanded, compelling you to bring all books, records and vouchers into court for examination and evidence.

This notice is sent you as a courtesy. We desire to protect your interests, and trust our action will be appreciated.

All communications in this matter should be addressed direct to Creditor.

Yours Truly,
STATE CREDIT CONTROL BOARD

Certified Statement of Account

I hereby certify that I have examined the record in the matter of the above mentioned claim, and have found the account to be true and correct to the best of my knowledge and belief.

_____
Creditor

Address_____

Date_____ 196____ Amt_____

PAST DUE NOTICE

CREDIT PROTECTION

An Independent Collection Service

[Encircling a seal of Justice]

STATE CREDIT CONTROL BOARD

P.O. Box 186 – Indianapolis, Indiana 46206

Corresponding Attorneys and Professional Collectors

Throughout the United States

M_____

_____

_____

Balance due $_____

THE PROMISED PAYMENT ON YOUR ACCOUNT WITH

CREDITOR _____

ADDRESS _____

IS DUE IN THEIR OFFICE

If we are to cooperate with you in permitting this account to be paid in installments—payments must be made to your creditor promptly as promised. There is no need to write a letter. Just place your remittance and THIS NOTICE in an envelope and mail to YOUR CREDITOR TODAY.
This matter is entirely in our hands now and it is very necessary that all your payments be made DIRECT TO YOUR CREDITOR.

STATE CREDIT CONTROL BOARD

E. Dean Slough
District Director

FINAL NOTICE
BEFORE ENTERING SUIT

Creditor ----------
Name Address
Debtor ----------
TO THE ABOVE NAMED DEBTOR:
FIRST: *Take notice that the above named creditor claims that you are indebted to him in the sum of* $----------.
SECOND: *Although duly demanded, the same has not been paid.*
THIRD: *Now therefore, unless you remit to* ----------
----
on or before the ---------- *day of* ---------- *A.D., 19* ---- *for payment of said claim, or make provision for adjustment thereof, suit may be brought for the total amount with interest together with the costs and disbursements of the action.*

This demand is made according to law for the purpose of laying a foundation for legal action if not paid before the above date.
Dated this ---------- *day of* ----------, *19* ------

CERTIFIED STATEMENT OF ACCOUNT

The above creditor hereby certifies that he has examined the matter in the above mentioned claim and has found the account to be true and correct to the best of his knowledge and belief.

CREDIT PROTECTION
An Independent Collection Service
[Encircling a seal of Justice]
STATE CREDIT CONTROL BOARD
P. O. Box 186, Indianapolis, Ind.
46206

Creditor
MAKE PAYMENTS DIRECT
TO CREDITOR
County Agent ----------
County of ----------

5. By and through the use of the aforesaid statements and representations, and others of similar import but not specifically set forth herein, respondent represents and places in the hands of

others the means and instrumentalities by and through which they may, directly or by implication, make the following representations, designated (a), (b), (c), and (d):

(a) A request for payment or other request regarding an allegedly delinquent account is being made by an agency of state government, to wit, State Credit Control Board.

This finding is the same as complaint counsel's proposed finding, except for the additional words "to wit, State Credit Control Board."

There cannot be the slightest doubt that the use of the name State Credit Control Board is a representation that the request is being made by an agency of state government, and that a substantial segment of debtors would so regard it. This misrepresentation is enhanced by the use of a figure representing Justice, and of such titles as "County Agent" and "District Director."

This is so, even though, in the examiner's opinion, a substantial segment of debtors, including sophisticated "deadbeats," would, particularly in view of the collection language in the last preliminary form, regard the request as being made by a private collection agency. (See Finding 5(c) immediately below.)

The representation that the request is being made by an agency of state government is not cured by the words "An Independent Collection Service," considering that they are printed upside down as well as backwards (from right to left), in small print, underneath the figure of Justice. It is also significant that respondent does not use the word "private" but confines himself to "independent," a word commonly used in connection with public bodies referred to as "independent agencies."

(b) A request for payment or other request regarding an allegedly delinquent account originates with a party other than the creditor, more particularly State Credit Control Board.

This finding is the same as complaint counsel's proposed finding except for the addition of the words "more particularly State Credit Control Board."

However, in the examiner's opinion, a fuller finding on the representation as to who originates the request would include *the creditor himself as also originating the request.*

The three preliminary "slip" forms contain direct requests from the creditor. The subsequent forms purporting to come from State Credit Control Board refer directly and indirectly to the requests for payment as coming from the creditor.

Neither the examiner nor the respondent can be bound by any

one meaning, particularly a restricted one, of the indefinite word "originates" used in the complaint.

(c) An allegedly delinquent account has been or is about to be referred to State Credit Control Board for collection, to wit, as a state agency or as a private collection agency.

This finding is as proposed by complaint counsel except for the addition of the wording "to wit, as a state agency or as a private collection agency," to carry out the examiner's finding, indicated under (a), of alternative representations.

The finding proper is clearly supported by the preliminary slip form expressly stating that the creditor will "turn your account in *for collection* to STATE CREDIT CONTROL BOARD" (our emphasis); and by the direct or indirect meaning of wording in the subsequent forms (*i.e.*, second type), threatening suit.

(d) Legal action with respect to an allegedly delinquent account is about to be initiated.

The forms (other than the preliminary slip forms) clearly threaten legal action, directly and by direct implication (boxed material in upper right). Respondent does not really contest that this is the representation, but defends and tries to justify it (Reply Brief, p. 2).

However, the finding omits complaint counsel's proposal that the representation also is that the delinquent account *"has been"* initiated. The forms so clearly indicate prospective legal action by law suit that it is unreasonably strained to construe them to represent an already initiated legal action by representing that there is a proceeding before a state body, State Credit Control Board, or that there is any other kind of already initiated legal action.

6. The true facts are set forth in the following paragraphs designated (a), (b), (c), and (d):

(a) The request for payment or other request regarding an allegedly delinquent account is not made by an agency of state, federal, or local government. (Admitted in answer, as amended.)

This finding is the same as complaint counsel's proposed finding.

(b) The request for payment or other request regarding an allegedly delinquent account originates with the creditor. (Admitted in answer, as amended.) However, the request also originates with respondent's State Credit Control Board.

The first sentence of this finding is the same as complaint counsel's proposed finding. The second sentence, that respondent's

State Credit Control Board also originates the request, is clearly supported by the evidence and circumstances herein.

Respondent, as State Credit Control Board, originates the system and particularly the forms containing the requests for payments, although the forms (second type) are to be filled out by the creditors so as to apply to the particular debtors in each instance. Moreover, as part of the system, respondent, as State Credit Control Board, also undertakes, once the forms are filled out by the creditors, to mail them to the debtors, *i.e.*, as coming from respondent.

More importantly, respondent, as State Credit Control Board, actually does perform the service of mailing out the forms to the debtors, and has a fairly large personnel, spread throughout the States in which he operates, to handle this service. (See TR 672.)

It is the respondent, of course, who has made the contention that he, as State Credit Control Board, also originates the request. The examiner definitely agrees. Respondent originates it together with the creditor. The request, moreover, coming from respondent, has third party authority, unlike one coming from the creditor alone, and thus can fully originate only after respondent mails the form from its chosen office in the debtor's State.

The supplying of true third party authority is, incidentally, as the examiner views it, prima facie lawful provided that, for one thing, no deceptive trade name or other deception is used. There is credible testimony herein that many debtors who will pay no attention to further letters from their creditors directly will pay attention to third party communications, although co-originating with their creditors (TR 656, 7).

Finally, it seems clear that certainly the respondent should not be bound or shackled by a bare admission of the allegation of the complaint that the creditor "originates" the request, when a reasonable construction of the word permits the admission to be consistent with origination by State Credit Control Board as well.

Accordingly, the representation found in 5(b), supra, of these Findings, and alleged to be a misrepresentation in FIVE (b) of the complaint, is found by the examiner to be true, rather than false.

(c) The allegedly delinquent account has not been, nor is it about to be, referred to "State Credit Control Board" for collection. [Admitted in answer, as amended.] This is so whether State Credit Control Board is represented as being a state agency, a collection agency, or acting in any other capacity.

The first sentence of this finding is the same as complaint counsel's proposed finding. The second sentence simply carries out, as in 5(c), the examiner's finding of alternative representations.

This finding provides the foundation for the clause in the examiner's order herein, infra, forbidding representations that a delinquent account has been, or is about to be, referred for collection when such is not the fact. It should be noted that complaint counsel asks for no such specific ban but only for the general and broader ban against a representation of third party authority.

(d) Legal action with respect to the allegedly delinquent account is in many cases not about to be initiated.

This is the same as the proposal by complaint counsel except that it eliminates the proposal that legal action "has not been" initiated, which is irrelevant due to the examiner's not finding in 5(d) a representation that action "has been" initiated.

As already found (Finding 4, latter part), both the preliminary "slip" forms and the main forms are part of a comprehensive system designed to enable creditors themselves to collect directly debts owed to them. This, presumably, including respondent's mailing services, is why a book of detachable forms, with duplicates, has been able to sell for as much as $47.50 and $57.50. The design to enable creditors to collect without commencing action (or without retaining collection agencies, with or without the commencement of action through them) is sufficiently disclosed by the comprehensiveness and substance of the printed Instructions on the inside front cover of the form books (CX 1 and 5). The design is also clearly disclosed by the very wording of the forms, except the preliminary "slip" forms, referring to future legal action—right up to the Final notice Before Entering Suit.

The design and purpose is further made clear by respondent's Guarantee (last page of the form books) that if the "purchaser shall have *used this entire system* in accordance with the printed instructions contained herein, and having *fully complied with said instructions,* does not collect the sum of $350 the purchase price of $57.50 will be refunded to purchaser * * *" (CX 5, emphasis ours; see also CX 1).

The design and purpose is admitted by the very claim of respondent and his counsel that respondent's system is a necessary service for small business concerns unable to afford to retain attorneys or collection agencies for their small accounts.

The design and purpose is further demonstrated by a description of the system by the respondent himself in the first para-

graph of a letter to a law list publisher (RX B). *Moreover, as now expressly found, on the basis of the examiner's own reading of these forms and of the Instructions, the forms are ideally and cleverly suited to the design and purpose of enabling creditors to collect delinquent accounts directly on the threat of legal action,* although no such legal action is contemplated—at least, under the system, not until "the creditors shall have used this entire system in accordance with such instructions."

The design and purpose is so clear and the system with its forms so adequate to the design and purpose, that at the very least a presumption, or its equivalent, is created that legal action is not about to be initiated "in many cases," as alleged in the complaint, Six (d), and found herein 6(d) proper (nor is the account about to be referred for collection, as also alleged, and found in 6(c)).

Respondent has not overcome any such presumption. On the contrary, complaint counsel has proved by a satisfactory and concededly random sample of witnesses that in many cases action is not about to be initiated, and as a matter of fact is not initiated in most cases, certainly not by creditors using the "entire system," as contemplated, rather than dropping it in the middle, as some do, and then suing; nor is the account about to be referred for collection.

Complaint counsel caused to be selected at random, from respondent's customers in Gary, Indiana, the names of 15 customers. It turned out that one customer was recently deceased and three had not yet used the forms.

Complaint counsel called the remaining 11 as witnesses. He has concisely summarized their testimony on pages 10 and 11 of his brief herein, with citations to the transcript of testimony. He states, immediately following the summary proper:

> An analysis of the foregoing testimony indicates that the questioned forms were used on a *minimum* of 230 accounts. No more than seven suits have actually been filed.

Respondent's reply to this brief, and to accompanying proposed findings, does not challenge this detailed summary, or the statement just quoted, except as to an inconsequential matter referred to in the first paragraph of page 3 of the reply.

Respondent's counsel has, to be sure, as part of his proposed findings (pages 10–12) presented his own summary and discussion of various testimony in this connection. But what he presents

hardly impeaches complaint counsel's summary of the random samplings in any particular.

For one thing, he presents figures and general testimony, elicited mostly on cross-examination from a very few of these witnesses, in respect to accounts never sought to be collected by the forms, or elicited from a few witnesses of his own not included in this or any other sampling.

Moreover, he presents the fact that four or five of the witnesses in the sample referred some of their delinquent accounts to collection agencies authorized, or more or less authorized, to sue if necessary. But these accounts, also, were all, or substantially all, not sought to be collected by respondent's forms.

As already found, the forms are expressly designed and worded for the collection of delinquent accounts without referral to attorneys or collection agencies, *i.e.*, while the forms are in use as a system. There may be, and of course are, accounts of a nature which a creditor prefers to send to a collection agency or an attorney, rather than use a system of forms at all.

In any event, as already fully indicated, the examiner, even without the sampling evidence, finds that legal action in many cases is not about to be initiated, and so finds on the wording of the forms and the Instructions, unrebutted as they are by sufficient countervailing evidence.

Accordingly, the statements and representations referred to in Findings 4 and 5 were and are false, misleading, and deceptive—except as to those referred to in (b) thereof relating to origination "with any party other than the true originator thereof."

In respect to (b), it may be noted here, supplementing comments under 4(b) and 5(b), that even the Guides Against Debt Collection, issued by the Commission as late as June 30, 1965, actually after the issuance of the complaint herein on June 16, 1965, contain no express example directed against the use of third party authority as such in the collection of debts. Of course, if deceptive, such use still can be reached under general language of the Guides, or of the law and practice which they serve more or less to summarize or point up in the form of "practical aids" to businessmen.

However, obviously the gravamen of the violation is permitting creditors to hold out that a state agency or a collection agency, state or otherwise, is making the demand for payment—not any agency apart from a state or collection agency.

The present case is a rather remote and meager one in facts for

introducing an outright challenge into the case law against third party authority without more. The fact that respondent is so clearly in violation as to representations of state or collection agency authority should not lightly lead to what may well be a general ruling of law as to a representation of general third party authority. The matter may well be one for further Commission investigation and study of the collection business.

7. *The use by respondent of the aforesaid false, misleading and deceptive statements and misrepresentations has had, and now has, the capacity and tendency to mislead members of the public into the erroneous and mistaken belief that said statements were and are true and into the payment of substantial sums of money by reason of said erroneous and mistaken belief. However, to be sure, there is no proof that any such payment of sums of money was for other than actual and lawful indebtedness.*[1]

The first sentence of this finding is as proposed by complaint counsel; although, of course, it does not apply to representation "(b)" in respect to general third party authority.

The second sentence is added for clarity, *i.e.*, so that there should be no misunderstanding of the finding in the first sentence.

8. *There is sufficient public interest to support this proceeding and the below order. Respondent's contention to the contrary, largely in respect to representations of proposed legal action or collection referral, has no adequate support.*

The Commission, at least in its administrative capacity, has, as appears in the prefatory paragraph commencing the complaint herein, found that this proceeding "would be in the public interest."

Moreover, long prior to the issuance of the complaint herein, the Commission in the "skip-tracing" cases laid down the rule, approved on appeal, that misrepresentations to delinquent debtors, even for the collection of lawful debts, are not to be condoned but should be restrained in the public interest. There are also quite a few Commission cases involving misrepresentation as to proposed action by attorneys, collection agencies, or the like—although, almost exclusively, directed against the creditors themselves and terminated by consent orders, not actual adjudication.

Respondent strenuously contends that there is no public interest in imposing a sanction the result of which is to prevent purely intrastate small business concerns from indulging in their Ameri-

[1] As in Finding 6, the emphasis here and in 8 and 9 is merely to set off the finding proper from discussion or explanation.

can "right" to threaten suit, or the like, in respect to a lawful debt. He adduced some testimony that form books or forms, similar to his, are of great help to small businessmen pursuing "deadbeats" (Reavis, TR. 371–373; White, TR. 456; Gawrysiak, TR. 259, 274).

Respondent also adduced a limited amount of evidence tending to show that none of the States in which he operates imposes such a sanction. This consists of his own testimony as to advisory opinions of a general nature from apparently reputable counsel in each State, and as to one or two State Attorney General rulings. The testimony is supported in a measure by some documentation.

Respondent's contention is that the public interest in seeing that the debtors pay their lawful debts outweighs the public interest in restraining the misrepresentation, particularly a misrepresentation as to, say, a present intent to sue, or a future likelihood of suing. This leads to the question, although perhaps one of policy, as to whether the Commission, with necessarily limited funds, is going somewhat afield in prosecuting violations of this kind rather than others of greater public interest or concern, whether in the area of misrepresentation or perhaps under the antitrust laws tending to favor small business.

However, in the examiner's opinion, past determination and pronouncement of the Commission, starting with the "skip-tracing" cases, is definitely opposed to respondent's contention as to public interest. The Commission's recent Guides Against Debt Collection Deception by and large attest this; although, of course, they are not a promulgation of law, but merely a compendium of "practical aids" to businessmen, as already stated.

If respondent is contending for a change or modification in the Commission's past declarations on public interest, or in its policy, in collection cases, he can address himself properly only to the Commission itself.

9. *There are no facts adequately supporting respondent's defense (implied or otherwise) of discontinuance and unlikelihood of resumption, nor his contention that, for equitable reasons, no order should issue against him.*

Discontinuance is claimed *only* as to the use of the name State Credit Control Board and related words such as County Agent and District Director, as well as use of the figure representing Justice.

Respondent's counsel asserts (Proposed Findings, etc., p. 18), apparently without precise supporting testimony, that "all new

printings have and will have the name "State's Credit Control Service." It is explained, and the evidence shows, that respondent has legally had his name changed from S. Dean Slough to State Dean Slough—a curious change indeed. Respondent, to be sure, has testified that "Board" in the name has been changed to "Service" in two states, Illinois and Ohio (TR. 540, 547).

