Annual Report of the

FEDERAL TRADE COMMISSION

For the Fiscal Year Ended

June 30, 1965

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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 Fifty-First Annual Report of the Federal Trade Commission, covering its accomplishments during the fiscal year ended June, 30, 1965.

By direction of the Commission.

PAUL RAND DIXON,
Chairman.

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

TABLE OF CONTENTS

Chapter		Page 7
I.	Introduction	1
11.	The Industry Guidance Program	7
111.	Combatting Deception of the Consumer	11
IV.	The Fight for Fair Business Competition	21
V.	Wool, Fur, and Textile Acts Enforcement	27
VI.	Follow Through in Law Enforcement	31
VII.	Legislation Needed	35
VIII.	The Role of Economic Studies and Violence	37
IX.	Field Operations	47
X.	Appropriations and Financial Obligations	49
XI.	Hearings Examiners	51
Appendix (A) FTC Cases in the Courts		53
Appendix (B)Penalty Enforcement Proceedings		61
Appendix (C) Textile and Fur Court Cases		63

INTRODUCTION

In fiscal 1965, the Federal Trade Commission went quietly but firmly about its purpose to help businessmen comply with the trade laws, using persuasion if possible and prompt adversary action whenever persuasion failed. With its staff trained in the use of recent innovations to obtain faster, wider, and more equitable law enforcement, the Commision's usefulness gathered momentum.

As more industries were alerted to the laws' requirements as applied to their particular practices, the FTC could, by the year's end, devote ever more attention to individual firms which though given ample opportunity to understand legal requirements chose to defy them. Many are to discover that education and equitable enforcement of the law do not imply laxity in FTC's vigilance.

The year also found the Commission demonstrating increasing concern for protection of consumers, principally from false or misleading advertising. First priority as given to advertising or selling practices which could adversely affect the health or safety of consumers, and a close second priority was accorded deception in the sale of such products as food, household equipment, home improvements, and other necessaries of special significance to low income families and the aged. Altogether more than 600 deceptive practices investigations were launched, and over 300 violations were brought to a quick and satisfactory conclusion by the Commission's receiving adequate assurance that the illegalities would be halted without the delay and cost of formal orders. Formal action was necessary in more than 130 other cases. Moreover, instead of merely swatting at the gnats and hornets of deception as they were called to the Commission's attention, entire areas of deception were probed in depth, and broad enough attacks were carried out to halt many forms of competitively engendered hucksterism.

To safeguard the economy from illegal restraints and monopolization of trade, the Commission found it necessary to expend even

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more of its money and manpower in the restraint of trade field than for its deceptive practice work. Not only did it receive 1,286 applications for complaint, principally from small businessmen who believed they were being victimized by unfair method of competition, but the Commission on its own motion initiated 242 formal investigations involving trade restraints.

Here again, the Commission's policy of guiding business into legal channels as an alternative to patternless clubing of offenders was followed whenever possible. This decision supported the increasingly obvious truth that more compliance with the law can achieved by clearly defining its requirements and persuading businessmen to abandon legal practices without the delay and cost of litigation than to strive for casework statistics. Only where persuasion promised to be fruitless did the Commission employ its mandatory procedures.

Funds available to the Commission for fiscal 1965 totaled $13,459,107. This provided for a staff of 1,175 to man Washington headquarters as well as 11 field offices and 1 suboffice. Nearly half of the funds ($6,246,000) was spent on the investigation and litigation of antimonopoly cases, and about one-fourth ($3,373,000) for deceptive practice investigation and casework, exclusive of $1,209,000 for enforcement of the textile and fur acts. A total of $850,000 was spent for economic and financial reports, and $511,000 for trade practice conferences, industry guides, and special efforts to assist small business.

The allocation for FTC's guidance program is by no means a true measure of the emphasis being given this phase of the Commission's work. The reason is that a very considerable amount of the investigational work both for deceptive practice and antimonopoly cases discloses illegalities of a character and scope that can be countered effectively at less cost by the issuance of Industry Guides, Trade Practice Rules, or Trade Regulation Rules. Thus, the investigational funds allocated to FTC's enforcement bureaus frequently serve to turn up factual information that dictates a feasible and more equitable handling of the problem by the guidance procedures. In addition, staff attorneys and others assigned to the enforcement bureaus are called upon frequently to contribute their expertise on particular problems to the staff of the Bureau of Industry Guidance.

This is not to imply that the enforcement responsibilities of the Commission were given secondary emphasis. More than enough illegalities neither require nor lend themselves to broadscale treatment, and defiance is all too frequently the response to persuasion. For example, in enforcing the anti-trust laws, the FTC found it necessary to issue 26 formal complaints and 39 orders to cease and desist. Significant such cases are discussed in the text of this report.

