Annual Report of the

FEDERAL TRADE COMMISSION

For the Fiscal Year Ended

June 30, 1963

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Letter of Transmittal

FEDERAL TRADE COMMISSION,
Washington, D.C.

To the Congress of the United States:

It is a pleasure to transmit herewith the Forty-ninth Annual Report of the Federal Trade Commission, covering its accomplishments during the fiscal year ended June 30, 1963.

By direction of the Commission.

PAUL RAND DIXON,
Chairman.

THE PRESIDENT OF THE SENATE.
THE SPEAKER OF THE HOUSE OF REPRESENTATIVES.

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INTRODUCTION

Two principal achievements highlighted the work of the Federal Trade Commission during the fiscal year 1963. It halted more illegal business practices than ever before in its 49-year history, and it expanded to an unprecedented degree its program for encouraging businessmen to abide voluntarily by the trade practice laws.

In hitting hard with formal orders where necessary and proffering guidance where the public interest could be protected without litigation, the Commission made a determined effort to fill the role for which it was created — to help reputable businessmen maintain a free, fair, and honest marketplace for the ultimate benefit of consumers.

To do this called for using both old and new tools. In many cases there was no acceptable alternative to halting a predator with an order to cease and desist; in others, the Commission had reason to believe the public interest would be adequately protected by explicit assurances that the illegal acts would be discontinued. In still other cases, where competition exerted heavy pressures, the eradication of an evil demanded simultaneous orders prohibiting at least the key members of the industry from engaging in it. On the other hand, where ignorance or misunderstanding of the law's requirements played an important part in undermining fair competition, the FTC's voluntary procedures were brought into play. Indeed, this area of the Commission's work was expanded by the introduction of new methods of forestalling illegal acts—a happy alternative to halting them after their damage had been done.

One of these methods—advisory opinions from the Commission itself—so accords with FTC's fundamental purpose to guide businessmen around the pitfalls of monopoly and deception that the Commission felt impelled to adopt it, even though it would add to an already heavy workload. Much faster and less costly than guidance

by litigation, the new advisory opinions appraise with certainty the legality of any proposed course of action as it relates to the laws enforced by the FTC.

From the businessman's standpoint, an advisory opinion not only removes doubt as to FTC's position on whether his proposed action is legal, but his identity as an interested person is kept confidential. Unfortunately, this element of confidentiality has resulted in so little publicity for advisory opinions that very few businessmen—particularly small businessmen—are yet aware of their availability. Steps to publicize this new service are being taken.

Another innovation in the field of business guidance is the Trade Regulation Rule. Its purpose is to spell out specifically how the Commission will apply the law to a particular trade practice. Such rules are promulgated only after all interested parties have been given opportunity to be heard on the subject. The final rule serves to give wide notice to industry members as to what FTC considers illegal about a trade practice, with all doubts removed. And even though this new service has been in effect only since June 1, 1962, the reaction of reputable businessmen has been heartening. They consider such rules effective weapons against unscrupulous competitors who have been hiding behind a shield of confusion as to what is legal. Particularly persuasive is the fact that a Trade Regulation Rule may be relied upon by the FTC in an adversary proceeding.

It is this backstopping of guidance with mandatory action against those who refuse to comply with the law voluntarily that contributed so much during the year to the Commission's voluntary law compliance efforts.

The mandatory enforcement program was pursued vigorously.

While numbers of cases are but one indication of meaningful enforcement, the fiscal year's performance produced some impressive totals. A new all-time record was set with issuance of 454 cease and desist orders, including 261 in the antimonopoly field. The previous high was 407 orders in fiscal 1962. The 431 complaints issued was the second highest in FTC history, and of this number, 230 involved restraints of trade, far surpassing the previous record of 121 antimonopoly complaints in fiscal 1961.

Two factors bear importantly on numbers of formal actions the Commission takes. The first is that under the rules adopted by the FTC in fiscal 1962, the investigation of a case must be conducted

more extensively than formerly was necessary inasmuch as FTC's staff must be prepared to go to trial on the issues of the case at any time after a respondent is served with the complaint. No longer are delays granted to provide belated investigations. This has the effect of preventing inadequately supported complaints, but, of course, makes for lesser numbers. (The same is true of new investigations, for the obvious reason that the staff is aware that it must be able to chew as much as it bites off. Certainly no good purpose is served by entering matters for investigation when the actual investigating would be inadequate or too long delayed.)

The second factor is that the Commission's determination of how best to cope with a widespread violation of law could either produce a flood of complaints, or, at the other extreme, none at all should it appear that the best approach, at least initially, is the voluntary one, such as the issuance of Industry Guides. In short, the ruling consideration is to stop the illegality, regardless of how many or how few formal actions result.

For example, a serious situation was brought to light during the year by a broad-scale investigation of illegal advertising and promotional allowances in the wearing apparel industry. To tackle it effectively required individual formal actions, for any lesser restraint undoubtedly could not have withstood the competitive pressures that existed in the industry. The Commission therefore offered 248 manufacturers of wearing apparel the opportunity to consent to a cease and desist order prohibiting violations of the Robinson-Patman Act's section 2(d) which outlaws discriminatory allowances. By the end of the fiscal year, 163 of these manufacturers had consented to take the order, and indications were that many others would follow suit.

Even the formal orders, however, could not entirely solve the problem. It was all too obvious that the wearing apparel industry was without any clear conception of what constituted compliance with section 2(d) ; so, FTC staff attorneys undertook to advise and educate industry members on how to comply with the orders. Informal discussions on proposed cooperative advertising programs were held with representatives of 110 consenting manufacturers, with the result that many misconceptions were cleared up, and a number of manufacturers set the example for the industry by insti-

tuting lawful cooperative advertising plans providing for proportionate payments to all competing customers.

Just as the foregoing problem resulted in a large number of formal orders, another situation—involving deceptive labeling of shoes—produced none at all during the year thanks to the Commission's decision to handle the difficulty by the issuance of an Industry Guide. Both problems demanded much of FTC's time and effort, thus illustrating that numbers of actions are but one measure of the agency's effectiveness.

Conclusion of cases by means of consent orders continued at about a 6 to 1 ratio over those contested. At the year's end, 381 consent orders had been issued compared to 65 that were litigated. Thus, the new procedure, introduced in fiscal 1962, was proving to be as workable and economical in time and money as had been hoped.

One new procedural development was the decision during the year to permit FTC's field offices to negotiate consent settlements at the investigational stage of a case. Under this program there were 27 consent settlements processed by these offices, and by the fiscal year's end, the Commission had adopted and issued 9 of these as consent orders. It hardly needs pointing out that this procedure is a real time saver both for FTC and respondents. The field offices, including a new one opened during the year in Los Angeles, also detailed attorneys to assist in the trial of docketed cases and to take part in investigational hearings as hearing officers and otherwise.

Applications for complaint from businessmen and the public continued to be received at a near record rate. The 5,871 received was second only to the previous year's 6,970 but was nearly a thousand more than in 1961 and about double the average of a decade ago. Here numbers have a considerable impact because only those that have some substance are considered to be applications. Each receives the consideration it warrants, and none is ignored. Even those applications where jurisdictional or public interest elements are lacking sometimes serve to signal incipient problems that bear watching.