It is counsel also who states in the same place (p. 18) that the seal has been changed from the figure of Justice to the figure of an armored knight. Respondent himself has testified that he has changed, or is changing, County Agent to Company Representative (Tr. 206) and District Director to Director (Tr. 198).

In the examiner's opinion the changes, even as claimed, are of little avail to save respondent from a cease and desist order. The use of the name State's is a continuance rather than a discontinuance; and the changed first name of respondent, relied on to justify this, is an absurdity rather than a justification. Moreover, all the changes are too late. Indeed, even as claimed they are only in the process of being put into effect. They are changes made only after the Commission's hand is on a respondent's shoulder.

Respondent's alleged solicitude for abiding by the law is not demonstrated, at least as to federal law, by the showing made by him (TR. 590; 435, 585, 655) that he consulted apparently reputable attorneys in each new State he was entering as to the lawfulness of his operations in each state. As far as the evidence shows only one opinion (RX T) from counsel touched on federal law, and then most perfunctorily, stating "statutes were consulted," and nothing found.

Nor can respondent validly claim that, after the Attorney General of the State of Illinois directed him to add the words "An Independent Collection Service" underneath STATE CREDIT CONTROL BOARD in his advertising (CX 14), he voluntarily did the same on his forms. As already pointed out, what he actually did on his forms was to print the quoted words underneath the seal of Justice and print them upside down.

Respondent also intimates that he has been unfairly singled out among a number of collection form sellers; and tries to intimate that he is one of the smaller collection form sellers, so that there is discrimination against the large form sellers. This is an attempt to come within the language of the opinion in *Universal-Rundle Corp.* v. *F.T.C.* (C.A. 7, October 27, 1965). Suffice to say respondent has adduced no facts in support of his intimations or

contentions. His appears to be a substantial concern and, for all the record shows, may be a leader in its field. Moreover, the Commission has proceeded against another collection form seller, operating under a name and system much like his, and has obtained a consent order. Furthermore, there are the fairly numerous proceedings against creditors themselves for making misrepresentations similar to those made in his forms.

CONCLUSIONS

1. The aforesaid acts and practices of respondent herein found to be misrepresentations or instrumentalities of misrepresentations—*i.e.*, all except those referred to in Finding 4(b) and 5(b), relating to third party authority generally—were and are to the prejudice and injury of the public; and they constituted, and now constitute, unfair and deceptive acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

2. The Federal Trade Commission has jurisdiction herein.

CASES

The Commission has made clear that misrepresentation for the purpose of collecting lawful debts stands on the same footing as misrepresentation in general. The fact that lawful debts are sought to be collected does not justify misrepresentation. The end does not justify the means, so to speak.

This policy was made clear in the "skip-tracing" cases. These involved efforts of creditors to obtain, directly or indirectly, the addresses of delinquent but elusive debtors by various tricks or artifices. It was held to be not in the public interest to permit such misrepresentation, *i.e.*, even for the purpose of collecting lawful debts.

The following four are the leading "skip-tracing" cases, all of them vigorously contested and upheld on appeal. All of them except one, directed against a creditor, are directed against the seller of forms (as in the case at bar) for use by creditors. The cases are: *Silverman* v. *Federal Trade Commission,* 145 F. 2d 751 (C.C.A. 9; 1944); *Rothschild* v. *Federal Trade Commission,* 200 F. 2d 39 (C.A. 7; 1952); *Dejay Stores Inc.* v. *Federal Trade Commission,* 200 F. 2d 865 (C.A. 2; 1952); *Mohr* v. *Federal Trade Commission,* 272 F. 2d 401 (C.A. 9; 1959). See also *Matter of Pitler, t/a Cavalier Reserve Fund,* F.T.C. Docket 7538 (1960).

The Commission has extended this policy of prosecuting misre-

presentations for the purpose of collecting debts. It has done so by commencing a fairly large number of proceedings, or proposed proceedings, directed against misrepresentations as to proposed referrals to attorneys, collection agencies or departments and the like, *i.e.*, when such proposed referrals were not fact but fiction, or never contemplated. Except for one of an inconclusive nature, these have all ended in consent decrees.

There are perhaps 15 of these "false referral" cases ending in consent decrees. Of course, unlike the "skip-tracing" cases, they were not vigorously contested, if contested in any sense at all, nor, of course, are there any appellate decisions upholding them. Moreover, all of them (except one noted below) are directed against creditors, themselves subject to interstate commerce jurisdiction, not against a third party alone supplying that jurisdiction as here. The respondent creditors in these cases were typically more or less substantial book and magazine publishers who were attempting to collect on sales or subscriptions with the preconceived but hidden policy of never commencing legal action or turning the accounts over to outside collection agencies.

The following is a list, presumably complete, of these "false referral" cases against creditors ending in consent decrees, all in 1964, the first five being listed by name and the others by consent docket numbers only: *Matter of Prentice-Hall, Inc.*, C–676; *Matter of Modern Handcraft*, C–712; *Matter of George Macy Companies*, C–740; *Matter of Popular Science Co.*, C–741; *Matter of Book Club Guild*, C–749. Also C–752, C–753, C–754, C–755, C–756, C–757, C–777, C–779, C–845, C–856.

At this point there may also be noted the issuance by the Commission on June 30, 1965, of its Guides Against Debt Collection Deception. These, of course, as already indicated in this decision, are purely advisory or indicative, and certainly do not purport to promulgate law. Two pertinent examples of misrepresentation relate to a proposed referral to an attorney or collection agency (Guide 1, par. 6; Guide 5). There is no such example as to referral to a third person generally. There is an express indication that a third party, as here, may make the misrepresentation (see definition of "industry member").—There is also, of course, the statement that a trade name or other means may not be used to simulate government authority or affiliation (Guide 3).

There will now be discussed the two cases separately referred to above as exceptions.

First, there is the one "false referral" case which was litigated, at least to some substantial extent:

Matter of Parents' Magazine Enterprises, Inc., F.T.C. Docket 8652 (December 3, 1965) [68 F.T.C. 980]. However, although this case went through a hearing, it does not appear to have been vigorously contested, resulting in a more or less pro forma Initial Decision—adopted, after respondents withdrew their notices of intent to appeal, as the decision of the Commission without any opinion of its own.

Second, there is the one "false referral" case which, although ending in a consent decree, was directed against a third party (also a seller of forms as here), not against the creditors themselves. The name respondent traded under is almost the same as that used by the present respondent. Moreover, the complaint is much like the present complaint. The case is: *Matter of State Credit Bureau, Inc.*, C–1000 (October 8, 1965) [68 F.T.C. 560].

Of course, the consent order in that case prohibits the use of the trade name. Complaint counsel also cites the case, however, for its prohibition of the use of third party authority generally as distinguished from misrepresentation as to intended referral to a collection agency, for instance.

The consent order is in other respects much like the one proposed by complaint counsel in the present case. But, obviously, as a consent order it is not a precedent. Respondent there, following Commission consent procedure, did not even admit any violation of the law. The most, perhaps, that the case can be cited for is that the Commission made a preliminary administrative finding of sufficient public interest, coupled with an appended proposed order, and that said finding of public interest has continued unchallenged and unchanged.

In respect to the question of public interest, and the hearing examiner's power in respect to this question, reference is made to the following cases: *In the Matter of Florida Citrus Mutual*, F.T.C. Docket 6074 (May 10, 1954) 50 F.T.C. 959; *In the Matter of Premier Pillow Corporation*, F.T.C. Docket 6136 (December 14, 1954). See also *F.T.C.* v. *Klesner*, 280 U.S. 19 (1929).

The determination as to whether the public interest requires the issuance of an order in cases of discontinuance lies in the sound discretion of the Commission: *Marlene's Inc.* v. *Federal Trade Commission*, 216 F. 2d 556, 559–60 (7 Cir. 1954); *Eugene Deitzgen Co.* v. *Federal Trade Commission*, 142 F. 2d 321, 330–1 (7 Cir. 1944).

Discontinuance after the Commission's hand is already on respondent's shoulder is of little avail: *Matter of Bakers of Washington, Inc.*, F.T.C. Docket 8309 (December 3, 1964) [66 F.T.C. 1222]; *Coro Inc.* v. *Federal Trade Commission*, 338 F. 2d 149 (1 Cir. 1964).

COMMENTS ON ORDER

The preliminary unnumbered paragraph [2] of the below order is the same as the preliminary unnumbered paragraph of complaint counsel's proposed preliminary unnumbered paragraph—with one exception. The exception is that the below order eliminates the words "or in the solicitation of information concerning debts or debtors." The purpose of this rejected wording is to have the order apply to "skip-tracing" activities, as well as activities to facilitate the collection of accounts. But there is no proof in this case of "skip-tracing" activities or the slightest suggestion that respondent indulges in them. On the contrary, so far as the forms are concerned, respondent's system requires the creditor to supply the debtor's address himself, and write it on the envelope. Respondent, except for mailing the addressed envelope containing the filled-out form (and except for lending his trade name), keeps out of the collection, or precollection, process under this system. It is true that, as he testified, he has qualified himself to be a collection agency in one or more states, but this should not, in the examiner's opinion, subject him to the proposed sanction.

The wording of 1. in the below order is precisely the same as the wording of 1. in complaint counsel's proposed order. This wording forbids the use of the name State Credit Control Board, the words District Director and County Agent, as well as similar wording.

The introductory wording of 2. of the below order is the same as 2. of the proposed order. This is simply the wording as to "representing" and providing "instrumentalities."

The wording of "a," under 2., of the below order is the same as the similarly designated wording of the proposed order. This wording is directed against representations of government authority.

From here on, however, the below order significantly differs from complaint counsel's proposed order.

The wording of "b" of the appended order, under 2. thereof, is directed simply at a representation that an account is or has been referred for collection when the indicated referral is not for ac-

[2] More precisely, the preamble.

tual collection. Said "b" is a substitute for proposed "b" and "c," the latter particularly—both directed against misrepresentation as to third party referral or authority generally. Said "b" differs from both in that it follows "c" of Paragraphs Five and Six of the complaint.

Said "b" in the below order prohibits the representation "unless such is the fact." This in effect rejects the extended proviso in proposed "c." The examiner regards the proposed proviso not as a limitation on the primary prohibition or sanction, but as an attempt to cut down respondent's rights in defending an alleged violation of the order by putting the burden of proof on him.

The wording of "c" in the below order is directed against representations that legal action is about to be commenced. It represents a watered-down version of proposed "d."

Said "c" does not, for one thing, refer to representations that legal action "has been" commenced, since the examiner has found that there were no such representations.

Said "c" in the below order also limits the prohibition, in respect to representations as to proposed legal action, to those made through "any system of such forms." This is in line with the examiner's finding of deception by reason of the system and content of the forms, rather than by proof that creditors do not intend to resort to legal action in respect to any particular account or accounts.

Said "c," moreover, as is consistent with its limitation to a system of forms, contains no saving condition whatever such as either the proposed extensive proviso or as such words as "unless such is the fact," used by the examiner in "b." The prohibition is made unconditional in this respect since, as the examiner has found, the system, with its forms, is inherently an instrumentality of deception as to the imminency of legal action.

ORDER

It is ordered, That respondent S. Dean Slough, individually and trading and doing business as State Credit Control Board, or under any other name or names, and respondent's agents, representatives and employees, directly or through any corporate or other device, in connection with the collection of, or the attempt to collect, accounts, or with the offering for sale, sale or distribution of forms, or other materials, for use in the collection of, or the attempt to collect, accounts, or in the solicitation of information concerning debts or debtors, in commerce, as "commerce" is

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

1. Using the words "State Credit Control Board," "District Director," "County Agent," or any other words of similar import or meaning to refer to respondent's business or any person connected therewith.

2. Representing, or placing in the hands of others, the means and instrumentalities by and through which they may represent, directly or by implication, that:

a. Any communication with respect to an allegedly delinquent account is being made by, through, or in connection with an agency of government, whether State, Federal, or local;

b. An allegedly delinquent account has been, or is about to be, or may be, referred to any party for collection, unless such is the fact;

c. Legal action with respect to an allegedly delinquent account is about to be initiated—if so represented, directly or indirectly, by a system of such forms or other materials.

OPINION OF THE COMMISSION

NOVEMBER 16, 1966

BY JONES, *Commissioner:*

This matter is before the Commission on cross-appeals of counsel from the initial decision of the hearing examiner which sustained in part and rejected in part the allegations of the complaint. Complaint in this matter was issued on June 16, 1965, charging S. Dean Slough, an individual, trading and doing business as State Credit Control Board, with making false, misleading and deceptive representations in various debt collection forms sold by him to creditors for use in the collection of debts and with placing in the hands of others the means and instrumentalities by and through which they may make false, misleading and deceptive representations in violation of Section 5 of the Federal Trade Commission Act.

After full evidentiary hearings, the hearing examiner's initial decision was handed down on January 19, 1966, and amended by order of the examiner on January 25, 1966. The hearing examiner concluded that:

(1) Respondent falsely represented that the request for pay-

ment of the delinquent account emanated from an agency of State government (Findings 5(a) and 6(a)) and that this misrepresentation was not cured by respondent's disclaimer that it was an independent collection service (Finding 5(a)) or by respondent's attempts at discontinuance (Finding 9);

(2) Respondent's forms falsely represented that an allegedly delinquent account has been or is about to be referred to the State Credit Control Board for collection (Findings 5(a) and 6(a)); and that legal action with respect to the allegedly delinquent account is about to be instituted (Findings 5(d) and 6(d));

(3) Respondent's forms originate both with respondent who mails them on behalf of the creditor-purchaser and with the creditor who purchases them from respondent and directs respondent to mail them to the debtors and the representation that the creditor was the originator of these forms was not, therefore, false as alleged in the complaint (Finding 6(b)).

On the basis of these findings and conclusions the hearing examiner proposed the entry of a cease and desist order prohibiting respondent from holding itself out as a governmental entity and from making the representations which the examiner found to have been false.

Complaint counsel appeals from the hearing examiner's decision, challenging (1) the examiner's findings that the origination of the forms was not deceptive and that respondent's forms did not represent that legal action had been taken; and (2) the adequacy of the order entered by the examiner.

Respondent also appeals from the hearing examiner's decision on the grounds that (1) the entry of the cease and desist order against him is improper because there is insufficient public interest in the complaint; (2) respondent is being denied due process of law because the complaint and proposed order were so designed as to put respondent out of business without regard to cessation of the challenged practices; (3) respondent cannot be held responsible for any misuse by his customers of respondent's forms which threaten legal action; (4) the order should not prohibit respondent from using "State" in his business name if it is accompanied by adequate affirmative disclaimer of any government affiliation; and (5) the examiner erred in refusing to issue a subpoena duces tecum to enable respondent to develop evidence that the practices in which he engaged are common and widespread in the industry and a recognized, acceptable and necessary method of collecting delinquent accounts.

I

STATEMENT OF THE FACTS

The evidence of record, as admitted by respondent, establishes that S. Dean Slough, the respondent herein, is an individual residing in Quincy, Illinois and engaged in the sale of collection forms in some fifteen states under the trade name of State Credit Control Board.

For a brief period and to a limited extent prior to the hearings in this proceeding respondent operated a collection agency in Illinois, Ohio, and Indiana (Tr. 608–610). This aspect of respondent's business is not involved on this appeal. (Tr. 665–670). Respondent testified (Tr. 540–541, 547) that in April or May, 1965, he began operation in Illinois and Ohio under the name "State Credit Control Service" and asserted through his counsel (Proposed Findings, p. 18) that "all new printings have and will have the name 'State's Credit Control Service.' " In 1964 respondent, desiring to expand his business into California, the law of which apparently restricted the use of the word "State" in business names, changed his first name on the advice of counsel from "Earl" to "State" (Tr. 167). After the State of Illinois ordered respondent to add an affirmative statement to his advertising that he was an independent collection service, he did so and thereafter also added the same statement to his forms by placing the words in fainter and smaller print upside down and backwards encircling a seal of Justice containing the words at the top and right-side up "Credit Protection" (*e.g.*, CX 1 and CX 5, Collection Letters 1, 2, and 3).

Respondent's business consists of the advertising, offering for sale, sale and distribution of debt-collection forms to businessmen, and, on their instruction, the remailing of such forms to debtors under respondent's letterhead and address (I.D., pars. 1–3).

Respondent's debt collection package consists of eleven different letters, reports and notices. The first three forms, denominated reminder slips, are to be used in connection with debts which are delinquent less than six months and are to be attached by the creditor to the monthly statements which he sends to the debtor (Tr. 172–173). These reminder slip forms are simply routine requests for payment couched in varying degrees of politeness, ending up on the final slip with the statement:

"Unless we hear from you within Ten Days with payment, we

shall turn your account *in for collection* to, STATE CREDIT CONTROL BOARD" (emphasis added) (CX 1 and CX 5, Green Reminder Slip No. 3).

Debts delinquent more than six months are serviced by a series of three collection letters, two other forms aimed at the debtor's employer and a "Final Notice Before Entering Suit" form. Each of the first five of these collection letters bears respondent's trading name, State Credit Control Board, on its letterhead, a post office box address in the capital city of the State in which the creditor and, presumably, the debtor reside and the signature of E. Dean Slough (in later editions S. D. Slough), the respondent, who is designated on the letter as "District Director," later changed to "Director" (Tr. 198). In the upper left-hand corner of each of these collection letters is a blindfolded lady of justice with the phrase "Credit Protection" arched over her head. Encircling her and reading downwards, backwards (from right to left), and upside down, is the inscription "An Independent Collection Service" (CX 1 and CX 5).

In the upper right-hand corner of the three white letters is a statement in red ink: "Referred to file of County Agent," with three blank lines which the creditor is instructed to fill in with the name of respondent's local salesman (which is separately furnished to the creditor) and the county of the debtor (CX 1 and CX 5, Collection Letters 1, 2 and 3). A box appearing below the letterhead and to the right is designated "For County (or Co. in a later edition) Agent Use Only" and provides space for the following entries: "Date Serving Writ"; "Writ Returnable"; "Date of Judgment"; "Name of Court Judge"; and "Date Sheriff's Notice." The creditor is instructed that this box is not to be filled in. The creditor's name and address, the name of the debtor and the amount of the indebtedness are to be filled in by the creditor in the appropriate lines provided (CX 1 and CX 5).

The first letter in respondent's series of three white collection letters bearing respondent's letterhead contains the statement that: "Our (State Credit Control Board) Representative is making a preliminary survey . . . previous to considering the taking of legal action to effect settlement on delinquent claims" (CX 1 and CX 5, Collection Letter No. 1). The second letter claims that "we have guaranteed to collect or *he* will prosecute" (CX 1 and CX 5, Collection Letter No. 2, emphasis added). The third form instructs the debtor to communicate with his creditor at once,

"otherwise he shall advise immediate suit. . . ." (CX 1 and CX 5, Collection Letter No. 3).

The language of these white collection letters is carefully couched to suggest that the letter is written by, and therefore comes from the State Credit Control Board, not the creditor. The debtor is explicitly directed, however, to send his payments directly and only to the creditor. Nevertheless, debtors frequently send their payments to the P. O. Box of the respondent who then mails them to the creditor (Tr. 547–549).

The creditor is instructed to insert each form letter in this series into an envelope provided by respondent which bears respondent's return address in that State (CX 2); to put the debtor's address on the envelope, together with a stamp; and then to send it under separate cover to the respondent's office in the capital city. Respondent thereafter mails the collection letter to the debtor from that capital city address (Tr. 175–177).

A green form letter is included in respondent's packet to be used by the creditor in the event he does not know the address of the debtor's employers (CX 1 and CX 5, green collection letter). This letter, bearing respondent's letterhead and P. O. Box number located in the creditor's capital city, is to be filled in by the creditor and sent to the respondent for remailing to the debtor between the first and second white form letters. The letter states that the debtor's account "had been handed to us (State Credit Control Board) for immediate attention." It further observes: "We hope that it will not become necessary to pursue this matter to the point where we may request the cooperation of your employer."

If the address of the employer is known, respondent has included a yellow-colored form which is to be sent to the employer at the same time as the second collection letter is sent to the debtor (CX 1, Notice to Employer, and a later version, CX 5, entitled Employment Verification Request). This report form, again bearing respondent's letterhead and appropriate P. O. Box number address, is to be filled out by the creditor and sent to the respondent who then mails it to the debtor's employer. The first version (CX 1) states that "We hope that suit will not be necessary" and that "we . . . trust that you will bring influence to bear, causing said Employee to adjust said claim at once, direct with the Creditor." The later version (CX 5) requests the employer to verify the debtor's "employment directly to the above named creditor" and notes that this "request is being made in order that

the creditor may determine if referral to an attorney for court action and garnishment is advisable."

If this series of six to seven missives fails, there is a last letter: "Final Notice Before Entering Suit" (CX 1), or, in a later edition, "Final Notice Before Referral to Attorney" (CX 5). This form letter has no letterhead but the blindfolded lady of justice is still in the upper left corner and the last four lines set in the letter's bottom right-hand corner read:

Co. Agent _____
County of _____
State Credit Control Board
P. O. Box State Capital

The creditor is instructed to write on the "Co. Agent" line the name of respondent's representative in the area (usually this is the salesman) and to fill in the name of the county. This letter alleges that, unless the debtor pays, "suit may be brought" and that the creditor certifies the debt to be "true and correct" (CX 1 and CX 5).

Two other forms are provided in respondent's packet: a "Past Due Notice" (CX 5 and CX 8a) to a backslider who had made arrangements with the creditor to pay his delinquent account and a "Bad Check Notice" (CX 5 and CX 8d). Both of these forms are similar in format to the white collection letters again bearing respondent's business name in the letterhead and a state capital post office box address. They are to be filled out by the creditor and sent to the respondent for remailing to the debtor. The "Past Due Notice" states: "This matter is entirely in our hands now . . . ." The debtor, however, is requested to pay the creditor directly.

Respondent conceded that he has no connection or affiliation with any governmental entity (I.D., Paragraph 6a); that he has no authority to collect or otherwise deal with these delinquent accounts other than to lend his name to the letters, mail them to the debtor as alleged in the complaint (Answer, Paragraph Six, and I.D., Paragraph 2 and 6c) and forward to the creditor any communications which it may receive from the debtor or the debtor's employer (Tr. 547–49); that the letters themselves are filled in, addressed, and stamped by the creditors (I.D., p. 1326), that his forms indicate that legal action is about to be initiated (Respondent's Answering Brief p. 5); and that the use of third-party referrals is a highly effective collection means since debtors pay more attention to communications respecting their delinquent ac-

counts which emanate from third parties than to those sent by the creditor himself (Tr. 656–57).

In view of these admissions, the issues raised by the parties on appeal are the following:

1. Does respondent's affirmative disclosure that it is an independent collection service negate the representation flowing from its letterhead and other terms used on its form that it is a governmental entity;

2. Are respondent's forms deceptive insofar as they indicate that respondent is the originator of them;

3. Do respondent's forms represent that legal action has been instituted and is such representation false;

4. Did the hearing examiner err in refusing to issue a subpoena duces tecum to the Gary Credit Bureau.

5. Is it in the public interest and consistent with due process to issue an order against respondent? If so, what should be the proper scope of such an order?

II

DISCUSSION OF ISSUES RAISED ON APPEAL

1. *Respondent's representation respecting his governmental affiliation*

Respondent concedes that he is in no way connected with any governmental entity (I.D. par. 6a). He argues, however, that his business name and his use of the word "State," together with his use of such terms as "county" or "Co. Agent" and "District Director" or "Director" in his form letters and notices do not necessarily connote that he is a governmental entity and in any event any possible implication to this effect is negated by the affirmative representation on each letter that he is "an independent collection service." We do not agree.

There is no doubt that respondent's business name, his use of State capitols as the mailing address for his debt-collection forms sent to debtors and his use on these forms of such terms as "County Agent" and "District Director" clearly convey the impression to the recipients of these forms that respondent is a governmental entity of some kind or has some governmental affiliation. Respondent has not pointed to a single legitimate basis for its choice of this business name and its use of these terms. Indeed, respondent deliberately changed his own first name from "Earl" to "State" in some vain attempt to give credibility and legitimacy

to his use of the word "State" in his trade name. The governmental connotation flowing from respondent's use of the terms county agent and director is in no way eliminated or mitigated by respondent's later abbreviation of these terms to "Co. Agent" and "Director." Even in abbreviated form they carry the identical connotation. Nor is respondent's apparent governmental character disavowed by respondent's further statement incorporated on its form letters that he is an independent collection service. Indeed, it is likely that if this statement were in fact noticed by any of the debtors receiving respondent's letter, they would only be confused rather than enlightened as to the true nature of respondent's business.

Considering the purpose of these forms and the importance which debtors attach to payment requests received from third persons other than the creditor, it is obvious that respondent's misrepresentation of itself as a governmental entity engaged in the collection of the recipient's debt is a particularly flagrant and serious deception.

One of the creditor witnesses called by complaint counsel testified that two or three of his debtors, to whom the challenged forms had been sent, asked why he had turned their accounts over to the State (Tr. 479–480). However, other creditor witnesses indicated that they did not believe that their debtors would be deceived into the belief that a request for payment was being made by a government agency (Tr. 358, 369, 459).

We are not bound in a matter of this kind by statements of witnesses as to whether they were deceived or not. *Double Eagle Lubricants, Inc.* v. *Federal Trade Commission,* 360 F. 2d 268, 270 (10th Cir. 1965). Nor are we bound, *a fortiori,* by statements of witnessses as to whether that which they are doing will deceive others or not. It is the capacity of representations to deceive which is crucial, not actual deception. *Stauffer Laboratories, Inc.* v. *Federal Trade Commission,* 243 F. 2d 75 (9th Cir. 1965). The Commission's duty is to protect the "gullible and credulous as well as the cautious and knowledgeable." *Charles of the Ritz Distribution Corp.* v. *Federal Trade Commission,* 143 F. 2d 676 (2d Cir. 1944).

We are convinced from our examination of respondent's forms that they will convey the impression—at least in many debtor's minds—that the forms emanate from some type of governmental entity having responsibility over delinquent accounts. Accordingly, we reject respondent's argument and uphold the examiner's

conclusion that respondent's trade name and associated terms are deceptive despite the inclusion in these letters of the statement that respondent is an independent collection service.

2. *Significance of Respondent's Origination of Collection Forms*

The complaint alleged that the requests for payment embodied in respondent's forms purported to originate with respondent (Par. 5(b)) whereas in truth and in fact these requests for payment originated with the creditors (Par. 6(b)).

The hearing examiner found that respondent's collection forms originated both with respondent and with the creditor and on this basis apparently concluded that respondent's origination of the forms was not deceptive.

The examiner found that many debtors will pay no attention to payment requests emanating from creditors but will pay attention to such requests if they come from third parties (I.D., Finding 6(b)). He concluded therefore, that payment requests coming from respondent would appear to have third party authority which they would not have if they came from the creditor alone (*ibid.*).

However, nowhere in his findings or in his opinion does the examiner explain or define the source of such third party authority. He simply concludes on the basis of these findings that since respondent's forms originate both with the creditor and with respondent, the complaint allegation that respondent is the originator of these forms is only partially true and therefore the deception fails of proof. Summarizing his decision on this point, he stated:

> The decision herein holds that this alleged misrepresentation in respect to a generalized third party authority has not been proved, considering the pleadings, the proof generally and perhaps the issue of public interest. It further holds that, in any event, this alleged misrepresentation does not, on this record, and under all circumstances, warrant the issuance of a separate prohibition in the cease and desist order issued herein (I.D., p. 1325).

In our opinion, the examiner erred in his conclusion on this issue and failed to come to grips with the real issue of deception involved in third party referrals raised by the instant complaint, namely, whether a third party referral or the use of third party authority is deceptive where the third party has no authority with respect to the collection of the debt.

Respondent admitted that the requests for payment originated with the creditor and that, while the requests for payment were referred to the respondent for transmittal to the debtor, they were not referred to him for collection and that he merely as-

sisted in their collection by "lending his name and services thereto" (Resp. Ans. and amended Ans. to the Complaint).

During the hearing, respondent testified as to the importance of being able to use "third party authority" in the collection of delinquent accounts. According to respondent, many "delinquent accounts will pay as soon as the account is turned over to a third party for collection. They will not pay the original creditor until they are pressed in some manner" (Tr. 656). In response to a question by the hearing examiner as to what impression upon the debtor the third party authority (in this case respondent's agent, Loyd Peters, whose name was signed on the collection request in question) is supposed to make, respondent stated: "The debtor may assume that Loyd Peters is soon to be out there to assist in collecting" (Tr. 205). In his own proposed findings submitted to the examiner at the conclusion of the hearing, respondent asked the examiner to find that collection letters of the sort sold by respondent give "the impression to debtor not only that it originates from someone other than the creditor but also that the account has been or is about to be turned over to the credit bureau, collection agency or other third party for collection" (RPF p. 10).

Thus, the record demonstrated that use of third-party referrals is important in the collection of delinquent accounts. The evidence clearly indicates that third-party referrals have this significance not simply because debtors are more apt to read what is sent by third parties, but more importantly because of the debtor's assumption from the fact of such referral that the creditor has placed the delinquent account in the hands of a third party for some affirmative action (Tr. 205, 218, 656). Debtors receiving any third-party communications respecting their delinquent accounts are thereby led to believe that their creditors will no longer extend credit and that they probably intend to collect the debt by legal action, if necessary. The entire purport of respondent's forms is designed to reinforce this assumption on the part of debtors. Thus, the last of respondent's three initial reminder slips sent to the debtor by the creditor concludes with the admonition that nonpayment will result in referral of the account to a collection agency for collection (CX 1 and CX 5, Reminder No. 3). The next form which is to be sent to the debtor carries respondent's letterhead denominating respondent as State Credit Control Board and, if respondent's upside-down and backwards print is in fact read, asserts that respondent is an independent collection service.

Moreover, the very first letter states: "Our representative is making a preliminary examination . . . previous to considering the taking of legal action to effect settlement on delinquent claims (CX 1 and CX 5, Collection Letter No. 1). The second letter asserts that "the above claim has been handed to us for immediate attention" and that "we have guaranteed to collect" (CX 1 and CX 5, Collection Letter No. 2). Respondent's green-colored collection letter advises the debtor that his account "had been handed to us for immediate attention" and further advises that we "hope that it will not become necessary to pursue this matter to the point where *we may require the cooperation of your employer*" (CX 1 and CX 5, green collection letter; emphasis added).

We conclude, therefore, that respondent's entire debt-collection packet, designed as it was to be sent out under respondent's letterhead, would create the impression in the minds of the debtors that the payment requests encompassed in these letters were being sent out by respondent and that respondent had authority to collect these delinquent accounts. Respondent admits that it had no such collection authority. Respondent argues, however, that it was a bona fide originator of these letters since it actually did mail and sign the letters and that *the third party referral to it for this purpose was also bona fide* and that therefore its actions in this respect were not deceptive. We do not agree.

Third-party referral, to the extent it is an effective debt-collection device, is effective because it implies to the debtor that the third party has collection authority or authority to take other legal action. If the third party does not in fact have such authority the mere lending of its name and address to the collection of the debt is wholly grounded in deception. This misrepresentation is in no way dissipated, as the hearing examiner apparently concluded, by the finding that in truth and in fact the real originators of the letters included the respondent. The gravamen of the misrepresentation in the instant case is respondent's representation by apparent origination of the letters that he was a third party with authority, where in fact he had no such authority. It is immaterial to the deception, therefore, that technically it could be said that there were two originators of respondent's forms, respondent and the creditor. The real deception is, as the complaint alleged, that respondent purportedly originated these forms, where as in fact the creditor still retained full authority with respect to the delinquent account and the only "origination"

act performed by respondent was to perform a mailing service on behalf of respondent. Since it was respondent who prepared and sold the forms which contained this holding-out and who further participated in the misrepresentation by admittedly assisting in the holding of himself out as having such third party authority by undertaking the mailing of these forms under his own name and address, respondent was properly charged with the misrepresentation to debtors that their creditors had referred their delinquent accounts to third persons—a material deception in violation of Section 5.

3. *Representation by Respondent that Legal Action Has Been Instituted*

Although the hearing examiner found that respondent's system represented that legal action was about to be instituted and that this representation was deceptive, the hearing examiner refused to find that the forms represented that legal action "has been" initiated. Complaint counsel argued on appeal that the represented referral to a State agency warrants the conclusion that legal action is pending and not merely prospective.

The hearing examiner found that the letters from the State Credit Control Board appeared to come from a State agency. Given this representation, it is reasonable for a debtor to believe that the implied referral of his debt to a governmental agency goes beyond a mere threat to take legal action and represents that legal action is already underway. It is impossible, in this case to separate the fact that respondent's forms represent a referral of the debtor's account to a governmental agency from the issue of whether they also imply that legal action is pending. Respondent counsel seems to recognize this in his brief to the hearing examiner in which he stated: ". . . if the proof of the allegation of misrepresenting government affiliation fails, then there is absolutely no foundation for the separate charge of representing that legal action has been initiated" (Respondent's Reply to Complaint Counsel's Proposed Findings and Brief, p. 2). There is no doubt that debtors may well believe that there are several types of legal remedies available to their creditors, including action by the State as well as by the creditor himself. Indeed, this is the major purport of respondent's holding himself out as a governmental entity. Accordingly, we hold that the fact that respondent holds himself out as a governmental agency is likely to create an assumption in the debtor's mind that their delinquent account has

already been turned over to the authorities for action and this could easily imply to many debtors that legal action by the State was imminent, or indeed already pending against them.

We are persuaded by the argument of complaint counsel and hold that the hearing examiner erred when he refused to find that the apparent referral to a govermental agency did not represent pendency of legal action and that such representation was deceptive.

4. *Necessity for and Scope of the Order Against Respondent*

A. Need for an Order Against Respondent

Respondent argued that the issuance of an order in the instant case would not be in the public interest, would violate due process and would be improper because of the examiner's error in refusing to subpoena certain documents requested by respondent.

The misrepresentations engaged in by respondent were of a particularly flagrant and serious nature and respondent has shown an unusual dogged diligence not to yield on its use of these deceptive practices. Respondent's so-called modification of its various forms or expressed intent to make such modifications after the hand of the Commission was on his shoulder in no wise eliminated the deceptive nature of the challenged representation. The changing of the phrase, "County Agent" to "Co. Agent," the expressed intent to change the term "District Director" to "Director" and the change of respondent's trade-name from "State Credit Control Board" to "State's Credit Control Service" hardly amounts to substantive changes or to a bona fide attempt on the part of respondent to eliminate the deceptions. As noted above, the change from "State" to "State's" was occasioned not by respondent's desire to avoid deception, but in an attempt to avoid any violation of California law. Moreover, respondent's purported affirmative representation that he is an "independent collection service" came only after the State of Illinois directed this change to be made on respondent's advertising material. Again, even in complying with this order by the State of Illinois, respondent did so by placing the prescribed words in a circle in fainter and smaller print upside-down and backwards around a seal of Justice containing the words on the top, "Credit Protection."