In addition to the workload engendered by these applications (which include those from Members of Congress) and requests from other Government agencies (notably the Department of Jus-

tice), the Commission generates a great many actions itself. The reason for this is that too many law violations are not isolated but are engaged in by several competitors if not a great many. Thus, minimum good is accomplished by halting the illegal practices of the particular firm singled out by an application for complaint. The problem may well demand broader treatment, with the Commission initiating action against equally culpable competing firms.

Here the limiting factor is the money allocated to the Commission for law enforcement. Its appropriation for fiscal 1963 was $11,472,500. With this, the Commission, aided by a staff of only 1,178, including clerks and stenographers, had immense statutory responsibilities. To illustrate, one of its duties is to prohibit all unfair methods of competition in commerce and all unfair or deceptive acts or practices in commerce in the United States.

Small wonder the Commission made a concerted effort during the year to encourage more voluntary law observance by business. By offering guidance and assistance to that vast majority of businessmen who prefer fair competition to the cut-throat variety and who share the public's indignation for all forms of deceit in selling, the Commission was better able to isolate willful violators of the law and proceed against them. Indeed, such isolation unquestionably prompted many violators to seek less conspicuous and less vulnerable positions within the law.

THE INDUSTRY GUIDANCE PROGRAM

Heretofore, there was no way in which a businessman could obtain a binding opinion from the FTC on whether his proposed course of action would violate the laws it enforces. He could consult with the Commission's staff, get the advice of his own lawyer, or study the laws himself, and still he could only guess as to what the Commission might or might not do. This is no longer true. The Advisory Opinion procedure, adopted June 1, 1962, was given its test this fiscal year, and the response of the business community demonstrated convincingly that the service is needed and wanted.

Legal problems presented for opinion covered the entire range of the Commission's work. The greatest number involved proposed cooperative advertising plans, while the most difficult involved proposed mergers and acquisitions. Other requests dealt with a wide variety of subjects, including group buying activities, functional and quantity discounts, refusals to deal, codes of ethics, and labeling of goods of foreign origin. In all, 183 requests for opinions were received with the Commission taking action on 62 by the end of the year and furnishing advisory opinions whenever practicable. The staff disposed of 81 other requests without the necessity of Commission action. Members of the advisory opinion staff also held 177 personal and 153 telephone conferences with businessmen to advise on how to avoid law violations, with the result that the callers frequently were satisfied that a formal advisory opinion from the Commission need not be sought.

While an Advisory Opinion serves to inform a businessman on the particular question he submits, Trade Regulation Rules are intended to advise all members of an industry as well as anybody else on what FTC considers unlawful. As previously mentioned, they are promulgated only after those interested have had a chance

to submit their views and may be relied upon by the FTC in an adversary proceeding, subject, of course, to procedural safeguards.

During the year, public hearings were held on rules concerning misrepresenting the size of sleeping bags and improper use of the word, “automatic," as descriptive of sewing machines. Five other Trade Regulation Rules were being readied for public hearings, and six others were receiving staff attention.

The longest established of the Commission's methods for obtaining voluntary compliance with the law is the Trade Practice Conference. For more than 40 years, TPC rules have served to inform members of a particular industry how their trade practices must be tailored to fit the laws FTC enforces. During fiscal 1963, TPC rules were promulgated for the wire rope and kosher food industries, bringing to 168 the total number of industries benefitting from such rules. Also, amended rules were issued for the mirror industry, and a public hearing was held as a step toward revising rules for the household furniture industry. Other TPC rules in the process of being formulated or revised were for the fresh fruit and vegetable, the radio and television, and the uniform industries.

Industry Guides, whose purpose is to clarify legal requirements as applied to a particular problem within an industry or common to many industries, were issued for Shoe Content Labeling and Advertising, and for Advertising of Radiation Monitoring Instruments. Guides for Fallout Shelters were amended. In addition, consideration was being given to the issuance of Guides for Mail Order Insurance and for the Advertising of Room Air Conditioners.

A significant innovation during the year was the holding of a public hearing to obtain the reaction of businessmen and the public to proposals regarding deceptive pricing and the use of the word "free." Prior to the hearing, proposed prohibitions on these matters were circulated to various affected groups together with an invitation either to attend the hearing or submit opinions on the subject in writing, or both. The response was gratifying, and the information received by the Commission will be very helpful in a further consideration of guides and rules on the subject. Apart from the value of the information received, such an approach to a problem does a great deal to foster genuine cooperation between

the Commission and reputable business in attacking deception and anticompetitive business problems.

Under the program for obtaining voluntary compliance with trade practice rules and guides already promulgated, a total of 1,100 matters involving alleged violations were dealt with. Of these, 347 were disposed of by assurances that they would be stopped permanently. Many involved several unlawful practices, all of which were stopped voluntarily without the expense of investigation and litigation. At the fiscal year's close, there remained 276 matters which were receiving attention by the staff under this voluntary compliance procedure.

All apart from formal actions dealing with compliance, FTC's staff was able to handle by letter and telephone more than 1,500 requests from businessmen on how to resolve their difficulties in conforming their practices with the law.

Chapter III

COMBATTING DECEPTION OF THE CONSUMER

About $4 million of FTC's $11 ½ million appropriation was spent during fiscal 1963 to halt the cheating of consumers, principally by false advertising. Under attack was that small but vicious portion of the Nation's $12 billion advertising expenditure that was false and misleading and hence not only gypped the public but took business away from reputable advertisers.

Deceptive practices were analyzed to determine how widespread they might be and whether the FTC had money and manpower sufficient to attack them on a comprehensive, simultaneous basis rather than to halt only a few violators and hope (rather forlornly) that others would take heed and give up the same profitable racket. Wherever possible, deception was tackled on an industry-wide basis, by voluntary means if such gave promise of being effective and by grouped complaints otherwise.

To tackle exaggerated advertising of food supplements, principally vitamins and vitamin mineral combinations, the grouped complaint procedure was chosen as the better method. Aside from its economic effect, this advertising posed a threat to the health of consumers. By the fiscal year's end, 2 orders and 1 complaint had been issued and 36 other cases were in various stages of investigation or prosecution, with final action expected on at least a majority during 1964.

Another grouped action target in the food line involved sales practices and advertising for food plans and freezers whereby gross misrepresentations had been made for the savings in food costs available to purchasers. Also involved were false claims for the quality and quantity of the food. Each sales contract was for more than $1,000 and was promptly discounted, leaving the purchaser with little recourse when he discovered the misrepresentation. Altogether, about 30 different actions were undertaken, of which 7 already have been concluded by consent orders to cease and desist.

In other actions affecting public health, FTC's scientific and medical staff was probing hard into what appears to be widespread false advertising of devices intended to filter or otherwise purify the air (frequently extolled as preventers of disease) ; of pesticide preparations, particularly advertising that might lead to misuse of the products with resultant danger to health; of preparations offered for the treatment of hemorrhoids; and of that far flung category of products that promise "cure" or "quick relief" from the common cold.

It might be pointed out that to lay the groundwork for such industrywide projects, a great deal of study, of conferring with medical specialists, and of clinical testing is necessary for the FTC to determine whether corrective action is warranted and to cope successfully with the elaborate defenses that respondents can be expected to erect.

Another major investigation on a nationwide basis was initiated by FTC to halt exaggerations by the mail order sellers of real estate, particularly for land in the winter-free areas of the South and Southwest. Fifteen investigations were undertaken, and by the year's end, two complaints had been issued.

Mail order sale of insurance also was tackled on a broad scale, with 13 investigations under-way at the year end.