We cannot imagine a clearer case in which the public interest demands that an order be entered against this respondent to ensure that these flagrant misrepresentations which we have found to have been made shall be stopped.

Respondent argued that no order should be entered here because many State laws do not cover the activities challenged in this complaint. This is hardly a basis for not entering a cease and desist order against respondent. If anything, that fact lends force to the need for an order against this respondent. Respondent's arguments that the entry of an order here would amount to a denial of due process are equally without substance and indeed have already been rejected by the Commission on prior motion by respondent.[1]

With respect to respondent's arguments of impossibility they are in any event moot, since the portion of the order proposed by examiner which are claimed to be incapable of being complied with have been deleted by using the order which we are entering.

In short, respondent has adduced no facts or arguments which would require this Commission to refrain from entering an order against the respondent or which might bring this case within that very limited number of cases where it can safely be concluded that the public interest does not warrant the issuance of an order against a respondent who has been found to have violated the law.

Finally, we hold that it was not error for the hearing examiner to refuse respondent's request for a subpoena duces tecum to be issued to the Gary Credit Bureau for the purpose of, developing facts for the record respecting the widespread use and generally deceptive practice in the debt-collection industry of third-party referrals. The hearing examiner refused respondent's request as untimely and burdensome (Tr. 160, 162) but did issue a subpoena ad testificandum which respondent's counsel did not use.

We agree with the examiner in refusing respondent's request for a subpoena duces tecum. Clearly, the deceptive or nondeceptive nature of a practice is not affected by the number of people who engage in it. The evidence would have been clearly irrelevant to the issues of deception in this proceeding and the hearing ex-

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[1] Respondent argued that he was being denied due process because the purpose of the order was to put him out of business and because in any event it would be imposible for respondent to comply with it. On September 30, 1965 respondent filed a motion for dismissal of the complaint because of alleged statements by complaint counsel purporting to demonstrate that the Commission's complaint was designed to put respondent out of business. Respondent's motion was denied, the Commission noting in part:

"The recorded comments (of the prehearing conference) fail to indicate the alleged 'avowed purpose of putting the respondent out of business.' The Commission, of course, has no power to close the doors of any business. . . . . The elimination and prevention of the practices charged in the complaint, if the charges are sustained by the evidence, is the sole purpose here. Respondent has made no showing to justify his request for dismissal of the complaint" (Order Denying Respondent's Motion to Withdraw or Dismiss Complaint, pp. 1–2).

aminer did not err in excluding it. As stated by the Commission *In the Matter of Wm. H. Wise Co., Inc., et al.*, Docket No. 6288, 53 F.T.C. 408, 417 (1956):

> But respondents claim that what they have done in sending out collection letters under the name "Publishers' Collection Service" is a practice which is essentially universal within the bookselling industry. But in no event is this a defense to a misleading and deceptive practice which violates the Federal Trade Commission Act.

B. Application of the Order to Respondent's Skip-Tracing Activities

The order as originally proposed by complaint counsel was to apply to respondent if it was engaged in the business of collecting debts, of soliciting information respecting debts or debtors, of selling debt-collection materials or forms to solicit information concerning debts or debtors. The hearing examiner, however, limited the applicability of the order solely to respondent's activities of debt collection and of the sale of debt-collection materials and of forms to solicit information concerning debts or debtors, thus eliminating from the order any solicitation activities on the part of respondent himself with respect to the whereabouts of debtors. Complaint counsel appeals on the ground that such skip-tracing activities are integral parts of the debt-collection business and that the order proposed by the examiner omitting this aspect of the business is unduly and unreasonably restricted in scope.

We agree with complaint counsel that the examiner's narrowing of the order so that it would not apply to respondent when acting as a bona fide skip-tracer is unduly limiting and renders the order inadequate. The proper scope of an order "depends on the facts of each case and a judgment as to the extent to which a particular violator should be fenced in." *Federal Trade Commission* v. *Mandel Bros.*, 359 U.S. 385, 392 (1959). In formulating orders in cases of this nature it has now been well established that orders need not be confined "to proscribing only the particular scheme used in the past" and that orders can be broad enough to prevent "variations on the basic theme." *Consumers Sales Corp.* v. *Federal Trade Commission*, 198 F.2d 404, 408 (1952). It is only necessary that there be a reasonable relationship between the breadth of the order and the "unlawful practices" found. *Siegel Co.* v. *Federal Trade Commission*, 327 U.S. 608, 613 (1946). Moreover, as the Supreme Court noted in the *Mandel Bros.* case, broader orders may be particularly necessary in the case of more extensive and flagrant violations (359 U.S. 385, 392).

We are convinced that there is an integral relationship between the business of debt collection and of soliciting information about the whereabouts of debtors. It is neither unlikely nor unreasonable to assume that a party engaging in one aspect of debt collection may in the future expand or switch his operations to other aspects of this business. In the Commission's recently issued "Guides Against Debt Collection Deception" three of the seven deceptive practices listed in Guide 1 relate to skip-tracing activities, while the remaining four refer to various other debt-collection practices. Respondent himself testified during the hearings of his intention "to go back into production on a large-scale" as a bona fide collection agency (Tr. 610) and of his desire to "offer a *complete* service of the system for picking up the accounts or after they have exhausted this system and not collected we will take the account over and collect it from that point, *with whatever efforts are necessary*" (Tr. 610; emphasis added). Although respondent did not specifically mention skip-tracing as one of the necessary efforts which he might use, it is obvious that any attempt to offer a complete debt-collection service would have to come to grips at some point with the debtor whose address was unknown. It is not unreasonable to assume, therefore, that at some point in the future respondent might engage in skip-tracing activities. This reasonable likelihood renders it imperative that respondent be barred now from engaging in the same representations in connection with skip-tracing which he has been found to have engaged in in connection with his sale of debt-collection forms. It would be unthinkable to have to bar respondent from holding himself out falsely as having authority to collect a debt and as being affiliated with a governmental entity when engaging in the sale of debt-collection forms and yet not prohibit him from making similar false representations when he is engaging only in seeking to elicit information respecting the whereabouts of debtors.

We specifically hold that the function of debt collection is so intimately associated with skip-tracing that the latter could well be viewed as a "variation" of the former. Skip-tracing is certainly a "related activity"; and any order designed to prevent respondent in the future from making misrepresentations in connection with the collection of debts must extend to all aspects of debt collection including the preparation of debt collection and skip-tracing forms, the actual collection of debts and the solicitation of information respecting the whereabouts of debtors. For all these

reasons we hold that the examiner erred in deleting skip-tracing activities from the application of the order.

C. Respondent's Misrepresentations of its Governmental Nature

Paragraphs 1 and 2(a) of the order proposed by the hearing examiner prohibit respondent from using the words "State Credit Control Board," "District Director," "County Agent" or other words of similar import to refer to respondent's business and from making a representation implying that he is acting in connection with any governmental entity. We believe that the language of the prohibition as proposed by the examiner must be broadened somewhat in order to make certain that the order effectively precludes respondent from persisting in his deception. Accordingly, we have amended paragraphs 1 and 2 of the order proposed by the examiner (as indicated by italic) to provide as follows:

1. Using the words "State Credit Control Board," "District Director," "County Agent," *or abbreviations thereof,* or any other words *or abbreviations* of similar import or meaning *which indicate or suggest that respondent is affiliated in any way with any governmental entity, whether state, federal or local,* to refer to respondent's business or *to* any person connected therewith.

2. Representing, or placing in the hands of others the means and instrumentalities by and through which they may represent, directly or by implication, that any communication with respect to an allegedly delinquent account is being made by, through, *under the aegis of* or in connection with any governmental *entity or agency,* whether State, Federal or local.

D. Prohibition on Respondent's Representations as to the Origin of Communications Respecting Delinquent Accounts

Complaint counsel originally proposed that the order against respondent prohibit him from representing that a communication respecting a delinquent account originates with any person other than the true originator thereof. The hearing examiner deleted this provision from the order because of his conclusion, discussed above, that respondent's representation of itself as the originator of the communications was not false and did not constitue a deception.

We have held that the examiner was in error on this point. It is essential that the order herein specifically prohibits respondent from lending his name or the name of any other person for use as

a third-party referral to the collection of a debt by a creditor unless such creditor has given respondent or such other person specific authority to collect the debt in question. Thus, the order must speak in these precise terms and not in terms of the "originator" of the letters. Accordingly, we have reinstated a provision regulating this practice in the order to be entered by us. This provision expands that originally proposed by complaint counsel since in our view complaint counsel's original proposal was ambiguous and would render the order difficult of enforcement.

Paragraph 3 of the order entered by us is designed to prohibit respondent from misrepresenting his authority with respect to any debt. We have also added to the order new paragraphs 4 and 5 specifically prohibiting respondent from selling any forms containing its own letterhead or the letterhead of any person other than the purchaser of the forms or some person designated by such purchaser who has in fact been authorized by the purchaser to take the action which such forms represent will be taken in connection with the delinquent account with respect to which form is being used.

E. Prohibitions on Representations Respecting Referrals of Delinquent Accounts for Collection and Intention to Take Legal Action

The hearing examiner's order contained two provisions, (Par. 2(b) and (c)), prohibiting respondent from making representations respecting referrals of the account for collection, unless such was the fact, and intentions of the creditor to take legal action. These provisions as drafted by the examiner were designed to prevent respondent from making these misrepresentations himself and also from selling a system of forms containing representations to be made by the creditor which may or may not be true.

Respondent's counsel challenged these provisions in the order insofar as they prohibited respondent from selling a system of forms containing representations respecting the intention of creditors to sue. Respondent argued that it specifically instructs its purchasers not to use these particular forms unless they intend to sue the debtor in question.[2] Respondent further argued that it cannot and should not be held accountable for the intentions and acts of its creditor-purchasers and that it would be an impossible

[2] We find that this claim was not substantiated by the witnesses. (Tr. pp. 230–231, 249–250, 283–284, 294, 303, 308.)

burden for respondent to assume to police the use of its forms and prevent their being used in the case of debtors whom the creditor-purchasers may have no intention of suing. Moreover, respondent argues that it is a creditor's right to threaten suit in order to collect a debt and that therefore there is nothing wrong in respondent's sale of debt-collection forms containing such threats.

We find it unnecessary to rule on these contentions of counsel since we do not believe it is necessary to include in the order any prohibitions on representations respecting the institution of legal action by respondent's customers.

The provisions of the order proposed by the examiner, insofar as they pertain to representations made by respondent, are essential, since the order which we are entering here applies to the activities of respondent if he engages in the collection of debts or in the solicitation of information respecting the whereabouts of debtors as well as to his activities as producer and seller of debt collection forms. It is obviously necessary to prohibit respondent himself from representing that a particular account is or will be referred to any party for collection or will be the subject of legal action if respondent has no such intention of taking such action. However, under the terms of the order which we are entering here we do not believe that it is necessary to impose any prohibition on respondent with respect to representations which may be made by the purchasers of respondent's forms.

Under the order which we are entering, respondent is prohibited from holding himself out to the debtor as the collector of a delinquent account, unless he has received specific authority from the creditor to collect the balance due on the account in question. Respondent is also prohibited from selling debt collection forms bearing the letterhead of himself or other persons not having such authority. We see no need, therefore, for any additional prohibitions in the order respecting representations made in forms which respondent sells for use by others.

Accordingly, subparagraphs (b) and (c) of paragraph 2 of the examiner's order will be deleted and their substance, to the extent they apply to respondent's own representations, incorporated into the new paragraphs 6 and 7, which we have added to the order to be entered by us.

The appeal of respondent's counsel and of complaint counsel is granted in part and denied in part.

The Findings and Conclusions of the hearing examiner to the extent they conflict with this opinion are overruled. The hearing

examiner's order is modified. An appropriate order will be entered.

FINAL ORDER

This matter having been heard by the Commission upon cross appeals of counsel from the initial decision and upon briefs in support of and in opposition to said appeals; and

The Commission having determined, for the reasons appearing in the accompanying opinion, that the appeals should be granted in part and denied in part, and having further determined that the initial decision should be modified in certain respects:

It is ordered, That the initial decision be modified by striking the order to cease and desist and substituting therefor the following:

It is ordered, That respondent S. Dean Slough, individually and trading and doing business as State Credit Control Board, representatives and employees, directly or through any corporate or other device, in connection with the collection of, or the attempt to collect, accounts, or with the solicitation of information concerning debts or debtors, or with the offering for sale, sale or distribution of forms, or other materials, for use in the collection of, or the attempt to collect, accounts, or in the solicitation of information concerning debts or debtors, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the words "State Credit Control Board," "District Director," "County Agent," or abbreviations thereof, or any other words or abbreviations of similar import or meaning which indicate or suggest that respondent is affiliated in any way with any governmental entity, whether state, federal or local, to refer to respondent's business or to any person connected therewith;

2. Representing, or placing in the hands of others the means and instrumentalities by and through which they may represent, directly or by implication, that any communication with respect to an allegedly delinquent account is being made by, through, under the aegis; of or in connection with any governmental entity or agency, whether state, federal, or local;

3. Mailing any collection letters, notices of debt due, or any other collection materials to any person indebted to a third party, or otherwise contacting any such person unless respondent has actual authority from the creditor to collect or otherwise compromise the debt; and unless an exact description of the extent

and nature of the respondent's authority to act in connection with such debt is conspicuously and prominently stated to the debtor;

4. Offering for sale or selling any form, letter, notice or other document, individually or in package or series form, for debt collection purposes which bears respondent's letterhead or any name other than that of the purchaser or of a person designated by the purchaser which represents in any way directly or by implication that a delinquent account has been referred to respondent or any other third party for collection;

5. Authorizing any creditor to utilize respondent's name or any trade name or style which respondent may adopt or use in connection with any debt collection activity whether directly or through third parties on the part of such creditor;

6. Representing directly or by implication that:

(a) Respondent is engaged in the business of collecting delinquent accounts with authority to effect collection by whatever means necessary;

(b) Any delinquent account has been referred to it for collection;

(c) Any legal or other action will be instituted to effect collection or reflect unfavorably on the credit rating of the debtor;

Provided, however, It shall be a defense hereunder for respondent to establish that it is engaged in the bona fide collection of delinquent accounts, has the authority and good faith intent to take any represented action, and the specific account in question has been referred to it for collection;

7. Engaging in any scheme, practice or business activity by and through which creditors may falsely represent that a delinquent account has been referred to a bona fide, independent collection agency; any third party has the authority to effect collection of a delinquent account; the delinquent account has been referred to an instrumentality of or agency affiliated with any governmental unit.

It is further ordered, That the hearing examiner's initial decision, as modified and as supplemented by the findings and conclusions embodied in the accompanying opinion, be, and it hereby is, adopted as the decision of the Commission.

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 the order to cease and desist set forth herein.

IN THE MATTER OF

NATIONAL OUTDOOR DISPLAY, INC., ET AL.

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

Docket C-1137. Complaint, Nov. 16, 1966—Decision, Nov. 16, 1966

Consent order requiring a Memphis, Tenn., manufacturer of electrical signs to cease recruiting salesmen and distributors through misrepresentations as to earnings, sales opportunities, training, and financial assistance.

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 National Outdoor Display, Inc., a corporation, and Hal Burns, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent National Outdoor Display, Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Tennessee, with its principal office and place of business located at 2191 Filmore Street, Memphis, Tennessee.

Respondent Hal Burns is the secretary-treasurer, and general manager of the corporate respondent. He formulates, directs, and controls the acts and practices of the said corporate respondent, including the acts and practices hereinafter set forth. His business address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the manufacturing, advertising, offering for sale, sale and distribution of electrical signs to the general public.

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

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

PAR. 4. In the course and conduct of their business, and for the purpose of promoting the sale of said products to members of the general public, and inducing members of the public to become salesmen and distributors for the respondents, the said respondents have made or caused to be made numerous statements and representations in advertisements and other promotional material with respect to the said merchandise, the profits and income made by salesmen and distributors of same, training programs and financial assistance offered by respondents, and available franchises of existing, growing, and profitable businesses in various States of the United States.

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

(A)

FRANCHISE
OPEN

Existing growing profitable business in this area or state distributorship available for our product. Investment only secondary to the individual's ability and aggressiveness to succeed in this very profitable business. We have the most wanted item on the market today. Every business firm a potential customer. Complete individual training program. Financing arrangements provided to appointed individual. Interviews now being held by appointment only.

(B)

$500 PER WEEK

Executive type experienced salesmen to call on business owners. $500 per week and more is now being made by our salesmen which we will quickly prove to you.

SUCCESSFUL BUSINESS
FOR A SUCCESSFUL MAN

A National Company will discuss a distributorship branch, only with a person with previous business success. Financial ability, and leadership. Company will assist initial organization and sales organization. Investment of $3,750. Secured by merchandise. Possible earnings in excess of $40,000 per year.

PAR. 5. Through the use of the aforesaid statements and representations, and others similar thereto, but not specifically set

forth herein, and the oral statements and representation of respondents' salesmen, respondents have represented, directly or by implication that:

1. Salesmen of said merchandise were earning $500 per week or more.

2. Distributors could expect to earn in excess of $40,000 a year.

3. Franchises were open and available in various areas for existing, growing, profitable businesses.

4. Without qualification every business is a potential customer.

5. A complete, individual training program would be given to salesmen and distributors.

6. Financial arrangements would be provided to appointed distributors.

PAR. 6. In truth and in fact:

1. None of respondents' salesmen had earned or were earning $500 a week.

2. No distributor has earned $40,000 a year. Many, if not all distributors appointed by respondents have lost money in the enterprise and such earnings would be improbable.

3. The franchise areas advertised did not represent existing, growing, profitable businesses and the business in those areas was nonexistent and would have to be developed.

4. Every business is not a potential customer because of various State laws or local ordinances which regulate such electrical signs.

5. The training program was inadequate and impersonal consisting only of the playing of a record and a short lecture to groups.

6. No financing arrangements were provided for distributors.

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

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

PAR. 8. The use by respondents of the aforseaid false, misleading and deceptive statements, representations and practices, has had, and now has, the capacity to misleading members of the general public into the erroneous and mistaken belief that said statements and representations were and are true, and into the accept-

ance of sales jobs, and in the investments of substantial sums of money as distributors of respondents' products, by reason of said erroneous and mistaken beliefs.

PAR. 9. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair methods of competition in commerce, and unfair and deceptive acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

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

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

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

1. Respondent National Outdoor Display, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Tennessee, with its principal office and place of business located at 2191 Filmore Street, Memphis, Tennessee.

Respondent Hal Burns is the secretary-treasurer and general manager of said corporation, and his address is the same as that of the said corporation.

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

ORDER

It is ordered, That respondents National Outdoor Display, Inc., a corporation, and its officers, and Hal Burns, individually and as

an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the selling, offering for sale or promotion of the sale of signs, displays or other merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that:

1. Salesmen of respondents' products have earned, or are earning $500 a week or any other amounts: *Provided, however,* That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that their salesmen regularly earn the represented amount.

2. Distributors of respondents' products have earned the sum of $40,000 a year, or will receive earnings or compensation in any amount: *Provided, however,* That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that distributors of said products have regularly and consistently received earnings or compensation in the represented amounts in the regular course of business.

3. Franchise areas are available in growing, profitable, existing businesses: *Provided, however,* That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish the truth of such representations.

4. Every business is a potential customer for purchase of respondents' products.

5. Respondents provide a complete individual training program for salesmen and distributors of their products: *Provided, however,* That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that a training program of the kind and scope represented is in fact furnished all salesmen and distributors.

6. Respondents provide financing arrangements for distributors of respondents' products: *Provided, however,* That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that financing in the amount and under the terms and conditions stated is provided.

7. Misrepresenting in any manner, the earnings of salesmen or distributors; the nature or character, kind and status of business offered for sale; the potential market for sales;

the training program provided, or the available financial support.

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

IN THE MATTER OF

THE ELMO COMPANY, INC.*

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

Docket 5959. Complaint, Feb. 28, 1952—Decision, Nov. 18, 1966

Order setting aside a consent settlement and order against a manufacturer of hearing aids, dated June 10, 1952, 48 F.T.C. 1379, and suspending the effective date of revocation until a new order issues.

CERTIFICATION OF RECORD WITH FINDINGS OF FACT, CONCLUSIONS AND RECOMMENDATIONS THEREON IN CONFORMANCE WITH COMMISSION'S REOPENING ORDER OF DECEMBER 1, 1965

JUNE 15, 1966

HISTORY OF THE PROCEEDING

Complaint issued against the above respondent on February 28, 1952, charging violation of the Federal Trade Commission Act in the interstate advertising, sale and distribution of drug preparations and devices for treatment of disorders of the human ear. Respondent, prior to hearing, entered into a consent settlement containing a cease and desist order which was accepted by Commission order on June 10, 1952 [48 F.T.C. 1379]. Paragraph 3, page 1387 of the consent settlement provides it 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 Rules of Practice then in effect.[1] The requirements of paragraph (f) of Rule V in the con-

*The complaint was dismissed on March 18, 1971.

[1] The rule in effect at the time of the consent settlement reads as follows: "(f) Pursuant to a change of law or facts, or when the public interest so requires, a consent settlement may be altered, modified, or set aside, in whole or in part, upon consent of all parties. All consent settlements shall contain an agreement that if consent to a change desired is not obtained, the Commission or any respondent may file a motion in the case to set aside such consent settlement, in whole or in part, on the grounds of change of law or fact or that the public interest so requires; and after opportunity for hearing upon the issues formed, the Commission may,

sent settlement are spelled out in the February 11, 1965, opinion of the United States Court of Appeals for the District of Columbia Circuit in *The Elmo Division of Drive-X Company, Inc., et al* v. *Federal Trade Commission*, 348 F. 2d 342.

The docket file shows that on September 16, 1965, the Commission entered an order herein entitled Order To Show Cause Why Proceeding Should Not Be Reopened which recited the 1952 consent settlement order to cease and desist, and directed, among other things, that the respondent may show cause why the public interest does not require (1) that the proceeding be reopened, (2) that the order of June 10, 1952, be vacated and set aside, (3) that the complaint be amended as per the amended complaint accompanying this order (4) that after appropriate proceedings the order to cease and desist attached to the amended complaint be entered. The accompanying amended complaint provided for an order to cease and desist more restrictive than that contained in the consent settlement. This order to show cause was vacated by the Commission on December 1, 1965 [68 F.T.C. 1229].

The foregoing vacating Commission order of December 1, 1965, is entitled Order Vacating Order To Show Cause And Reopening Proceeding To Determine Whether A Change Of Law Or Fact Or The Public Interest Requires Setting Aside Consent Settlement In Whole Or In Part. This reopening order refers the matter to a hearing examiner for the purpose of receiving evidence, provides that the proceeding be conducted pursuant to the Commission's Rules of Practice for Adjudicative Proceedings insofar as applicable, and directs that the hearing examiner upon the conclusion of the hearing, certify the record, together with a report of his findings, conclusions and recommendations with respect thereto, to the Commission for disposition.

A stenographically reported prehearing conference was held herein on February 18 and March 18, followed by a brief hearing on April 18 and 19, 1966. The record consists of the complaint, the consent settlement and order to cease and desist, the instant Commission reopening order, the answer filed thereto by respondent, a record stipulation between respective counsel, Commission Exhibit No. 1 a bound indexed documentary exhibit, and Respon-

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if it finds that a change of law or fact, or the public interest so requires, set aside the consent settlement or any part thereof which is separable from the remaining provisions without changing their effect. Thereafter, the Commission may, by adversary proceedings pursuant to the original complaint, or a new or amended and supplemental complaint, undertake corrective action as to any acts or practices not prohibited by any remaining provisions of the consent settlement."

dent's Exhibit Nos. 2 and 3 also bound indexed documentary exhibits.

Commission Exhibit No. 1 in evidence contains reproductions of respondent's magazine and newspaper advertisements, and follow-up literature sent by respondent to potential purchasers of the "Elmo Palliative Home Treatment." Included in the exhibit is a listing of the professional qualifications and published works of three medical doctors and excerpts of the testimony they would give on direct examination if called as witnesses. Respondent's Exhibit No. 1 contains excerpts from the testimony on cross-examination which would be given by these Commission medical witnesses, as well as excerpts from the testimony which would be given on direct examination by respondent's three medical witnesses and their professional qualifications. Included in the exhibit are excerpts from the testimony on direct examination of one of respondent's officials and two lay users of respondent's products if called as witnesses. Respondent's Exhibit No. 2 contains literature connected with claimed satisfactory use by various purchasers of the "Elmo Palliative Home Treatment," a listing of the Published works and professional associations of its three medical witnesses, and extracts from various medical texts.[2]

Proposed findings of fact, conclusions and supporting briefs were filed by respective counsel and a stenographically reported oral argument was held before the hearing examiner on June 10, 1966. Proposed findings of fact and conclusions submitted and not adopted in substance or form as herein found and concluded are hereby rejected.

After carefully reviewing the entire record of this proceeding as hereinbefore described, it is hereby certified to the Commission in conformance with the reopening order herein of December 1, 1965, together with the following findings of fact, conclusions and recommendations for disposition by the Commission.

FINDINGS OF FACT

1. The Drive-X Company, Inc., trading as The Elmo Company, hereinafter referred to as "respondent" is a corporation organized, existing and doing business under and by virtue of the laws

[2] The evidentiary material contained in these exhibits was extracted from the record of testimony and exhibits in Docket No. 8615, *In the Matter of The Drive-X Company, Inc., et al, trading as The Elmo Company.* The initial decision in Docket No. 8615 was vacated on September 16, 1965, by the Commission's order therein entitled Order Dismissing Complaint In Part, Vacating Examiner's Initial Decision, and Suspending Proceedings.

of the State of Iowa, with its principal office and place of business at Second and Main Streets, in the city of Madrid, in the State of Iowa. Respondent is successor in interest to The Elmo Company, Inc., a corporation formerly organized, existing and doing business under and by virtue of the laws of the State of Iowa with its principal place of business in Davenport, Iowa.[3]

The Drive-X Company, Inc., trading as The Elmo Company, the corporate successor to The Elmo Company, Inc., is bound by the order to cease and desist contained in the June 10, 1952 consent settlement in this proceeding in the same manner and to the same extent as its corporate predecessor, The Elmo Company, Inc.[4]

2. Respondent is now, and for some time last past, has been engaged in the sale and distribution of certain drug preparations and devices as the terms "drug" and "device" are defined in the Federal Trade Commission Act. The combination of the preparations and the devices is referred to by respondent as the "Elmo Palliative Home Treatment."

The designations and formulae used by respondent for its said preparations and the designation and description for said devices are as shown on pages 1387 through 1393 of the prior findings of fact in this matter (48 F.T.C. 1379) with the addition of 20 pounds of sugar of milk to each 200 pounds of the formula for Elmo Nasal Cleaner No. 2. The directions for use of such preparations and the devices are as shown in Respondent's Exhibit No. 2.[5]

3. Respondent causes its said preparations and devices, when sold, to be transported from its place of business in the State of Iowa to purchasers thereof located in various other States in 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 preparations and devices in commerce, as "commerce" is defined in the Federal Trade Commission Act. The volume of business in such commerce has been and is substantial.[6]

4. In the course and conduct of its business, respondent has disseminated, and cause the dissemination of, certain advertisements concerning its said preparations and devices by the United States mails and by various means in commerce, as "commerce" is

[3] See paragraph 1 of record stipulation between counsel at Tr. 17–18.

[4] See paragraph 2, page 1 of answer filed by respondent on February 8, 1966, to the Commission's reopening order of December 1, 1965 [68 F.T.C. 1229].

[5] See paragraph 2 of record stipulation between counsel at Tr. 18.

[6] See paragraph 3 of record stipulation between counsel at Tr. 18–19.

defined in the Federal Trade Commission Act, including, but not limited to, advertisements inserted in newspapers, magazines, and by means of circulars and other advertising media, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said preparations and devices; and has disseminated, and caused the dissemination of, advertisements, of said preparations and devices, by various means, including, but not limited to, the aforesaid media, for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of said preparations and devices in commerce, as "commerce" is defined in the Federal Trade Commission Act.[7]

5. The unnumbered findings of fact and the conclusion in the 1952 consent settlement, entered into prior to a hearing in this proceeding, are but a reiteration of paragraphs one through twelve of the 1952 complaint issued against the respondent. The paragraph of the consent settlement findings as to the facts, permissive of certain representations in the consent settlement order to cease and desist now in effect in this proceeding, corresponds with the allegations of paragraph seven of the complaint and reads as follows:

The said advertisements are misleading in material respects and constitute "false advertisements" as that term is defined in the Federal Trade Commission Act. In truth and in fact, the use of respondent's preparations, as directed or otherwise, will have no beneficial value whatsoever in cases of deafness and impaired hearing except when caused by catarrh, that is, a chronic, inflammation of, and hypersecretion from, the membranes of the nose, ear or air passages. When deafness or impaired hearing, together with ear or head noises, result from discharging catarrh, the use of respondent's preparations, as directed or otherwise, will have no beneficial effect in the treatment of said conditions in excess of temporarily relieving the catarrhal condition and the resulting deafness or impaired hearing and ear and head noises. In cases of deafness or impaired hearing and head and ear noises resulting from so-called dry catarrh, the benefits derived from the use of said preparations, as directed or otherwise, are limited to the softening of the dried exudates. Respondent's treatment would not usually result in the removal of these exudates from the ear canal and, until removed by other means, the deafness or impaired hearing and head and ear noises due to these exudates would be expected to continue. The use of Elmo No. 8 Ear-Vibrator, as directed or otherwise, will have no beneficial effect in the treatment of deafness or impaired hearing or of ear or head noises due to catarrh. Respondent's method of treatment and the preparations and device employed is not based on the findings of any accepted medical authorities. Catarrh is not the most common cause of deafness. Respondent's Elmo Ear Oil No. 1 and Elmo No. 8 Ear-Vi-

[7] See paragraphs 4 and 11 of record stipulation between counsel at Tr. 19 and 25.

brator are not safe to use and may cause injury to the user as is more fully set out hereinafter.

The foregoing finding as to the facts in the consent settlement, as translated into the order to cease and desist in the consent settlement, has resulted in the following paragraphs now in effect in the said order to cease and desist:

(a) That the use of its preparations and device, singly or in combination, as directed, or otherwise, will have any beneficial effect upon deafness not caused by a catarrhal condition of the nose, ear or air passages.

(b) That the use of its preparations and device, singly or in combination, as directed, or otherwise, will have any beneficial effect in the treatment of deafness, impaired hearing, or head or ear noises caused by discharging catarrh, in excess of affording temporary relief therefrom.

(c) That the effects of its preparations in the treatment of deafness or impaired hearing or head or ear noises due to dry catarrh is in excess of softening of the dry exudates, or that any benefit can be expected by reason of this action of respondent's preparations in the treatment of conditions caused by dry catarrh of the ear canal unless the softened exudates are removed by other means.[8]

6. Subsequent to the consent settlement herein, respondent's advertising was revised in the alleged effort to conform with the various requirements of the order to cease and desist outstanding.[9] The revised advertising for respondent's products, disseminated as set forth in preceding finding number four, is as shown in Commission's Exhibit No. 1.[10] Typical of such advertising is the following:

EAR NOISES relieved! . . . thousands reported. Wonderful relief from years of suffering from miserable ear noises and poor hearing caused by catarrhal (excess fluid mucus) conditions of the head! That's what these folks (many past 70) reported after using our simple Elmo Palliative HOME TREATMENT during the past 23 years. This may be the answer to your prayer. NOTHING TO WEAR. Here are SOME of the symptoms that may likely go with your catarrhal deafness and ear noises; Mucus dropping in throat. Head feels stopped up by mucus. Mucus in nose or throat every day. Hear—but don't understand words. Hear better on clear days—worse on bad

[8] The balance of the consent settlement order to cease and desist contains no permissive qualifications and further requires disclosures of possible harm to users of respondent's products.

[9] See paragraph 3, pages 1–2 of answer filed by respondent on February 8, 1966, to the Commission's reopening order of December 1, 1965.

[10] See paragraph 5 of record stipulation between counsel at Tr. 19.

days, or with a cold. Ear noises like crickets, bells, whistles, clicking or escaping steam or others, You, too, may enjoy wonderful relief if your poor hearing or ear noises are caused by catarrhal conditions of the head and when the treatment is used as needed. Write now for PROOF of RELIEF & 30 DAY TRIAL OFFER. THE ELMO COMPANY, Dept. H25B Madrid, Iowa.

Respondent's advertising in the main is directed to the elderly, and the volume of respondent's business is substantial. The testimony of respondent's official, Craig W. Sandahl, in Respondent's Exhibit No. 1, at page 116 (f) and Commission's Exhibit No. 1, at pages 72–73 and 83–84, shows that respondent sends out about 15,000 treatments a year and that out of the number of people replying to respondent's advertisements over the past 30 years, approximately 60% or one quarter of a million people have paid respondent either respondent's first asking price of $10 or the follow-up price of $7.35.

People replying to respondent's advertising are sent reproduced follow-up testimonial letters [11] extolling respondent's treatment, and making claims for its use, for example, as appears in one such letter: "Here I want to say I feel a complete cure." An examination by the hearing examiner [12] of these advertising and follow-up testimonial letter exhibits shows them plainly susceptible of being interpreted and understood by the purchasing public [13] as representing, directly or impliedly, that respondent's "Elmo Palliative Home Treatment" will have a beneficial effect on and cure or constitute an effective treatment for poor or lost hearing, ear and head noises, and so-called catarrhal conditions of the head.

7. Commission counsel in the absence of the present record stipulation would call the following witnesses: Dr. Donald F. Proctor, Dr. Samuel L. Fox and Dr. David Myers, whose qualifications, experience and publications are as shown in Commission's Exhibit No. 1.[14] The named witnesses if called by Commission counsel would testify under direct examination as shown in Commission's Exhibit No. 1.[15]

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[11] Comm. Ex. No. 1, pages 63–68.

[12] See April 8, 1966, opinion of the Commission and cases therein cited, Docket No. 8635, *In the Matter of Merck & Co., Inc., et al.* [69 F.T.C. 526] as to a finding based on such examination.

[13] "Advertisements are intended not 'to be carefully dissected with a dictionary at hand, but rather to produce an impression upon' prospective purchasers" and "the law is not made for experts but to protect the public—that vast multitude which includes the ignorant, the unthinking and the credulous, who in making purchases do not stop to analyze but to often are governed by appearances and general impressions." *Aronberg* v *Federal Trade Commission*, 132 F. 2d 165,167–168.