A successful effort was made to require three of the Nation's principal audience rating services for radio and TV broadcasts to disclose, in describing their rating reports, the limiting factors in the conduct of surveys which affect the accuracy of the measurements. Toward the end of the fiscal year, a broad investigation of the use being made of such survey reports by broadcasters, in their advertising, was launched.

Deceptive advertising of toys also came under attack. A principal target was their depiction on TV to exaggerate the toys' performance and component parts. Two orders and I complaint were issued, and the practices of 22 other advertisers of toys were being considered.

Other possibly deceptive practices against which the FTC is moving on a broad scale include: advertising of the services offered inventors to help them secure patents on their inventions; advertising of "debt consolidation services"; advertising of services rendered in connection with the purchase and sale of commodity futures; and "bait and switch" practices in connection with home improvement contracts, such as for aluminum siding.

Another sales scheme which appeared to be mushrooming during the year involved nationwide operations by a number of retailers of radios and other consumer goods who falsely represent that they are engaged in liquidating or otherwise disposing of surplus merchandise. After halting one company with a cease and desist order, the FTC launched investigations of other such companies on the west coast and in the South.

To these broad-scale enforcement efforts were added the never ending miscellany of deceptive practices which the Commission has been attempting to control with scattered fire throughout the years. High on the list, of course, is fictitious pricing. In this area, a concentrated effort was directed at the practice of wholesalers to furnish their retailer customers with advertising materials carrying fictitiously high prices in order to make regular prices appear to be bargains. Five such wholesalers accepted orders to cease and desist from the practice. Also, four major watch companies were ordered to stop preticketing watches with fictitiously high prices and failing to disclose foreign origin of parts.

Still another group of orders was issued to halt seven manufacturers of plastic metal mending compounds from failing to disclose that their products were not safe to use near heat or flame and might be injurious to the skin on prolonged contact.

The variety of chicanery investigated and stopped either by assurance of discontinuance or orders to cease and desist is too voluminous for discussion here. Sufficient to say the Commission's Bureau of Deceptive Practices had its hands full selecting from 4,562 applications for complaint those that warranted FTC action.

The Commission's own advertising monitoring efforts added grist for the mill. During the fiscal year, 516,352 radio and TV scripts of commercials and 302,572 pages of print material were reviewed. From this total, 61,300 advertisements were forwarded for examination and possible corrective action by the legal staff. The continuities and newspaper and periodical advertising thus reviewed were submitted by every radio and TV station in the country and a broadly representative number of newspapers and periodicals.

Nor was the Commission's antideceptive work confined to stopping current chicanery. It also disposed of 10 penalty proceedings for violations of outstanding orders. The penalties totalled $86,200.

THE FIGHT TO PROTECT SMALL BUSINESS

Because restraints on trade have only an indirect effect on the consuming public, they are little publicized; yet, their abatement presents the Commission with its most difficult and frightening responsibility. Their effect is insidious; preferential treatment to favored customers in one form or another--perhaps only pennies in product costs or a few dollars in services--can put small businesses at a fatal disadvantage. The eventual result, of course, is to throttle competition and deprive the public of a competitive marketplace.

During the fiscal year, 1,309 applications for complaint were received. This was a reduction of about 10 percent from the previous year but was substantially higher than any other previous year. There was, however, a very marked increase in the number of formal complaints issued--230 as compared with 49 in fiscal 1962. Much of this increase is attributable to the Commission's policy of striking at law violations on an industrywide basis when investigation discloses that a large number of industry members are equally culpable. This policy also accounts for the issuance of 261 orders, compared with the previous all-time high of 103 in fiscal 1961.

The principal industrywide attacks were made against discriminatory practices being used by (1) processors and retail chain grocery distributors of fluid milk, (2) publishers of magazines and books, (3) toy manufacturers, and (4) as previously mentioned, manufacturers of men's, women's, and children's wearing apparel.

Spurring the FTC on in its investigation of milk price wars was a steady shower of complaints from widely separated sections of the country that milk was being used as a "loss leader" by the grocery chains and that its price was being temporarily depressed for the purpose of driving out competition. The FTC made field investigations and conducted investigational hearings in scattered

areas from Denver to New York. The results of this broad look were under study at the year's end.

Meanwhile, cease and desist orders were issued against Foremost Dairies, Inc. (Docket 7475) prohibiting it from discriminating in the price of fluid milk to favored customers, and against the Borden Co. (Docket 7129) prohibiting it from discriminating in price between purchasers of its Borden label and private label evaporated initial decision found that the company sold fluid milk and other dairy products to competing customers at illegally different prices. Similar charges were being weighed by a hearing examiner in a case against National Dairy Products Corp.

In its industrywide attack against the giving of discriminatory allowances in the book and magazine business, the FTC brought effective action against 31 publishers with orders prohibiting them from illegally favoring chain retail news stands. One other such case is still pending.

In contested cases against producers of toys, the Commission found that 16 manufacturers had violated section 2(d) of the Clayton Act, as amended, by making "payments to certain toy catalog companies which were owned or partly owned by jobber customers as compensation for advertising and illustrating the manufacturers' products in the catalogs which were sold and distributed to retailers for redistribution to the public." Eight other toy manufacturers signed consent orders agreeing to stop similar practices. At the same time, action was taken against six toy catalog companies and their associated jobbers for inducing and receiving this discriminatory treatment. Two of the companies consented to stop; the other four cases are being litigated.

The fiscal year also saw considerable activity directed against the granting or receiving of illegal brokerage commissions or discounts. Among the 17 cease and desist orders issued were those against Dixie-Central Produce Co., Inc., Western Fruit Growers Sales Co., and Pure Gold, Inc. Also, 13 complaints were issued, and 15 other cases were under investigation at the year's end.

In the field of general trade restraints, the FTC won an important case against Sun Oil Co. in the Supreme Court when the latter ruled that in order for a discriminatory price to be justified as a good faith meeting of competition it must be to meet the price of a com-

petitor of the grantor, rather than to enable a customer to meet the low price of his competitor.

In another case involving the gasoline industry, the FTC determined (in Docket 7471) that a temporary "consignment" contract between the Atlantic Refining Co. and its independent service station dealers under which the supplier retained title to the gasoline during "price wars" was the means employed to effectuate an unlawful conspiracy to fix and maintain the retail price.

Indeed, discriminatory practices in the gasoline industry were being given the closest scrutiny by the Commission. Three new complaints were issued during the year (Shell Oil Co., Crown Central Petroleum Corp., and Humble Oil & Refining Co.) and five other cases were being reviewed by the Commission.

Another industry given more than ordinary attention was the furniture industry. Six separate investigations were begun during the fiscal year to determine the extent to which price fixing and other trade restraints were injuring smaller firms.

In the Commission's enforcement of the Celler-Kefauver Antimerger Act, emphasis was placed on completing the 24 cases on the trial docket at the beginning of the fiscal year. (Also two new complaints were issued.) As a result, only 15 of these 26 cases remained in trial status at the end of the year. The other 11 went to the Commission, with the result that 5 orders of divestiture were issued, 2 cases were dismissed, and 4 remained under advisement.

In the milk industry, in which there have been numerous acquisitions, the Commission has issued complaints against four of the leading companies. Last fiscal year the case against Foremost Dairies (Docket 6495) resulted in an order of divestiture. This year, after completion of the Commission's case-in-chief against the National Dairy Products Corp. (Docket 6651) the respondent entered into a consent settlement. The case against Beatrice Foods Co. (Docket 6653), the trial of which was finished this year, is awaiting the hearing examiner's decision. The case-in-chief against the Borden Co. (Docket 6652), the last of the four cases, was almost completed during the fiscal year. Consequently, this industrywide program is approaching completion.