[14] See paragraph 6 of record stipulation between counsel at Tr. 19.

[15] See paragraph 7 of record stipulation between counsel at Tr. 19–20.

8. Counsel for respondent in the absence of the present record stipulation would call the following witnesses: Dr. McKeen Cattell, Dr. Benjamin Calesnick and Dr. Harry Cherken, whose qualifications, experience and publications are as shown in Respondent's Exhibit No. 2. In addition, respondent would call certain user witnesses.[16]

9. The foregoing named witnesses if called by counsel for respondent would testify under direct examination and the witnesses to be called by Commission counsel would testify on cross-examination as shown in Respondent's Exhibit No. 1.[17] In addition to the foregoing testimony, respondent would offer the exhibits from medical texts and other facts as shown in Respondent's Exhibit No. 2.[18]

10. The proffered testimony of respondent's official, Craig W. Sandahl, discloses that Respondent's business records show that the "Elmo Palliative Home Treatment" has been sold under the same formulae for approximately the past 30 years.[19] Commission's medical witness, Dr. Proctor would testify that he was familiar with the formulae of respondent's preparations and the devices used in the "Elmo Palliative Home Treatment," and further in part would state as follows:

Q. Doctor, based on your scientific knowledge, training, research and experience and bearing in mind the quantitative formulae and the directions for use of the preparations and the devices comprising the Elmo Palliative Home Treatment, what is your opinion as to whether or not this product would be of value in curing catarrhal conditions of the head?

A. As I have said before, the term "catarrhal congestion of the head" is such a vague term that I do not think that any medical man would say that any particular thing would cure it. We would have to be more specific about it.

Q. Using the term "catarrhal" in the sense that it was used in the advertising as excess fluid mucus?

A. Well, I can answer, perhaps, in a general way by saying that as far as I know of my own personal knowledge, there is nothing in these treatments as described in the material that I have seen which I would expect to cure any condition related to the problem about which we have been talking.

Q. Would this opinion include poor hearing or ear noises caused by excess mucus?

A. It does, indeed, and an even more important consideration here is that, as I have already mentioned, there are some very serious disease processes

[16] See paragraph 8 of record stipulation between counsel at Tr. 20. See also, *Merck & Co., Inc.*, and cases cited, footnote 12, *supra*, as to the necessity for and the probative weight to be given the testimony of these lay users of respondent's products.

[17] See paragraph 9 of record stipulation between counsel at Tr. 20.

[18] See paragraph 10 of record stipulation between counsel at Tr. 20.

[19] Resp. Ex. No. 1, pages 117–119.

which can cause these symptoms, such as the brain tumor or any number of things that I could mention, multiple sclerosis and so forth and so on, which might go undiagnosed if the patients were going through any long period of time with treatments such as this thing and he was not getting at the base of his trouble.

Q. What is your opinion as to whether or not this product would be of value as a cure for poor hearing or ear noises caused by any other condition other than excess fluid?

A. There is no condition that I know of that this would be of any use for.

Q. What is your opinion as to whether or not these products would be of value as an effective treatment for the relief of catarrhal conditions of the head?

A. I would suspect that it might do the reverse. There is one thing that is used in these preparations which might lead the patient to believe he was getting some relief, menthol, which is a topical local anesthetic, a rather poor one, but it is to a degree, and this might temporarily lead a person to believe that he felt a little bit better, but at the same time menthol could be harmful to the mucous membrane and do him more injury than good.

Q. What is your opinion as to whether or not this product would be of value as an effective treatment for the relief of poor hearing, deafness, head noises or ear noises caused by excess fluid mucus?

A. I see no reason to think that it would be of use in the treatment of these conditions.

Q. What is your opinion as to whether or not this product would be of value as an effective treatment for the relief of poor hearing, deafness, head noises or ear noises caused by any other condition?

A. None whatsoever—it would be of no help.

Q. What is your opinion as to whether or not this product would have any beneficial effect on hearing losses or head noises or ear noises or catarrhal conditions of the head?

A. I do not believe it would be of any use whatsoever.[20]

Commission's medical witness, Dr. Fox, would be in agreement with Dr. Proctor, and further would testify in part as follows:

Q. Doctor, what does the word "catarrh" mean to you?

A. Medically, we do not use the word "catarrh," this is a term that is a lay term. It has no specific meaning. The older books on Pathology before we knew about allergies and before we knew about steroid problems, cortisone problems, before we knew about stress problems, the older books spoke of a catarrhal inflammation, meaning tissues that were swollen and looked irritated, but you could not find any infection in the sense of bacteria. You could not put your finger on what was wrong with you. They were not ulcerated, they were not infective—they were just swollen and edematous and irritated. We have not used this term, except as a hang-over in one or two names which have stuck with us over the years, but we have not used this term in relation to disease of the ear, nose and throat, in about 30 years. It has been about 30 years since they, the books, contained it—we have tried to omit this and have gradually been able to do so. There is no specific Pathology. There

[20] Comm. Ex. No. 1, pages 22–25.

is no specific cause. There is no specific disease. This is really a symptom complex when you do not know what else to call it, and you have no way of explaining it to the patient. As sometimes you say to an older patient, "what you have used to be called a catarrh."

Q. Doctor, using the term "catarrh" as meaning excess fluid mucus as it is used in the advertisement of the Elmo Company, can you tell us whether excess fluid mucus conditions of the head can cause ear noises and poor hearing?

A. They cannot.

Q. In your experience, doctor, what percentage of poor hearing and ear noises are caused solely by what is referred to in this advertisement in 1-A as "catarrhal conditions of the head"—which is excess fluid mucus?

A. I would say none, with the possible exception of the acute colds which for a few hours might block up the ears.

Q. Are older people likely to suffer from poor hearing and ear noises?

A. That is right. There is natural loss of hearing with every decade of life, starting at age 20, just as there is a loss of vision by age, and you wear bifocals as—with a natural loss of hearing.

Q. Doctor, is there anything new or unusual about the preparation or the devices contained in the Elmo Palliative Home Treatment?

A. They are very old preparations. All of the ingredients have been known, since, well, since the 1800's, some older than that. Many of these ingredients are listed in the Bible as being present. They are very old preparations. There is nothing new. That is, about the preparations or their uses. There is no new knowledge about them that would make them any more effective than we thought they were 25 or 30 years ago when most of them were discarded.

Q. Have you used or tested the various preparations included in this treatment?

A. Under the name of "Elmo" preparations?

Q. That is correct.

A. No.

Q. Why not?

A. I would have no confidence or faith that they would have any effect from my knowledge of pharmacology and my knowledge of diseases of the ear, nose and throat. I would not subject a patient in this modern era to such drugs.

Q. Doctor, based on your scientific knowledge, your training, your research and experience, and bearing in mind the quantitative formulae and the directions for the use of the preparations and the devices comprising the Elmo Palliative Home Treatment, what is your opinion as to whether or not this product would be of value in curing catarrhal conditions of the head?

A. It would be worthless.

Q. What is your opinion as to whether or not this product would be of value in curing poor hearing caused by catarrhal conditions of the head?

A. It would be worthless.

Q. What is your opinion as to whether or not this product would be of value in curing ear noises caused by catarrhal conditions?

A. It is worthless.

Q. What is your opinion as to whether or not this product would be of value as a cure for poor hearing or ear noises caused by any other condition?

A. It's worthless.

Q. What is your opinion as to whether or not this product would be of value as an effective treatment for the relief of catarrhal conditions of the head?

A. Ineffective.

Q. What is your opinion as to whether or not this product would be of value as an effective treatment for the relief of poor hearing, deafness, head noises or ear noises caused by catarrhal conditions of the head?

A. Ineffective.

Q. What is your opinion as to whether or not this product would be of value as an effective treatment for poor hearing, deafness, head noises or ear noises caused by any other conditions?

A. Ineffective.

Q What is your opinion as to whether or not this product would have any beneficial effect on hearing loss or head noises or ear noises or catarrhal conditions of the head?

A. It might have a harmful effect.

Q. Would it have any beneficial effect?

A. No, sir.[21]

Commission medical witness, Dr. Myer, also would be in agreement with the prior medical witnesses Dr. Proctor and Dr. Fox and further would testify in part as follows:

Q. Have you reviewed this complaint including the quantitative formulae and the directions for use for the various preparations comprising the Elmo Palliative Home Treatment?

A. Yes, sir.

Q. Are you familiar with the ingredients in the various formulae?

A. Yes, sir.

Q. Are you familiar with the devices included?

A. Yes, sir, I am.

Q. Is there anything new or unusual about any of these preparations or devices?

A. No, sir.

Q. Doctor, based on your scientific knowledge, training, research and experience, and bearing in mind the quantitative formulae and the directions for use of the preparations and the devices comprising the Elmo Palliative Home Treatment, what is your opinion as to whether or not this product would be of value in curing catarrhal conditions of the head?

A. I would say that the treatments outlined in this pamphlet would not cure catarrhal conditions of the head.

Q. What is your opinion as to whether or not this product would be of value in curing poor hearing caused by catarrhal conditions of the head?

A. My opinion would be that the treatment outlined here would have very little effect on deafness or the cure of deafness.

Q. What is your opinion as to whether or not this product would have any value as a cure for poor hearing or ear noises caused by any other conditions?

[21] Comm. Ex. No. 1, pages 33, 34, 40, 41, 48–50.

A. In my opinion this would not cure any form of deafness.

Q. Or ear noises?

A. Or ear noises.

Q. What is your opinion as to whether or not this product would be of value as an effective treatment for the relief of catarrhal conditions of the head?

A. I have a very poor opinion of this product as a treatment for catarrhal conditions of the head.

Q. Could you be more explicit? Do you think it has any value for the relief of catarrhal conditions?

A. I think it has no value for the relief of catarrhal conditions.

Q. What is your opinion as to whether or not this product would be of value as an effective treatment for the relief of poor hearing, deafness, head noises or ear noises caused by catarrhal conditions of the head?

A. In my opinion this form of therapy outlined here would not cure the form of catarrhal deafness.

Q. My question, doctor, was directed to the relief of poor hearing, ear noises, head noises or ear noises caused by catarrhal conditions.

A. I feel that it would not relieve these symptoms.

Q. What is your opinion as to whether or not this product would be of value as an effective treatment for the relief of these same symptoms caused by other conditions other than catarrhal conditions of the head?

A. I feel they would have no effect in relieving these conditions or symptoms or curing them.

Q. What is your opinion as to whether or not this product would have any beneficial effect upon hearing loss or head noises or ear noises or catarrhal conditions of the head?

A. In my opinion the product would not affect the deafness or head noises or cure catarrhal conditions of the head.

Q. My question, Doctor, was directed as to whether it would have any beneficial effect disregarding the cure for the moment.

A. As I mentioned before, the use of nasal irrigation gives some comfort to patients who have crusting in their nose and throat, and if their complaint, problem is with dryness or the presence of large crusts or discharge in their nose and throat by washing their nose with the nasal douche they could clear the products of infection from their nose and throat. But this action would not cure the condition or make any change in the symptomatology. It wouldn't actually do any more good than nose flooding or expelling the products of inflammation from the nose or throat.

Q. Doctor, do you use irrigation to relieve patients who have head noises or ear noises?

A. No, sir.

Q. Would you prescribe the Elmo Palliative Home Treatment for any of your patients suffering from poor hearing, deafness or ear noises?

A. No, sir, I wouldn't.[22]

11. The professional qualifications and specialized medical ex-

[22] Comm. Ex. No. 1, pages 51, 53–54, 55–58.

perience of the witnesses [23] and the excerpts from their medical testimony set forth in foregoing finding number 10, considered together with the preceding findings herein numbered 5 and 6, show grounds to exist and sufficient reason to believe that the public interest requires and would best be served, by the setting aside in part of the consent settlement's findings as to the fact and the order to cease and desist in this proceeding and the undertaking of corrective action as provided in paragraph (f) of Rule V of the Rules of Practice incorporated in the said settlement.[24] This would be in accord with the February 11, 1965, holding of the Appellate Court in *The Elmo Division of Drive-X Company, Inc., et al* v. *Federal Trade Commission,* 348 F. 2d 342, at 346, footnote 7 of the court's opinion.

In making the instant finding, full consideration has been given by the hearing examiner to the cross-examination of the foregoing medical witnesses by the respondent,[25] the medical text book exhibits of respondent,[26] the direct testimony, professional qualifications and medical experience of respondent's medical witnesses,[27] the lay user testimony [28] and the testimonial letters and other material contained in respondent's submitted exhibits.[29]

12. Respondent's answer filed to the Commission's reopening order herein alleges its advertisements as revised conform to the order to cease and desist of the 1952 consent settlement and make no remedial claims beyond the affording of temporary relief from the described symptoms. Respondent's answer also denies that it has represented either, directly or by implication, that its drugs or devices will cure or constitute an effective treatment for poor hearing, ear and head noises and so-called catarrhal conditions of the head.

Respondent's proposed findings of fact are to the effect, in

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[23] Comm. Ex. No. 1, pages 3–9, for Dr. Proctor; pages 10–14, for Dr. Fox; pages 15–20, for Dr. Myers.

[24] The provisions of this rule appear on page 1374, footnote 1, *supra.*

[25] Resp. Ex. No. 1, pages 3–61, for Dr. Proctor; pages 62–88, for Dr. Fox; pages 89–116, for Dr. Myers.

[26] Resp. Ex. No. 2, pages 7a–g, 8a–f, 9a–g, 10a–g, 12a–c, 14a–c, 15 a–b, 16a–d, 17a–e, 18a–d. With regard to the use of medical text books on the direct and cross-examination of medical witnesses or as exhibits, see the February 28, 1964, Commission opinions in Docket No. 8490, *Sinkram Incorporated, et al* [64 F.T.C. 1243].

[27] Resp. Ex. No. 1, pages 120–136, and Resp. Ex. No. 2, pages 4a–k, for Dr. Cattell; Resp. Ex. No. 1, pages 136, 136a–n, 137 and Resp. Ex. No. 2, pages 11a–c, for Dr. Calesnick; Resp. Ex. No. 1, pages 138, 138a–d, 139–140, and Resp. Ex. No. 2, pages 13–a–b, for Dr. Cherken.

[28] Resp. Ex. No. 1, page 141, for Joseph P. McDonald, pages 142–143, for Edna Gildersleeve.

[29] Resp. Ex. No. 2, pages 2a–b, directions for use of the "Elmo Palliative Home Treatment"; pages 3a–c, 19a–z29, confidential report blanks and testimonial letters sent to respondent by lay users of its treatment.

brief, that respondent purchased its corporate predecessor in reliance on a negotiated final consent settlement containing findings as to the facts and an order to cease and desist allowing the advertising of the "Elmo Palliative Home Treatment" to represent to the purchasing public that its use would afford not in excess of temporary relief from the advertised symptoms described, and that respondent's advertising of the said treatment is confined to such a represented result and when used as directed the treatment will afford the represented result as advertised.

Preceding finding number 6, at page 1379, *supra*, would show that respondent's advertising of the "Elmo Palliative Home Treatment" and its follow-up sales literature since the consent settlement are susceptible of the understanding by the purchasing public that the represented result from its use is not so confined as respondent contends,[30] but would extend to representing [31] that respondent's treatment will have a beneficial effect on and cure or constitute an effective treatment for poor or lost hearing, ear and head noises, and so-called catarrhal conditions of the head.

Respondent's medical text book exhibits and the testimony of its medical witnesses submitted on the record of this hearing are directed towards respondent's contention that use of the "Elmo Palliative Home Treatment" will afford not in excess of temporary relief from the symptoms described in its advertising. In turn, the testimony of the medical witnesses as submitted by Commission counsel and set forth in preceding finding number 10, at page 1381, *supra*, is in agreement and unequivocal that the use of the "Elmo Palliative Home Treatment" not only would not afford temporary relief from its advertised described symptoms, but further, that the treatment will not have a beneficial effect on and cure or constitute an effective treatment for poor or lost hearing, ear and head noises, and so-called catarrhal conditions of the head.

Respondent's claimed reliance on the finality of a negotiated consent settlement disregards paragraph (f) of Rule V of the Rules of Practice incorporated in the settlement. Further, the purpose of the present hearing is not to determine whether respondent's advertising of the "Elmo Palliative Home Treatment"

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[30] See *Aronberg* v. *Federal Trade Commission*, 132 F. 2d 165, at 167–168, holding "The public is not learned in medical technology . . . . The term 'relief' is not of definite connotation or entirely free from ambiguity; in a common sense, it connotes permanent removal of organic or functional disturbances, as distinguished from allocation of discomfort."

[31] See *Aronberg* case, footnote 30 above, "a representation that a medicine is 'for' or a 'treatment for' a disorder is equivalent to labeling it 'as a cure or remedy.'"

is in compliance with the findings as to the facts and the order to cease and desist of the consent settlement, but to ascertain whether grounds exist which, in the public interest, require that the consent settlement be set aside in whole or in part.[32]

Respondent would argue that in assessing the medical evidence of record in this hearing, little weight should be given to the medical testimony submitted by Commission counsel because, allegedly, the witnesses had demonstrated no familiarity with nor tested the preparations and devices in the "Elmo Palliative Home Treatment," and further, that substantial weight is to be given the testimony and the written testimonials of the satisfied lay user purchasers of the treatment submitted of record by counsel for respondent.