Developing during the year was a similar industrywide program involving the cement industry and industries using cement. Following an order of divestiture issued by the hearing examiner in Perma-

nente Cement Co., et al. (Docket 7939) a complaint was issued against Diamond Alkali Co. (Docket 8572) challenging the merger of two cement companies. Concurrently with this action, a longstanding case against Martin-Marietta (Docket 8280), which company had acquired cement plants and several concrete pipe companies, was settled by consent with an order of divestiture.

As a further step to meet the merger trend in this industry, a complaint challenging the acquisition of two ready-mix concrete and aggregate companies by the Lone Star Cement Corp. (Docket 8585) was forwarded to the Commission with recommendation for issuance. Other cases in this field also are being developed.

A problem of grave proportions exists in the policing of compliance with outstanding orders, particularly those directed against trade restraints. Unlike orders halting deceptive practices, violations of antitrust orders are not as readily apparent to competitors and are rarely discernible to the public; consequently, to check compliance with these orders is a task that falls almost entirely on the shoulders of the FTC. Moreover, policing such orders presents a formidable task inasmuch as so many of them cover extremely complicated pricing and distribution practices by multiple respondents. The problem is simply that the FTC lacks sufficient manpower to maintain any systematic check of the more than 1,200 outstanding restraint of trade orders. Indeed, its compliance staff of 17 attorneys was hard put to handle more than 450 active cases involving Commission orders during fiscal 1963. At the end of the year, for example, the antitrust compliance workload included 280 active cases involving orders halting violations of the Robinson-Patman amendment to the Clayton Act, 82 cases arising under section 5 of the FTC Act, and 22 antimerger cases.

The same staff also continued the job of checking compliance with 56 judgment cases obtained by the Department of Justice since 1940, all involving complex investigational and legal problems. Twenty-four of these cases were completed during the year and forwarded to the Department of Justice. Good progress was being made on the others.

WOOL, FUR AND TEXTILE ACTS ENFORCEMENT

Both businessmen and consumers need protection against the ever improving artistry of more than a few unscrupulous sellers of textiles and furs to make their product appear to be of a higher quality or more desirable than it is. Nearly gone are the days of clumsy misrepresentations when rabbit fur was passed off as mink, or when plainly inferior textiles were advertised as all virgin wool. Instead the problem today is to halt the far more subtle operators who tipdye furs and who take advantage of percentage points to increase the quantity of cheaper fibers in those of mixed weaves. It requires expert analysis in many cases to determine the truth, and a continuing follow-up investigation to make sure the truth is told. This is a major job of the FTC.

To assist consumers and businessmen, the rules and regulations under the Fur Act contain a Fur Products Name Guide, which sets out the true English name of the animal producing the fur; in addition, the regulations under the Textile Act contain a list of 16 generic names for manufactured fibers which serve as common denominators for the hundreds of synthetic fibers now on the market.

During fiscal 1963, a total of 14,682 inspections were made, a 60 percent increase over the previous year. Even this, however, provides for no more than a light sampling. Nevertheless, 101 recommendations for complaint were forwarded to the Commission. And the Commission issued 75 cease and desist orders, of which 47 were to halt violations of the Fur Act, 10 of the Wool Act, and 9 each for the Textile Fiber Products Identification Act and the Flammable Fabrics Act.

The principal problems in Wool Act enforcement have been the practice of upgrading reprocessed wool or reused wool on labels, and misrepresentation as to the country of origin of wool products. Also, the FTC found it necessary to issue two orders, one against

Sacks Woolen Co., et al. (Docket 8436) and Vikingo, Ltd., et al. (Docket 8479) on grounds that they had understated the amount of woolen fibers in their products and consequently overstated on labels the amount of other fibers. The Commission said that to err either through overstatement or understatement of the woolen content was a violation of the law.

In the labeling of furs, 18 orders halted deceptive comparative prices and fictitious prices, 8 stopped misbranding dyed furs as “natural,” and 5 attacked the failure to disclose the fact that furs were "used." Also, a concerted effort was made to insure proper record keeping on the part of all firms inspected.

An interesting sidelight in the enforcement of the Fur Act concerns the mislabeling of broadtail-processed lamb as merely "Broadtail," thus implying that the fur in the product is entitled to the designation "Broadtail Lamb" (which is from two to four times as expensive!). Four orders were issued to stop this.

A campaign was undertaken to inform manufacturers and marketers of fur-trimmed garments that they, too, are subject to requirements of the Fur Act and its rules.

And, of course, the Flammable Fabrics Act was closely policed. Such cases receive top priority in order to protect the consuming public. One such case against Novik & Co. (Docket 8453), established that bridal veiling was not merely headwear but an article of wearing apparel subject to the act.

In administering the Textile Fiber Products Identification Act, continued emphasis was given to educating businessmen to the need for giving the generic names and amounts of constituent fibers in the fabrics offered for sale. Formal actions were taken to prevent violations, particularly the use of fiber trademarks for the generic names of fibers. Also, attention was given to imports of foreign fabrics, such as rugs, which were misbranded.

A new problem for the FTC is presented by the increasing use of synthetic fibers to resemble fur products. A special effort will have to be made to assure that these “furs” are properly identified in labeling and advertising.

One aspect of enforcement in the textiles and furs field—compliance with new orders as they are issued (75 the past year) and checking compliance with some 830 outstanding orders as occasion requires—presents a sizable problem. Only three attorneys

are on the compliance staff. Nevertheless 40 cases were reopened during the year for compliance checks, 3 civil penalty cases were certified to the Attorney General charging violations of orders, and 1 case was certified for criminal prosecution.

In bringing about compliance with specific orders under the four acts in this area, technical and complicated as the acts and regulations are, the compliance staff has devoted considerable effort toward educating respondents to the end that they may avoid other violations and possible corrective action.

FOLLOW-THROUGH IN LAW ENFORCEMENT

Any person, partnership, or corporation against which the FTC has issued an order to cease and desist may petition a U.S. court of appeals to review and set aside the order. Disobedience of a court's decree enforcing a Commission order or subpoena may be punished by the court as a contempt.

Thus, it behooves the FTC to follow through with vigor in all cases where its decisions are challenged in the courts. Indeed, the Commission's effectiveness in curbing law violations—particularly in its role of deterring powerful corporations from engaging in predatory tactics—would be seriously undermined were the Commission's orders to be reversed by the courts too frequently. Therefore, the Commission cannot afford to do less than defend its decisions with all the competence at its command.

This job falls to the General Counsel's Office, and in fiscal 1963 the 19 attorneys assigned to appellate work, by dint of much unpaid night and week-end labor, handled 127 cases, an increase of 41 over the previous year. This staff completed litigation in 57 cases, 16 of which were restraint of trade matters, 16 involved deceptive practices, 8 concerned FTC's subpoena power, 13 were suits for injunction or declaratory judgment brought against the Commission, 2 concerned the enforcement of FTC orders, 1 was a criminal contempt proceeding, and another involved a petition by the FTC to obtain access to evidence adduced before a grand jury. By the year's end, there were 70 cases open for further action or pending final disposition, an increase of 14 over fiscal 1962.

(The status of the more important court cases at the year's end is outlined in Appendix A of this report.)