Respondent's first argument is answered, to the contrary, in *Feil* v. *Federal Trade Commission* 285 F. 2d 879 at 893: "In the petitioners' argument much is made of the fact that the medical experts produced by the Commission had little knowledge of the device, knew it only by reputation, or had only seen it demonstrated at the trial. The answer is that given by this Court in a similar case where objection was voiced that experts were allowed to testify as to the efficacy of a medical preparation which they had never prescribed or the effect of which they had not observed in concrete cases: 'The witnesses were shown to possess wide knowledge in the field under inquiry. There is no good reason to suppose them incompetent to express an opinion as to the lack of therapeutic value of petitioner's preparation merely because they had had no personal experience with it in the treatment of the disease. Their general medical and pharmacological knowledge qualified them to testify.' "

Respondent's second argument is also answered, to the contrary, in the *Feil* case above, at page 882, footnote 5, wherein it is stated: "Coincidentally, the petitioner in that case urged, as do the petitioners in this case, that the Commission should not have rejected the testimonials from satisfied customers. The answer of the court was: 'Further, it is sound to say that the fact that petitioner had satisfied customers is not a defense to Commission action for deceptive practices.' "

Respondent would further contend that in contrast to the public interest necessary for the issuance of a complaint, more is

[32] Respondent is presently subject to a penalty upon failure to comply with the various other paragraphs of the existing consent settlement order to cease and desist not containing permissive qualifications. If the consent settlement be set aside in whole and the order to cease and desist vacated, this would relegate the entire matter back to the complaint of 1952.

required in the public interest to disturb an allegedly final Commission order accepting a consent settlement such as here. If this be so, the required public interest is clearly present.[33] One quarter of a million people have already paid respondent either the first asking price of $10 or the follow-up price of $7.35 for the "Elmo Palliative Home Treatment." Unless the 1952 consent settlement be set aside in part and corrective action undertaken consistent with the preceding findings as herein made, a considerable number of the purchasing public may further go unprotected and suffer substantial monetary loss in the payment for a treatment described on the record of this hearing, by qualified and experienced medical specialists, as worthless for the represented results advertised.

CONCLUSIONS

The foregoing findings of fact show grounds to exist and reason to believe the public interest requires that the 1952 consent settlement in this proceeding be set aside in part and corrective action undertaken as provided in paragraph (f) of Rule V of the Rules of Practice incorporated in the said settlement.

RECOMMENDATIONS

Based on the record in this hearing, which is herewith certified to the Commission, together with the foregoing findings of fact and conclusions, it is recommended that the 1952 consent settlement in this proceeding be ordered set aside in part; that the allegations of the complaint be amended; and that the notice in the complaint contain that form of order to cease and desist which the Commission has reason to believe should be issued if the facts are found to be as alleged in the complaint, as amended.

OPINION OF THE COMMISSION

NOVEMBER 18, 1966

By ELMAN, *Commissioner:*

This case concerns the reopening and modification of Commission orders to cease and desist. Such orders, like judicial injunctions, are not immutable. "A continuing decree of injunction directed to events to come is subject always to adaptation as events may shape the need." *United States* v. *Swift & Co.*, 286 U.S. 106, 114. With respect to Commission orders that have become final,

[33] Compare, *Exposition Press, Inc.* v. *Federal Trade Commission*, 295 F. 2d 869, at 872–874.

whether by consent or after litigation, Section 5(b) of the Federal Trade Commission Act provides that "the Commission may at any time, after notice and opportunity for hearing, reopen and alter, modify, or set aside, in whole or in part, any report or order made or issued by it under this section, whenever in the opinion of the Commission conditions of fact or of law have so changed as to require such action or if the public interest shall so require." *Cf. American Chain & Cable Co., Inc.* v. *Federal Trade Commission,* 142 F. 2d 909, 911 (4th Cir.).

Under the present practice (Section 3.28, Rules of Practice), the Commission, acting on its own motion or at the request of a party, may reopen a proceeding for the purpose of modifying or vacating an outstanding order. In the absence of consent to the proposed modification or vacation of the order, and where substantial issues of fact are involved, the matter is heard initially before a hearing examiner, and then before the Commission, to determine whether and how the order should be altered. Normally, the question whether, by reason of changed conditions or the public interest, the outstanding order should be vacated is intertwined with the question of determining the terms of a new superseding order to be entered. Under the present practice, the Commission enters a single new order determining both of these related questions which is, of course, subject to judicial review in the same manner as other Commission orders.

In the instant case, however, we are obliged by the decision of the Court of Appeals for the District of Columbia Circuit in *The Elmo Division of Drive-X Company* v. *Dixon,* 348 F. 2d 342 (1965),[1] to consider and decide separately the question whether the existing order should be set aside, before taking up the question of the content and scope of a new superseding order. The Court of Appeals upheld respondent's contention that the Commission had bound itself, by entering into the agreement upon the basis of which the consent order in this case was issued on June 10, 1952 [48 F.T.C. 1379], to follow the procedure prescribed by Rule V (f) of the Commission's Rules in effect at that time, which was construed by the Court of Appeals to require the Commission to enter a separate order (which would be judicially reviewable immediately) setting aside the old consent order as a prerequisite to reopening the proceeding for the purpose of issuing a new modified order.

[1] Since this case was regarded as *sui generis* and having no general precedential importance, certiorari was not sought.

We have scrupulously followed the course required by the mandate of the Court of Appeals. On December 1, 1965 [68 F.T.C. 1229], after the case was remanded to us, the Commission issued an order reopening the proceeding in Docket 5959 to determine whether a change of law or fact or the public interest required setting aside, in whole or in part, the consent order issued in 1952. The matter was assigned to a hearing examiner with instructions to take evidence to determine whether changed conditions or the public interest requires that the order be so set aside, and to certify the record, together with a report of his findings, conclusions, and recommendations, to the Commission for final disposition. The hearing before the examiner having been held, the matter is now before the Commission on the examiner's certification of the record.

The only question before the Commission in the present posture of the case, we repeat, is simply whether the outstanding 1952 consent order should be vacated in whole or in part, and not what the terms or scope of a new superseding order should be. Because of the unusual manner in which we have been directed to proceed in this case, the Commission intimates no view whatsoever on the latter question. We have determined only, for the reasons shortly to be stated, that the findings of fact and conclusions of law contained in the hearing examiner's certification are correct and valid; and, with one modification, they are hereby adopted by the Commission as its own. We find and hold that the public interest requires that the consent order issued by the Commission on June 10, 1952, be reopened and set aside in whole, rather than in part as recommended by the examiner. We are this date entering an order to that effect. Under the decision of the Court of Appeals in this case, respondent will have the opportunity it successfully sought of obtaining immediate judicial review. If and when today's order vacating the 1952 consent order should become final, because respondent does not seek court review or because upon such review our order should be affirmed, the Commission will promptly initiate such further administrative proceedings as are found to be warranted by the then existing circumstances.

The reasons for our determination to vacate in its entirety the consent order issued in 1952 may be summarized as follows:

1. The order issued in 1952 and now in effect permits respondent to represent that the use of its preparation and device will have some beneficial effect in the treatment of deafness, impaired hearing, or head or ear noises.

2. The medical testimony in the record, summarized in Finding 10 at pages 1381–1385, supports the conclusion that the preparations and devices comprising the Elmo Palliative Home Treatment have no beneficial effect whatsoever in the treatment of poor hearing, deafness, and head or ear noises.

3. Respondent's current advertising represents that its products will relieve poor hearing and head or ear noises.

4. On the basis of the foregoing, we conclude that the 1952 order fails adequately to protect the public interest.

Accordingly, the Commission's duty to safeguard the public interest requires that the consent settlement and order entered herein on June 10, 1952, be set aside in whole. In order to prevent a hiatus in which respondent would be entirely free from *any* order, we are staying the effective date of today's order until such time as a new superseding order of the Commission, finally disposing of this complaint, shall take effect. Respondent may thus obtain immediate judicial review of our present order, without the harm to the public interest which would result if it were wholly relieved from the prohibitions of any order during the pendency of judicial review.

Complaint counsel's motion to strike the reply brief filed by respondent is denied.

ORDER SETTING ASIDE CONSENT SETTLEMENT AND ORDER

The Commission having issued on December 1, 1965 [68 F.T.C. 1229], its "Order Vacating Order To Show Cause And Reopening Proceeding To Determine Whether A Change Of Law Or Fact Or The Public Interest Requires Setting Aside Consent Settlement In Whole Or In Part," and a hearing before an examiner having been held pursuant to that order; and

The Commission having considered the evidence introduced by the parties at the hearing, the proposed findings and conclusions submitted by the parties, the briefs in support thereof, and having heard oral argument; and

The Commission having determined, for the reasons set forth in its opinion accompanying this order, that such action is now required in the public interest:

It is ordered, That the consent settlement and order entered herein on June 10, 1952 [48 F.T.C. 1379], be, and they hereby are, set aside in whole.

It is further ordered, That this order shall not take effect until such time as a new order of the Commission fully disposing of the

complaint in Docket No. 5959, in its present form or as it may be amended, and superseding the consent settlement and order entered herein on June 10, 1952, shall become final.

IN THE MATTER OF

CUSTOM SLEEP SHOPPES, LTD., ET AL.

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

Docket 8709. Complaint, Sept. 12, 1966—Decision, Nov. 18, 1966

Consent order requiring a Silver Spring, Md., retailer of mattresses and other bedding products to cease using bait tactics and otherwise misrepresenting the design, construction, certification or approval of its merchandise.

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 Custom Sleep Shoppes, Ltd., a corporation, and Harold Naiditch, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Custom Sleep Shoppes, Ltd., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 7910 Georgia Avenue, in the city of Silver Spring, State of Maryland.

Respondent Harold Naiditch is an officer of the corporate respondent. He formulates, directs, and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His business address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of mattresses and box springs to the public.

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

PAR. 4. In the course and conduct of their business as aforesaid and for the purpose of inducing the purchase of their said mattresses and box springs, respondents have represented and are now representing, directly or by implication:

1. That they are making a bona fide offer to sell mattresses at a reduced or special sale price of $22.50 for a limited time only and that purchasers of such mattresses realize a savings from respondents' regular selling price.

2. Through the use of the words and terms "orthopedic," "Ortho-Chiro-Health," "Ortho Chiro Health Certified" and other words and terms of similar import not set forth herein, that certain of respondents' mattresses and box springs have been specially designed and constructed so as to prevent, correct or afford substantial relief to a body deformity or deformities, and accord with recommendations of orthopedic authorities respecting design and construction of such product for the prevention, correction or relief of such deformity or deformities.

3. Through the use of the term "custom built" or other words of similar import that certain of respondents' mattresses and box springs have been specially designed and constructed in accordance with specifications furnished prior to manufacture by individual purchasers and users of said mattresses or box springs.

4. Through the use of the statement "PHILADELPHIA MEDICINE official publication of the Philadelphia County Medical Society ORTHO-CHIRO-HEALTH CERTIFIED" that the design and construction of certain of respondents' mattresses and box springs have been certified or approved by said medical authorities.

5. By failing to reveal or otherwise, that purchasers' notes or installment contracts will not be discounted or negotiated to finance companies.

PAR. 5. In truth and in fact:

1. Respondents' offers are not bona fide offers to sell the said mattresses at the aforesaid price but are made for the purpose of obtaining leads to persons interested in the purchase of mat-

tresses and box springs. After obtaining such leads, respondents, their salesmen or representatives call upon such persons at their homes. At such times, respondents' salesmen or representatives disparage the aforementioned mattress and otherwise discourage the purchase thereof and attempt to sell, and frequently do sell, different and more expensive mattresses and box springs.

2. The offer set forth above, is not for a limited time only. Said mattresses are offered regularly at the represented price.

3. Respondents' products are not being offered for sale at a special or reduced price and no savings are realized by respondents' customers.

4. Respondents' mattresses and box springs have not been specially designed and constructed so as to prevent, correct or afford substantial relief to body deformity or deformities nor do said mattresses accord with recommendations or orthopedic authorities respecting design and construction for prevention, correction or relief of such deformities.

5. Certain of the mattresses represented by respondents as being custom made are not specially designed in accordance with specifications furnished prior to manufacture by individual purchasers or users of their mattresses or box springs.

6. Said medical authority has not certified or approved the design and construction of respondents' mattresses or box springs.

7. Purchasers' notes or installment contracts are discounted or negotiated to finance companies.

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

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

PAR. 7. The use by respondents of the aforesaid false, misleading and deceptive representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said representations were and are true and into the purchase of substantial quantities of respondents' products by reason of said erroneous and mistaken belief.

PAR. 8. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors, and constituted, and now

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

DECISION AND ORDER

The Commission having issued its complaint on September 12, 1966, charging the respondents named in the caption hereof with violation of Section 5 of the Federal Trade Commission Act, and the respondents having been served with a copy of that complaint; and

The Commission having duly determined upon a motion certified to the Commission that, in the circumstances presented, the public interest would be served by waiver here of the provision of § 2.4(d) of its Rules that the consent order procedure shall not be available after issuance of complaint; and

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

The Commission having considered the aforesaid agreement and having determined that it provides an adequate basis for appropriate disposition of this proceeding, the agreement is hereby accepted, the following jurisdictional findings are made, and the following order is entered:

1. Custom Sleep Shoppes, Ltd., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 7910 Georgia Avenue, in the city of Silver Spring, State of Maryland.

Individual respondent Harold Naiditch is an officer of the corporate respondent and formulates, directs, and controls the acts, practices and policies of the corporate respondent. His office and principal place of business is the same as that of the corporate respondent.

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

ORDER

It is ordered, That respondents Custom Sleep Shoppes, Ltd., a corporation, and its officers, and Harold Naiditch, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of mattresses, box springs or any other product in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using, in any manner, a sales plan, scheme or device wherein false, misleading or deceptive statements or representations are made in order to obtain leads or prospects for the sale of mechandise.

2. Making representations purporting to offer merchandise for sale when the purpose of the representation is not to sell the offered merchandise but is to obtain leads or prospects for the sale of other merchandise at higher prices.

3. Discouraging the purchase of, or disparaging, any merchandise which is advertised.

4. Representing, directly or by implication, that any merchandise is offered for sale when such offer is not a bona fide offer to sell said merchandise.

5. Using the word "sale," "save," "saving" or any word of similar import to refer to any amount which is not a significant reduction from the price at which the merchandise has been sold or offered for sale in good faith by respondents in the recent regular course of business, or otherwise misrepresenting the price at which merchandise has been sold or offered for sale by respondents, or otherwise misrepresenting in any manner the savings realized by purchasers of such products.

6. Using the word or term "orthopedic" or "Ortho Chiro Health" or "Ortho Chiro Health Certified" or any other words or phrases of similar import or meaning as descriptive of mattresses or any other bedding product not specifically designed and constructed so as to prevent, correct, or afford substantial relief to a body deformity or deformities, and not in accord with recommendations of orthopedic authorities respecting the design or construction of such product for the prevention, correction or relief of a body deformity or deformities; nor shall such words or phrases be used unless ac-

companied by specification of the kind or kinds of body deformities for which the product has been so designed and constructed.

7. Using the word "custom" or the phrase "custom built" or any other word or phrase of similar import or meaning as descriptive of stock merchandise; or representing, directly or by implication that their products have been specially designed and constructed in accordance with specifications furnished by purchasers or users prior to manufacture: *Provided however,* That this shall not prohibit respondents from using the name Custom Sleep Shoppes, Ltd., or representing items as custom made, that are, in fact not carried as inventory items and are built to specifications furnished by purchasers or users prior to manufacture.

8. Representing, directly or by implication, that the design and construction of their products have been approved by a practitioner or practitioners of medicine, orthopedics or chiropractic: *Provided, however,* That it shall be a defense in any enforcement proceeding instituted hereunder for the respondents to establish the fact of such representation.

9. Misrepresenting the design, construction, certification, or approval of any such products.

10. Failing to disclose orally at the time of sale and in writing on any conditional sales contract promissory note or other instrument executed by the purchaser, with such conspicuousness and clarity as is likely to be read and observed by the purchaser that:

(1) Such conditional sales contract promissory note or other instrument may, at the option of the seller and without notice to the purchaser, be negotiated or assigned to a finance company or other third party;

(2) If such negotiation or assignment is effected, the purchaser will then owe the amount due under the contract to the finance company or third party and may have to pay this amount in full whether or not he has claims against the seller under the contract for defects in the merchandise, nondelivery or the like.

11. Obtaining the signature of any purchaser to any installment contract or promissory note without prior disclosure, in a clear and understandable manner that such contract or note may be discounted or negotiated to a finance company or other third party.

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

IN THE MATTER OF

BUSINESS DEVELOPMENT SALES, INC., ET AL.

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

Docket C-1138. Complaint, Nov. 18, 1966—Decision, Nov. 18, 1966

Consent order requiring a Minneapolis, Minn., distributor of coin-operated laundry and dry cleaning equipment and supplies to cease misrepresenting to its prospective customers the profits to be made from its equipment and the service it renders such customers.

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 Business Development Sales, Inc., a corporation, and Thomas H. Boulay and Albert J. DeMarsh, 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 Business Development Sales, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Minnesota, with its principal office and place of business located at 7705 Morgan Avenue South, in the City of Minneapolis, State of Minnesota.

Respondents Thomas H. Boulay and Albert J. DeMarsh are officers of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their business address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have

been, engaged in the offering for sale, sale and distribution of coin-operated laundry and dry cleaning equipment and supplies to the public to be installed in stores servicing the public and operated by the purchasers for a profit.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said equipment and supplies, when sold, to be shipped and transported from their place of business in the State of Minnesota or from the place of business of the manufacturer or supplier thereof to purchasers located in various States of the United States other than the State of origination of said shipment and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said equipment and supplies in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business, and for the purpose of inducing the sale of their laundry and dry cleaning equipment and supplies, respondents have made certain statements and representations orally in sales presentations and through means of a prospectus.