A different division of the General Counsel's Office supervises negotiation of consent orders by which about 75 percent of FTC's proceedings are concluded. This volume of consent cases constitutes

in numbers the great majority of FTC enforcement proceedings, thereby saving a great deal of time in presenting cases as well as the expense of their trial and other adversary litigation. A total of 199 executed agreements containing consent orders to cease and desist were forwarded to the Commission during the year.

The General Counsel's Office also took over direction of the Division of Export Trade during fiscal 1963 in a move to give closer attention to its function, which is to supervise export trade associations that have been established under the provisions of the Webb-Pomerene Export Trade Act. Members of these associations are permitted certain exemptions from the antitrust laws in joint export trade ventures. FTC supervision of the associations involves careful coordination with other Government agencies dealing with the promotion and advancement of our foreign trade. Thus, the purpose of FTC's new Export Trade Division is to promote the utilization of the authority of the act in furthering our international commerce. Such stepped-up coordination in the field of foreign marketing is expected to advance American exports in considerable measure.

LEGISLATION NEEDED

The Commission continued to urge the enactment of laws which would:

1. Amend section 7 of the Clayton Act (15 U.S.C. 18) to require proper notice to the FTC and other appropriate agencies of proposed mergers of corporations of significant size which are engaged in interstate commerce.
2. Amend section 5 of the FTC Act so as to empower the Commission to issue a temporary restraining or cease and desist order, pending completion of proceedings by the Commission in all cases in which the Commission is authorized to issue a complaint and final order to cease and desist thereunder, when the Commission has reason to believe that its action would be in the public interest and would prevent irreparable harm.
3. Amend the FTC Act so as to make it clear that the Commission has jurisdiction to prevent the continuance of sales over which it has jurisdiction, where such sales are below cost and have an adverse competitive effect regardless of the intent of the sellers in making the sales.

Chapter VIII

THE ROLE OF ECONOMIC STUDIES AND EVIDENCE

Each year the competitive structure of the American economy becomes more complex, and to protect our system of free enterprise demands an understanding of what is happening. Reliable economic information is vital to this understanding. For this reason the FTC placed increased emphasis on its economic reporting function during the year.

It completed Part II of its Inquiry into Food Marketing, The Frozen Fruit, Juice and Vegetable Industry and transmitted it to Congress. The report was developed from information required from 270 freezers and 675 wholesale distributors in this industry on their operations in 1959.

The report reveals, among other things, that sales in the "packer-label" market were highly concentrated where the 4, 8, and 20 largest packer-label sellers accounted for 52, 66, and 82 percent of packer-label sales.

The report also shows a substantial increase in the influence of the large chain grocery stores. The 10 largest grocery chains purchased over 60 percent of all customer-label products. The data indicate, that as a result of the increasing importance of customer label sales, the role of independent wholesale frozen food distributors may be expected to decline.

The structure of the industry was altered somewhat by 62 mergers, which occurred in the 1950's, and to a lesser extent by some new entrants. The data show that the eight largest firms accounted for 60 percent of the acquired assets. Some 67 new firms (or about 25 percent of the survey firms) entered the industry during this same period. However, in 1959, they accounted for less than 8 percent of total sales. For the most part, the new and small firms experienced low profits and a high mortality rate. Some 65 freezers re-

ported net losses during 1959 with the bulk of these having sales of less than $1 million.

The increasing influence of corporate chains and the high degree of concentration in the packer-label market, together with the experience of new firms in the 1950's suggest that entry of new firms is unlikely to have any significant competitive effect in the immediate future.

Another study in the food industry is nearing completion: Part III of the Inquiry into Food Marketing, The Fruit and Vegetable Canning Industry. It examines the structure of that industry, the extent of concentration and integration, and the marketing patterns of over 750 canners of fruits and vegetables.

Also in progress is an extensive economic inquiry of the rapidly growing polyethylene and polypropylene resin and film industry. The firms in this highly important segment of the plastics industry have engaged in a number of mergers in recent years which may have had significant effect on the structure of the industry. This study, covering the period 1955-62, examines the present patent situation in the industry, overall industry integration, and the extent of the foreign operations of industry members.

The Commission's economic work is by no means confined to the making of reports; fully as important is its contribution to the development and support of legal casework, particularly economic and statistical analyses needed in antitrust actions.

During the year, FTC economists rendered assistance on 70 investigations and 30 formal cases, of which 63 and 24 respectively dealt with suspected illegal mergers. In addition, FTC's Division of Economic Evidence reviews every merger reported by the press and trade sources and screens out those that might be illegal. This study reveals a rapid increase in the rate of mergers among businesses subject to FTC's jurisdiction--from 703 in 1951 to 1,260 in 1962.

A major accomplishment of the Commission, in which economic work played a significant role, is in the great reduction in recent years in the number of dairy acquisitions by the major dairy corporations. As late as 1950, the year when the Celler-Kefauver amendment to the Clayton Act was passed, the 4 largest national dairies reported 62 acquisitions of dairy firms. The number continued at about this level through 1955, when there were 60 such acquisi-

tions. Between 1950 and 1956, the 4 largest dairies made 373 dairy acquisitions. However, a fairly sharp decline occurred in 1956, the year in which the Commission issued its complaints against the four largest dairies. But, notwithstanding this decline, there was an average of about 18 acquisitions per year by the 4 largest dairies during the 6-year period 1956 through 1961, inclusive. The effect of the Commission's program became most noticeable after the Commission rendered its decision on April 30, 1962, in the Matter of Foremost Dairies, Inc. (Docket 6495.) In 1962 the four largest dairies acquired only two other dairies. Data for the current year indicate that acquisitions of other dairies by the four largest are virtually nil in this field. This decline may be attributed in large measure to the antimerger complaints filed by the Commission against the four large dairy companies.

The Division of Economic Evidence also made surveys of the paper, vending machine, dairy products, bakery products, and the potato chip, corn chip, and pretzel industries.

Toward further fulfillment of its role of providing economic evidence to the legal bureaus, the Division of Economic Evidence assisted in a case involving a major manufacturer charged with price discrimination and monopolization in the oat flour industry. In addition, the Division assisted attorneys in analyzing a number of false and deceptive claims based on data collected by use of a sample. It was by testing the reliability of the generalizations drawn from data collected by sampling methods relative to the techniques and methods used in developing the sample, that FTC economists and statisticians were able to be of most assistance.

During the year, the important statistical work of the Division of Financial Statistics continued. This was the summarizing each calendar quarter of uniform, confidential financial statements collected from a probability sample of manufacturing corporations. Here the purpose is to produce an income statement and balance sheet for all manufacturing corporations, classified by industry and asset size.

Four issues of the Quarterly Financial Report for Manufacturing Corporations were published containing 13 income statement items, 32 balance sheet items, and 44 financial and operating ratios for each industry and size group of corporate manufacturers. The subscription list for this periodical increased to more than 15,000.

These nongovernment subscribers use this information to measure efficiency and appraise costs by comparing a company's operating results with the average performance of companies of similar size or in the same line of business, to determine whether to undertake new ventures by comparing the profitability of various types of business activity, and as a guide to the relative movement of sales and profits in order to reduce controversies in wage negotiations.

A special report was published on Profit Rates of Manufacturing Corporations, 1947-62, containing profits per dollar of sales and rates of profit on equity for 63 industry and size groups of manufacturing corporations in each calendar quarter from 1947 through 1962.

The report on Profits as well as the Quarterly Financial Reports were prepared in cooperation with the Securities and Exchange Commission.