Among and typical of such statements and representations, but not all inclusive thereof, are the following:

(a) That operators of stores in which respondents' equipment will be installed will realize a gross monthly income varying in amount from approximately $1,000 to $2,000 and a net monthly income varying in amount from approximately $500 to $1,000.

(b) That the usual operating time per day for a piece of equipment is four hours.

(c) That respondents will provide to purchasers of their equipment continuing assistance in the operation of their stores.

PAR. 5. In truth and in fact:

(a) Said representations as to monthly gross and net income are greatly exaggerated.

(b) The usual operating time per day for a piece of equipment in a substantial number of installations is not four hours but two or less hours per day.

(c) Respondents in a significant number of instances do not render to purchasers of their equipment the assistance promised in the operation of their stores.

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

PAR. 6. In the conduct of their business, at all times mentioned

herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of laundry and dry cleaning equipment and supplies of the same general kind and nature as that sold by respondents.

PAR. 7. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of respondents' said equipment and supplies by reason of said erroneous and mistaken belief.

PAR. 8.The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and of the respondents' competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

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

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

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

1. Respondent Business Development Sales, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Minnesota, with its office and principal place of business located at 7705 Morgan Avenue South, Minneapolis, Minnesota.

Respondents Thomas H. Boulay and Albert J. DeMarsh are officers of the said corporation and their address is the same as that of said corporation.

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

ORDER

It is ordered, That respondents Business Development Sales, Inc., a corporation, and its officers, and Thomas H. Boulay and Albert J. DeMarsh, 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 or distribution of coin-operated laundry or dry cleaning equipment or supplies or any other equipment or product, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or indirectly:

(a) That an operator of a store utilizing said coin-operated laundry or dry cleaning equipment or supplies or any other equipment can realize a gross income of from $1000 to $2000 per month or a net income of from $500 to $1000 per month or any other gross or net income in any amount for any period of time: *Provided, however,* That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that any represented amount of gross or net income is the amount gnerally realized by others in the operation of stores located in similar type communities and locations and utilizing equipment of similar kind and quantity;

(b) That said coin-operated laundry or dry cleaning equipment will be used by the public for four hours per day or that any of respondents' equipment or products will be used or operated with any degree of frequency or

for any period of time: *Provided, however,* That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that equipment of a similar kind installed in stores located in similar type communities and locations is used by the public generally with the degree of frequency or to the extent represented.

2. Misrepresenting in any manner the degree or amount of assistance or guidance given to a purchaser of any of the aforesaid equipment or supplies.

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

IN THE MATTER OF

RICHARD PICK & HELLER CO.

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

Docket C-1139. Complaint, Nov. 21, 1966—Decision, Nov. 21, 1966

Consent order requiring a Chicago, Ill., wholesaler of cut-to-order upholstery fabrics to cease falsely advertising and misbranding its textile fiber products.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Textile Fiber Products Identification Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Richard Pick & Heller Co., a corporation, hereafter referred to as respondent, has violated the provisions of said Acts and the Rules and Regulations promulgated under the Textile Fiber Products Identification Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Richard Pick & Heller Co. is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Illinois. Said corporation is a wholesaler and distributor of cut-to-order upholstery fabrics, with its office and principal place of business located at 345 West Chicago Avenue, Chicago, Illinois.

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

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

Among such misbranded textile fiber products but not limited thereto, were textile fiber products, namely upholstery fabrics, containing more than one fiber with labels which:

A. Set forth the generic name of a particular fiber, namely nylon, in such a manner as to over emphasize the nylon content of the product, to detract from the required fiber content disclosure and to represent or imply, that the products were composed entirely of nylon when in truth and in fact the products contained fibers other than nylon.

B. Set forth the fiber content of textile fiber products composed in part of nylon, in such a manner as to imply that the product was composed entirely of nylon when in truth and in fact such products contained fibers other than nylon.

Also among such misbranded textile fiber products, but not limited thereto, were textile fiber products which were falsely and

deceptively advertised by means of price lists which used terms such as "Nylon," "Nylon Matelasse," and "Nylon Brocade," among others but not limited thereto, in such a manner as to represent or imply that the products were composed entirely of nylon when in truth and in fact such products contained fibers other than nylon.

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

Among such misbranded textile fiber products but not limited thereto were upholstery fabrics with labels which failed: (1) to disclose the true generic names of the constituent fibers present in the product in the order of predominance by the weight thereof; (2) the percentages of each fiber present, by weight; (3) any fiber or group of fibers present in the amount of less than 5 percentum as "other fiber" or "other fibers"; and (4) the name, or other identification issued and registered by the Commission, of the manufacturer of the product or one or more persons subject to Section 3 of said Act with respect to such products.

Also among such misbranded textile fiber products were certain textile fiber products, namely upholstery fabrics, sold by means of samples, swatches or specimens, and unaccompanied by an invoice or other paper showing the information required to appear on the label, which textile fiber products were not stamped, tagged, or labeled to disclose the information required by Section 4(b) of the Textile Fiber Products Identification Act.

PAR. 5. Certain of said textile fiber products were misbranded in violation of the Textile Fiber Products Identification Act in that they were not labeled in accordance with the Rules and Regulations promulgated thereunder in the following respects:

A. Nonrequired information was placed on labels in such a manner as to minimize, detract from, and conflict with the required information and in such a way as to be false or deceptive as to fiber content, in violation of Rule 16(c) of the aforesaid Rules and Regulations.

B. Fiber trademarks were placed on labels without the generic names of fibers appearing on such labels, in violation of Rule 17(a) of the aforesaid Rules and Regulations.

C. Generic names and fiber trademarks were used on labels

without a full and complete fiber content disclosure appearing on such labels, in violation of Rule 17(b) of the aforesaid Rules and Regulations.

D. Generic names of fibers were used in nonrequired information on labels in such a manner as to be false, deceptive or misleading as to fiber content, and to indicate, directly or indirectly, that such textile fiber products were composed wholly or in part of a particular fiber, when such was not the case, in violation of Rule 17(d) of the aforesaid Rules and Regulations.

PAR. 6. Certain of said textile fiber products were falsely and deceptively advertised in that respondent in making disclosures or implications as to the fiber content of such textile fiber products in written advertisements used to aid, promote and assist, directly or indirectly, in the sale or offering for sale of said products failed to set forth the required information as to fiber content as specified by Section 4(c) of the Textile Fiber Products Identification Act and in the manner and form prescribed by the Rules and Regulations promulgated under said Act.

Among such textile fiber products, but not limited thereto, were upholstery fabrics which were falsely and deceptively advertised by means of price lists, distributed by respondent throughout the United States in that the true generic name of each fiber present in the products was not set forth.

PAR. 7. By means of the aforesaid advertisements and others of similar import and meaning not specifically referred to herein, respondent falsely and deceptively advertised textile fiber products in violation of the Textile Fiber Products Identification Act in that said textile fiber products were not advertised in accordance with the Rules and Regulations promulgated thereunder in the following respects:

A. The generic name of a fiber was used in advertising textile fiber products, namely upholstery fabrics, in such a manner as to be false, deceptive and misleading as to fiber content and to indicate, directly or indirectly, that such textile fiber product was composed wholly or in part of such fiber when such was not the case, in violation of Rule 41(d) of the aforesaid Rules and Regulations.

B. In advertising textile fiber products in such a manner as to require disclosure of the information required by the Act and Regulations, all parts of the required information were not stated in immediate conjunction with each other in legible and conspicu-

ous type or lettering of equal size and prominence, in violation of Rule 42 (a) of the aforesaid Rules and Regulations.

PAR. 8. The acts and practices of respondent as set forth above were and are in violation of the Textile Fiber Products Identification Act and the Rules and Regulations promulgated thereunder, and constituted and now consitute unfair methods of competition and unfair and deceptive acts or practices, in commerce, under the Federal Trade Commission Act.

DECISION AND ORDER

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

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

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

1. Respondent Richard Pick & Heller Co. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at 345 West Chicago Avenue, Chicago, Illinois.

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

ORDER

It is ordered, That respondent Richard Pick & Heller Co., a corporation, and its officers, and respondent's representatives,

agents and employees, directly or through any corporate or other device, in connection with the introduction, delivery for introduction, sale, advertising or offering for sale, in commerce, or the transportation or causing to be transported in commerce or the importation into the United States of any textile fiber product; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported of any textile fiber product which has been advertised or offered for sale in commerce, or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, after shipment in commerce, of any textile fiber product whether in its original state or contained in other textile fiber products as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act do forthwith cease desist from:

A. Misbranding textile fiber products by:

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

2. Failing to affix labels to such textile fiber products showing in a clear, legible and conspicuous manner each element of information required to be disclosed by Section 4(b) of the Textile Fiber Products Identification Act.

3. Placing nonrequired information on labels in such a manner as to minimize, detract from, or conflict with the required information or to be false or deceptive as to fiber content.

4. Using a fiber trademark on labels affixed to such textile fiber products without the generic name of the fiber appearing on the said labels.

5. Using a generic name or fiber trademark on any label, whether required or nonrequired, without making a full and complete fiber content disclosure in accordance with the Act and Regulations, the first time such generic name or fiber trademark appears on the label.

6. Using the generic names of fibers in nonrequired information on any label in such a manner as to be false, deceptive or misleading as to fiber content or to indicate, directly or indirectly, that such textile fiber products are

composed wholly or in part of a particular fiber, when such is not the case.

B. Falsely and deceptively advertising textile fiber products by:

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

2. Using the generic name of a fiber in advertising textile fiber products in such a manner as to be false, deceptive or misleading as to fiber content or to indicate, directly or indirectly, that such textile fiber products are composed wholly or in part of such fiber when such is not the case.

3. Failing to set forth all parts of the required information in advertisements of textile fiber products in immediate conjunction with each other in legible and conspicuous type or lettering of equal size and prominence.

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

IN THE MATTER OF

CARPET DISCOUNT MART, INC., ET AL.

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

Docket C-1140. Complaint, Nov. 25, 1966—Decision, Nov. 25, 1966

Consent order requiring a Philadelphia, Pa., carpet retailer to cease falsely advertising, deceptively guaranteeing, and misbranding its merchandise.

COMPLAINT

Pursuant to the Federal Trade Commission Act and the Textile Fiber Products Identification Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Carpet Discount Mart, Inc., a corporation, and Morris Chaiken, individually and as an officer of said corporation, hereafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Textile Fiber Products Identification Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Carpet Discount Mart, Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the Commonwealth of Pennsylvania, and is engaged in the retail sale of carpeting, with its office and principal place of business located at 139 N. 63rd Street, Philadelphia, Pennsylvania.

Respondent Morris Chaiken is an officer of Carpet Discount Mart, Inc., a corporation. He is primarily responsible for formulating, directing and controlling the policies, acts and practices of said corporation. His address is the same as that of the respondent corporation.

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

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

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

Among such misbranded textile fiber products, but not limited thereto, were floor coverings which were falsely and deceptively advertised in The Philadelphia Sunday Bulletin, and The Philadelphia Sunday Inquirer, newspapers published in the city of Philadelphia, Commonwealth of Pennsylvania, and having a wide circulation in the said Commonwealth and various other States of the United States, in that the respondents in disclosing the fiber content information as to floor coverings containing exempted backings, fillings, or paddings, failed to set forth such fiber content information in such a manner as to indicate that it applied only to the face, pile, or outer surface of the floor coverings and not the exempted backings, fillings, or paddings.

PAR. 4. Certain of said textile fiber products sold by means of samples, swatches or specimens, and unaccompanied by an invoice or other paper showing the information required to appear on the labels, were further misbranded by the respondents, in that there was not on or affixed to such textile fiber products any stamp, tag, label, or other means of identification showing the required information in violation of Section 4(b) of the Textile Fiber Products Identification Act and the Rules and Regulations promulgated under such Act.

PAR. 5. Certain of said textile fiber products were falsely and deceptively advertised in that respondents in making disclosures or implications as to the fiber content of such textile fiber products in written advertisements used to aid, promote and assist directly or indirectly in the sale or offering for sale of said products failed to set forth the required information as to fiber content as specified by Section 4(c) of the Textile Fiber Products Identification Act and in the manner and form prescribed by the Rules and Regulations promulgated under said Act.

Among such textile fiber products, but not limited thereto were floor coverings which were falsely and deceptively advertised by means of advertisments placed by the respondents in The Philadelphia Sunday Bulletin and other newspapers published in Philadelphia, Commonwealth of Pennsylvania, and having a wide circulation in said Commonwealth and various other nearby states of the United States in that the true generic names of the fibers in such floor coverings were not set forth.

PAR. 6. By means of the aforesaid advertisements and others of similar import and meaning not specifically referred to herein, respondents falsely and deceptively advertised textile fiber products in violation of the Textile Fiber Products Identification Act in that said textile fiber products were not advertised in accordance with the Rules and Regulations promulgated thereunder in the following respects:

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

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

PAR. 7. The acts and practices of the respondents, as set forth above, were and are in violation of the Textile Fiber Products Identification Act and the Rules and Regulations promulgated thereunder, and constituted, and now constitute, unfair methods of competition and unfair and deceptive acts or practices, in commerce, under the Federal Trade Commission Act.

PAR. 8. In the course and conduct of their business, respondents now cause and for some time last past have caused, their said products, when sold to be shipped from the respondents' suppliers to purchasers thereof located in the various States of the United States, and maintain and at all times mentioned herein have maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 9. Respondents in the course and conduct of their business, as aforesaid, have made the following guaranty statements in newspaper advertising of their textile fiber products, namely, floor coverings.

Guaranteed 10 Years For Wear
Guaranteed Until 1973

Guaranteed Until 1979 15 Year Guarantee Against Wear—Shredding—Pilling—Fuzzing

PAR. 10. Through the use of said statements and representations, as set forth above, and others similar thereto, but not specifically set out herein, the respondents have represented, directly or indirectly, to the purchasing public that said floor coverings are unconditionally guaranteed for 10 and 15 years.

PAR. 11. In truth and in fact said floor coverings are not unconditionally guaranteed for 10 and 15 years and the nature and extent of the guarantee and the manner in which the guarantor will perform was not set forth in connection therewith. Moreover, the name and address of the guarantor were not set forth as required. Therefore, the statements and representations made by the respondents, as hereinbefore stated, were and are false, misleading and deceptive.

PAR. 12. The aforesaid acts and practices of the respondents, as herein alleged in Paragraphs 8, 9, 10, and 11 were and are all to the prejudice and injury of the public and of the respondents' competitors, and constituted, and now constitute unfair and deceptive acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

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

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

The Commission, having reason to believe that the respondents have violated the Federal Trade Commission Act and the Textile

Fiber Products Identification Act, and having determined that complaint should issue stating its charges in that respect, hereby issues its complaint, accepts said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Carpet Discount Mart, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Pennsylvania, with its office and principal place of business located at 139 North 63rd Street, Philadelphia, Pennsylvania.

Respondent Morris Chaiken is an officer of said corporation and his address is the same as that of said corporation.

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

ORDER

It is ordered, That respondents Carpet Discount Mart, Inc., a corporation, and its officers, and Morris Chaiken, individually and as an officer of said corporation, and respondents' representatives, agents, and employees, directly or through any corporate or other device, in connection with the introduction, delivery for introduction, sale, advertising or offering for sale, in commerce, or the transportation or causing to be transported in commerce, or the importation into the United States, of any textile fiber product; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, of any textile fiber product which has been advertised or offered for sale in commerce; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, after shipment in commerce, of any textile fiber product whether in its original state or contained in other textile fiber products, as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act, do forthwith cease and desist from:

A. Misbranding textile fiber products by:

1. Failing to set forth that the required disclosure as to the fiber content of floor covering relates only to the face, pile or outer surface of such products and not to exempted backing, filling or padding, when such is the case.

2. Failing to affix labels to such textile fiber products showing each element of information required to be dis-

closed by Section 4(b) of the Textile Fiber Products Identification Act.

B. Falsely and deceptively advertising textile fiber products by:

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

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

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

It is further ordered, That respondents Carpet Discount Mart, Inc., a corporation, and its officers, and Morris Chaiken, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the sale, offering for sale, or distribution of floor coverings, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing that any of respondents' products are guaranteed, unless the nature and extent of the guarantee, the name of the guarantor, the address of guarantor and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed.

It is further ordered, That the respondents herein shall, within

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

IN THE MATTER OF

NATELSON'S, INC., ET AL.

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

Docket C-1141. Complaint, Nov. 25, 1966—Decision, Nov. 25, 1966

Consent order requiring three retailers of women's wear in Omaha and Lincoln, Nebr., to cease falsely advertising, deceptively invoicing, and misbranding their wool, fur, and textile fiber products, and unlawfully removing or mutilating required labels.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, the Fur Products Labeling Act, the Wool Products Labeling Act of 1939 and the Textile Fiber Products Identification Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission having reason to believe that Natelson's Inc., Natelson's Crossroads, Inc., and Natelson's Gateway, Inc., corporations, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Fur Products Labeling Act, the Wool Products Labeling Act of 1939 and the Textile Fiber Products Identification Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Natelson's Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Nebraska. Its office and principal place of business is located at 1517 Douglas, Omaha, Nebraska. Said corporate respondent operates women's wear retail outlets.

Respondent Natelson's Crossroads, Inc., is a corporation organized, existing and doing business under and by virtue of the laws