This in summary is what the Federal Trade Commission accomplished in fiscal 1963. While striving to protect the consumer from deception and to curb the predatory tactics of a few industry giants and would-be giants that would undermine fair competition, the Commission made an attempt, unprecedented in scope, to assist that vast majority of reputable businessmen to take the leadership themselves in maintaining a free and honest marketplace in this country.

APPROPRIATIONS AND FINANCIAL OBLIGATIONS

FUNDS AVAILABLE FOR THE COMMISSION FOR THE FISCAL YEAR 1963

Funds available to the Commission for the fiscal year 1963 amounted to $11,471,973. Public Law 87-74l, 87th Congress, approved October 3, 1962, provided $11,282,500, of which $527 was transferred to the General Services Administration for additional space rental costs and Public Law 88-25, 88th Congress, approved May 17,1963, provided $190,000.00.

Obligations by activities, fiscal year 1963

1. Antimonopoly:	
Investigation and litigation	$4,714,871
Economic and financial reports	616,466
Trade practice conferences, industry guides, and small business	129,579
Compliance investigations for Attorney General	882,420
2. Deceptive practices:	
Investigation and litigation	3,009,333
Trade practice conferences, industry guides, and small business	259,151
Textile and fur enforcement	965,437
3. Executive direction and management	269,965
4. Administration	608,785
Total	11,456,007

Settlements made under Federal Tort Claims Act

During the fiscal year 1963 the Commission paid claims in the total of $534.99. No other claims are pending for the same period.

APPENDIX (A)
FTC Cases in the Courts

Following is a summary of the principal FTC cases before the courts during fiscal 1963, together with a brief discussion of what is involved in each case or group of cases.

RESTRAINT OF TRADE CASES

Perhaps the most significant restraint of trade case decided during the fiscal year was the Supreme Court's decision in Sun Oil Co. (FTC Docket 6641) involving the activities of a "major" refiner-supplier of gasoline during a "price war" in Jacksonville, Fla. A gasoline station operated by a "nonmajor" chain-retailer named Super Test was engaged in competitive "price cutting" across the street from an independently-owned Sun station. To enable its station to meet this price competition, Sun sold certain supplies of gasoline to it at a lower price than it sold to its other independently-owned retail gas stations in the area. The Commission challenged Sun's lower prices to this one station as being unlawful price discriminations under § 2(a) of the Robinson-Patman Act. Sun defended on the ground that its lower prices were given "in good faith to meet an equally low price of a competitor" as permitted under § 2(b) of the act. The Commission held that the § 2(b) defense referred only to a seller's own competitor, not a competitor of its customer, and was thus inapplicable. But the Fifth Circuit reversed, reasoning that the favored Sun station was a mere "conduit" for Sun in marketing its gasoline, and that Sun was therefore itself in competition with Super Test in retail sales of gasoline to the public. The Supreme Court, however, reversed the Fifth Circuit and sustained the Commission's application of the statute. It stated that the record did not show—that the court of appeals had merely assumed—that Super Test was an integrated supplier-retailer of gasoline rather than a mere retailer. Thus there was no showing that Sun and Super Test were competitors, and sun could accordingly not avail itself of the § 2(b) defense.

Additional Robinson-Patman Act questions under § 2(a) stemming from another "price war," this in Smyrna-Marietta, Ga., are currently pending in the Seventh Circuit in American Oil Co. FTC (Docket 8183). The Commission's finding of competitive injury has been challenged. Also in issue is American's right to assert the § 2(b) defense.

Another important decision under § 2(a), involving the application of the § 2(b) proviso, occurred in the Seventh Circuit in Sunshine Biscuits, Inc. (FTC Docket 7008). The Commission had ruled that Sunshine could meet a competitor's price under § 2(b) only to retain old customers, and not to acquire new ones. The court reversed, holding that this distinction was not only economically unsound but contrary to the purpose of Congress in enacting the Robinson-Patman Act.

Other § 2(a) cases were pending at the end of the fiscal year in the Ninth Circuit in Tri-Valley Packing Association (FTC Dockets 7225 and 7496), and in the Fifth Circuit in Borden Co. (FTC Docket 7129).

Under the "brokerage" section of the Robinson-Patman Act, § 2(c), the only court decision was that of the Fifth Circuit in Thomasville Chair Co. (FTC Docket 7273). The court set aside the Commission's order and remanded the case to the Commission for further proceedings.

In Central Retailer-Owned Grocers, Inc. (FTC Docket 7121), the Seventh Circuit has been requested to review the question of whether lower prices granted by suppliers to a buying organization, wholly owned by retailer-owned wholesale grocers, were in fact allowances and discounts in lieu of brokerage in violation of § 2(c), in connection with the purchase of "private brand" grocery products on behalf of its members. And the major issue presented in Western Fruit Growers Sales Co. (FTC Docket 8194), pending in the Ninth Circuit, is whether, on brokerage paid in certain transactions by a company engaged in packing, selling, and distributing citrus fruit, the recipients of such brokerage were "the other parties to such transactions" within the meaning of § 2(c), i.e., the actual purchasers (as the Commission concluded), or whether the recipients were acting only as brokers for Western in those transactions.

With regard to § 2(d) of the Robinson-Patman Act, possibly the year's most significant decision was that of the Second Circuit in Vanity Fair Paper Mills, Inc. (FTC Docket 7720). The court in large part upheld the Commission's order. It held that it was not enough that Vanity's salesmen had been "advised" of its policies with respect to special promotional allowances and "instructed to inform [its] customers thereof." On the contrary, the test of "availability" of the challenged promotional allowances could not be satisfied in the absence of a showing by Vanity that its policies had been actually communicated to all competing customers.

The same two favored customers which were involved in Vanity Fair are also involved in another § 2(d) case, Shreveport Macaroni Mfg. Co. (FTC Docket 7719), pending decision in the Fifth Circuit at the close of the year. A prime issue in this case is whether the statutory requirement of interstate commerce has been met, where a Louisiana manufacturer, engaged in interstate commerce, makes disproportionate advertising allowances to two food chain customers, also engaged in interstate commerce, but reselling the products in issue only in Louisiana, and where the nonfavored competing customers are all located in Louisiana.

The year's only § 2(f) decision was handed down by the Ninth Circuit in Alhambra Motor Parts (FTC Docket 6889), an Automotive Parts "group purchasing" case. The court affirmed that part of the Commission's order prohibiting the inducing or receiving of price discriminations in connection with products on which the "group" merely processed purchase orders, with the manufacturers making drop shipments of the products directly to individual jobber members. But the court set aside that part of the order applicable to products upon which the group performed actual "warehouse distributor" services, and remanded the case to the Commission to determine whether the lower prices to the "group" on those products might be "cost-justified."

In the field of illegal mergers, § 7 of the Clayton Act, the District of Columbia Circuit reviewed and decided Reynolds Metals Co. (FTC Docket 7009). The Commission had found the relevant line of commerce to be the "production and sale of decorative aluminum foil to the florist trade." The court affirmed this finding based upon (1) the trade recognition of decorative aluminum foil as being a separate line of commerce, (2) its distinct customers, and (3) its distinct prices. The court further observed that Reynolds was the largest producer of aluminum foil in the world; that the florist foil converter field was a small industry with only a few firms engaged in the business; that the acquired firm, Arrow Brands, Inc., had accounted for roughly 33 percent of the sales of such foil to the florist industry; and that Arrow's assimilation into Reynolds' enormous capital structure and resources gave Arrow an immediate and illegal advantage over remaining competing converters. The court, however, modified the Commission's order to the extent that it had required divestiture of a manufacturing plant constructed by Reynolds subsequent to the merger.

There were several important merger cases pending at the close of the fiscal year. The Pillsbury Co. (FTC Docket 6000), in the Fifth Circuit, involves the acquisition by Pillsbury of Ballard, its most significant regional competitor in the southeastern United States in the family-flour and flour-base home-mixes lines of commerce; and Pillsbury's acquisition of Duff, a significant competitor in the sale of flour-base home-mixes throughout the United States. Union Carbide Corp. (FTC Docket 6826), pending in the Third Circuit, involves the acquisition by Union Carbide, the second largest chemical company in the United States, of Visking Corp. Union Carbide is the largest producer of polyethylene resins in the country, and Visking was the company's largest single customer for these resins. In addition, Visking was also the country's largest manufacturer of polyethylene film produced from these resins. The Commission found that this merger had probable anticompetitive effects upon other resin producers and film manufacturers. Consolidated Foods Corp. (FTC Docket 7000), in the Seventh Circuit, involves an acquisition by Consolidated Foods, a large diversified processor and seller of food products, of Gentry, Inc., a company primarily engaged in the production of dehydrated onion and garlic. At issue is the

competitive effect of the practice of “reciprocity” or “reciprocal buying,” whereby Consolidated is now afforded opportunity to use expressed or implied business coercion to induce suppliers to purchase some or all of their dehydrated onion and garlic requirements from Consolidated's Gentry Division.

In restraint of trade cases brought under § 5 of the Federal Trade Commission Act, there were no court decisions during the year. Pending, however, are a series of important related cases in the Fifth, Seventh, and District of Columbia Circuits. At issue is the legality of an arrangement between certain major oil and rubber companies known as the “sales-commission plan” for promoting retail sales of tires, batteries, and accessories to the public through gasoline stations. The Commission has concluded that this practice is in restraint of trade and has issued orders requiring the B. F. Goodrich Co. and Texaco, Inc. (FTC Docket 6485), the Goodyear Tire and Rubber Co. and the Atlantic Refining Co. (FTC Docket 6486), and the Firestone Tire and Rubber Co. and Shell Oil Co. (FTC Docket 6487), to cease and desist from this method of doing business.

An important case pending decision in the Third Circuit is Luria Brothers & Co. (FTC Docket 6156), involving Luria and several other companies. This is a highly complex matter involving illegal restrictive agreements and arrangements in the scrap iron and steel industry. In addition, R. H. Macy & Co. (FTC Docket 7869) is currently pending in the Second Circuit. The Commission found that Macy's had violated § 5 in soliciting contributions of $1,000 each from approximately 750 of its suppliers in connection with its “one-hundreth Anniversary Celebration.” In Snap-On Tools Corp. (FTC Docket 7116) and Sandura Co. (FTC Docket 7042), the Seventh and Sixth Circuits have been petitioned to review Commission decisions involving such restraints on competition as resale price maintenance, apportioning of exclusive territories, and restrictions upon resale customers. And in Brown Shoe Co. (FTC Docket 7606), in the Eighth Circuit, at issue is the legality of Brown's retail store franchise program, whereby in exchange for various benefits given to certain customers by Brown, these customers must allegedly concentrate their purchases of shoes upon lines manufactured by that company.

DECEPTIVE PRACTICE CASES

An important area of the Commission's activity against deceptive business practices is that of television advertising. In the consolidated Colgate-Palmolive and Ted Bates & Co. cases (FTC Dockets 5972 and 5986), the First Circuit sustained the Commission's finding that a visual "demonstration" of a shaving cream's ability in shaving sandpaper was deceptive and misleading. However, the court remanded the case to the Commission to rewrite the order. Another case involving a television advertising "demonstration," also involving the properties claimed for a shaving cream product, is currently awaiting decision in the Fifth Circuit in Carter Products, Inc. (FTC Docket 7943).

"Fictitious pricing" is another important facet of the Commission's deceptive practices activity. Probably the year's leading decision in this field was rendered by the District of Columbia Circuit in Giant Food, Inc. (FTC Docket 7773). This case involved the use of the term "manufacturer's list price" by a retailer of housewares, electrical appliances, and other merchandise. The Commission held, and the court affirmed, that the use of this term was false and deceptive where the "manufacturer's list price" was not the regular and usual trade area retail price of the merchandise. In Rayex Corp. (FTC Docket 7346), the particular method of fictitious pricing under scrutiny in the Second Circuit was that of "pre-ticketing" sun glasses. This is a practice whereby certain manufacturers and distributors attach distinctive labels or stickers to their wares, setting forth prices and other information, prior to distributing such goods to dealers who sell them at retail to the general public. As the court noted, this practice can lead to deception when retail dealers habitually market a product in a given trade area at prices substantially less than the pre-ticketed price. While the court expressed “complete agreement” with the Commission's efforts to stamp out this practice, it set aside the Commission's order in Rayex because of the insufficiency of the evidence. Pending decision in the Third Circuit at the close of the fiscal year, was the Commission's decision in Regina Corp. (FTC Docket 8323). The practice challenged in that case was the use by an appliance manufacturer of price lists containing “manufacturer's list” or “suggested list” prices. The Commission found that by means of such lists, Regina not only misrepresented the usual and customary retail prices of its products, but placed an instrument of consumer deception in the hands of retail dealers. "Fictitious pricing" was also involved in the Commission's “watch” cases. In Helbros Watch, Co. (FTC Docket 6807), the District of Columbia Circuit affirmed the Commission's finding that Helbros had unlawfully engaged in false “pre-ticketing.”

In Waltham Watch Co. (FTC Docket 7997), the Seventh Circuit affirmed the Commission's cease-and-desist order, where a successor corporation to the original Waltham Watch Co. had licensed the use of the famous name "Waltham" in connection with watches and clocks imported from Germany, when such fact was not disclosed to the public. In another significant case, Mary Carter Paint Co. (FTC Docket 8290), pending in the Fifth Circuit, the primary issue presented is Mary Carter's use of the word “free” in its advertising and merchandising of paint.

In the area of “drug” advertising under § 12 of the Federal Trade Commission Act, the Commission sought a temporary injunction under § 13(a) to restrain certain advertising by Sterling Drug, Inc. (FTC Docket 8554) of its product, Bayer Aspirin. The District Court for the Southern District of New York denied the injunction, and on appeal, the Second Circuit likewise held that the Commission had failed to make a sufficient showing for the granting of an injunction prior to the completion of the administrative proceedings.

In Damar Products, Inc. (FTC Docket 7769), the Commission held that Damar had falsely advertised that its "vibrator" device would cause weight reduction, and would firm and tone sagging muscles. On appeal to the Third Circuit, the chief question was that of "abandonment" of such claims. The court affirmed the Commission's findings and order, stating that the record before it fully justified the Commission's insistance that its order remain in effect, notwithstanding the alleged discontinuance. And in National Bakers Service, Inc. (FTC Docket 7480), the Seventh Circuit has been petitioned to review a decision of the Commission regarding allegedly false advertising of the dietary properties of "Hollywood" bread.

MISCELLANEOUS CASES

Throughout the year, the Division remained active in enforcing compliance with subpoenas in the courts. Of these proceedings, perhaps the most outstanding were the following. In Standard American, Inc. (FTC File 612 3348), the Third Circuit rejected arguments that the subpoenas in question were burdensome and oppressive, and that the production of the requested documents must be before a member of the Commission or one of its hearing examiners, rather than returnable before an attorney-examiner. In Moore Business Forms, Inc. (FTC Docket 7086), the District of Columbia Circuit affirmed orders of the district court directing compliance with certain specifications of a Commission subpoena. The court stated that when the subpoena was placed alongside the Commission's complaint, it could not agree with the contention that the information requested was plainly irrelevant to the charges. In John R. and Natalia E. Harrell (FTC File 612 3895), the Seventh Circuit reversed a holding of the district court that under § 9 of the Federal Trade Commission Act, the Commission was empowered to subpoena only documentary evidence of corporations being investigated or proceeded against, and that § 9 did not apply to individuals.

The Holland Furnace Co. case (FTC Docket 6203), an important criminal contempt proceeding, remained pending in the Seventh Circuit throughout the year. Upon the Commission's petition, the court had last year issued an order to show cause why Holland should not be held in criminal contempt for willful violations of the Commission's court-enforced order prohibiting various unfair and deceptive representations and practices in the sale of furnaces and furnace parts to the public. During the present year the court issued further show cause orders against certain individuals. In another criminal contempt proceeding, the Ninth Circuit found Sydney Floersheim (FTC Docket 6236) not guilty of criminally violating the Commission's court-enforced order prohibiting the use of deceptive "skip-tracing" forms to locate delinquent debtors.

In Lafayette Iron Works (FTC File 345 6736), the Commission, pursuant to § 9 of the Federal Trade Commission Act, filed a complaint in the district court in New Jersey to compel compliance with an order of the Commission requiring a special financial and statistical report, and to obtain judgment

for statutory penalties under § 10 of the act. This case was pending at the close of the year. Also pending was Columbia Southern Chemical Corp. (FTC Docket 3519), a complaint in the district court in Northern Ohio for civil penalties of $1 million for violation of the Commission's cease-and-desist order prohibiting conspiracy to fix prices in the distribution of calcium chloride.

In H. M. Prince Textiles, Inc. (FTC Docket 6081) a civil suit was filed in the Southern District of New York on certification to the Attorney General by the Commission seeking civil penalties for an alleged violation of the Commission's order under the Wool Products Labeling Act. This proceeding was unique in that for the first time in the history of the FTC where an outstanding order was involved, it asked for a preliminary injunction as respects the products charged to be in violation as well as for an order in the nature of mandamus under section 9 of the Federal Trade Commission Act commanding obeyance to the Commission's cease-and-desist order.

There were a number of actions filed against the Commission in Federal courts in fiscal 1963. A petition for mandamus filed by Coty, Inc. (FTC Docket 3325), in the Third Circuit, to have the Commission reopen proceedings to consider modifying its order to cease and desist was denied. A decision of the district court in Washington, D.C., dismissing a suit filed by Carl Brandenfels (FTC File 602 3654), was affirmed by the District of Columbia Circuit on appeal. Brandenfels had sought to enjoin the Commission from investigating his hair and scalp treatment business. A complaint for declaratory judgment and injunctive relief filed by John Kaslow, t/a J. C. Martin Co. (FTC Docket 6145) was dismissed by the district court on the Commission's motion for summary judgment. Kaslow has appealed to the District of Columbia Circuit. His petitions for stay of judgment have been denied by the district court, the court of appeals, and by the Supreme Court. Sears, Roebuck & Co. (FTC Docket 8069) also filed suit for declaratory judgment and injunction against the Commission in the District Court for the District of Columbia. Sears sought to prevent the Commission from remanding the proceeding against it to the hearing examiner. The court granted the Commission's motion for summary judgment. However, in a similar complaint filed by J. Weingarten, Inc. (FTC Docket 7714), the District Court for the Eastern District of Texas (Beaumont Division) enjoined the Commission from remanding a case for the taking of additional evidence before the examiner. At the close of the year, an appealable order had not been entered.

In addition to the above, there were a number of suits for declaratory judgment and injunctive relief filed regarding the extent to which parties are entitled to be represented by counsel in public and nonpublic investigational hearings conducted by the Commission. Falling within this category are cases such as Wanderer (Midwest Warehouse Distributors) (FTC Docket 6888) — involving six separate complaints; Mead Corp. (FTC File 571 0656); Hall (Kroger) (FTC File 621 0823); and Archer (Denver Milk) (FTC File 611 0519) — involving four separate complaints. Most of the questions

raised in Wanderer, Hall, and Archer have now been clarified by the Commission's decision in Mead Corp. In the continuing litigation in Mead Corp., however, the validity of this decision is challenged.

A complaint filed by Grove Laboratories (FTC File 612 4053) in district court in Washington, D.C., for declaratory judgment and injunctive relief was pending at the close of the year. Grove is resisting compliance with a Commission order requiring the filing of a special report in connection with a matter under investigation. It seeks safeguards beyond those accorded by statute and regulation regarding the confidentiality of trade secrets. Another pending matter in the same court filed by Graber Mfg. Co. (FTC Docket 8038), concerns the conditions under which in camera status should be accorded to documents received in evidence in an adjudicatory proceeding.

APPENDIX (B)
Statutes Pertaining to the Federal Trade Commission

The authority and powers of the Federal Trade Commission in the main are drawn from the following statutes:

1. Federal Trade Commission Act, approved September 26, 1914 (38 Stat. 717), and subsequently amended as indicated below.

2. Clayton Act, sections 2, 3, 7, 8 and 11, approved October 15, 1914 (38 Stat. 730, 731, 732), amended as indicated below.

3. Webb-Pomerene Export Trade Act, approved April 10, 1918 (40 Stat. 516).

4. Wheeler-Lea Act, approved March 21, 1938 (52 Stat. 111), amending the Federal Trade Commission Act.

5. Robinson-Patman Act, approved June 19, 1936, and amendment thereto approved May 26, 1938 (49 Stat. 1526; 52 Stat. 446), revising and extending section 2 of the Clayton Act.

6. Wool Products Labeling Act of 1939, approved October 14, 1940 (54 Stat. 1128).

7. Public Law 15, 79th Congress, approved March 9, 1945, "An Act to express the intent of the Congress with reference to the regulation of the business of insurance" (59 Stat. 33).

8. Lanham Trade Mark Act, approved July 5, 1946 (60 Stat. 427).

9. Oleomargarine Act, approved March 16, 1950, amending Section 5 of the Federal Trade Commission Act respecting civil penalties, and section 15 respecting misleading advertisement of oleomargarine or margarine (64 Stat. 20).

10. Public Law 899, 81st Congress, approved December 29, 1950, the so-called antimerger legislation, amending and extending section 7 of the Clayton Act (64 Stat. 1125).

11. Fur Products Labeling Act, approved August 8, 1951 (65 Stat. 175).

12. Flammable Fabrics Act, approved June 30, 1953, and amendment thereto approved August 23, 1954 (67 Stat. 111; 68 Stat. 770).

13. Packers and Stockyards Act Public Law 85-909, 85th Congress, approved September 2, 1958 (72 Stat. 1749).

14. Textile Fiber Products Identification Act, approved September 2, 1958 (72 Stat. 1717).

15. Public Law 86-107, 86th Congress, approved July 23, 1959 (73 Stat. 1749).

[Single copies of any of the above statutes are available without charge, upon request to the Federal Trade Commission, Washington, D.C., 20580.]