In addition to halting law violations by voluntary or mandatory processes, the Commission made more use than ever before of advisory opinions by which businessmen who seek advice on the legality of proposed courses of action are accommodated. Fifty-eight opinions were rendered by the Commission, and another 152 requests for advice were handled satisfactorily at staff level. It is significant that the questions posed were sufficiently difficult that the business firms thought authoritative answers were needed. Had illegalities not thus been averted, the Commission's casework statistics undoubtedly would have been increased. Here again is emphasized the Commission's policy of helping business comply with the law as a less costly and happier alternative to cracking down on offenders.

The increased emphasis on voluntary and industry-wide compliance with the law also was reflected in the work of the General Counsel's Office. While cases instituted and pending in the courts and the number of consent settlement negotiations and orders declined, the quality and importance of the casework remained high. Moreover, while the number of cases declined, this lessened workload was more than offset by increased demands on the General Counsel's Office for assistance in rulemaking proceedings, subpoenas and orders to file special reports, and the development of technical procedures required for industrywide investigations and actions.

In policing the Wool, Fur, Textile Fibers, and Flammable Fabrics Acts, the Commission, despite a smaller staff of inspectors, increased the total number of inspections. The number of items spot-checked increased over fiscal 1964 from 46 to 67 million, due to checking of larger manufacturers and larger retail stores. The total number of cases disposed of in fiscal 1965 was 285, an 8 percent increase over the preceding year.

One of the most important of the year's accomplishments was the Commission's fact finding and analysis of trends in the field of corporate mergers. This involved updating to 1964 the examination

of merger activity last assessed by the FTC in 1955. The study by FTC's Bureau of Economics showed that merger activity has accelerated at a rapid pace; indeed, the present rate is higher than at any time during the past 30 years. The study also revealed that acquisitions made by manufacturing and mining companies with assets of $100 million or more accounted for 25 percent of mergers in 1964 as compared to but l6 percent 10 years earlier. Firms making electrical machinery and chemical products were responsible for about one-fourth of the recorded acquisitions. Other large acquiring industries were: nonelectrical machinery, food and kindred products, and transportation equipment.

The study also showed, among other things, that over the period 1948-64, a total of 720 major mergers took place, and in the year prior to their acquisition, the acquired companies' assets totaled more than $23 billion.

During the fiscal year, the third and final report of the Commission's economic inquiry into food marketing was published. This report examines production and consumption patterns, concentration, diversification, and integration in merger activity, product promotion, and entry barriers in the canned fruit, juice, and vegetable industry. The report showed that larger canners are doing an expanding share of total business, and smaller canners are becoming less capable of offering effective competition to the leaders.

The Commission also undertook two studies for the National Commission on Food Marketing. The studies, expected to be completed in fiscal 1966, are: Market Structure, Conduct, and Performance in Food Retailing, dealing primarily with the changing market structure of grocery retailing during the past two decades, and Concentration, Integration, and Diversification in Food Manufacturing, which will describe and evaluate the structures and structural trends of food manufacturing industries including an analysis of market concentration, degrees of product differentiation, and conditions of entry. Both studies will undertake to assess the degree of monopolistic power being exercised in the two areas.

The Commission's Division of Economic Evidence continued to study current corporate mergers and investigated 50 thoroughly. The study revealed that the present merger movement is the most prolonged and serious in recent American history. The Division also undertook two comprehensive investigations to assist in planning

the merger enmforcement program for the plastics and textile industries.

A more detailed summary of the Comniission's accomplishments and objectives follows. (Particular attention is invited to section titled "Legislation Needed.")

Chapter II

THE INDUSTRY GUIDANCE PROGRAM

The Commission's entire staff, including those assigned to the enforcement Bureaus, participated in unprecedented efforts during fiscal 1965 to guide business into legal channels with the least liti- gation necessary. If more observance of the law could be achieved, and faster,by giving a a businessman opportunity to halt an illegal act or practice without litigation, that is the way it was done. And while this resulted in fewer litigation statistics, it not only achieved wider compliance with the law, but enabled the Commission to concentrate its force on the defiant violator.

However, persuading businessmen to comply with the trade laws calls for more than the threat of adversary action. It also requires enlightenment on what the law prohibits, confidence that it is being administered as fairly as possible, and the tools and assistance needed for effective self policing.

In a full-scale effort to accomplish these objectives, all of the guidance procedures, both old and new, were brought to bear.

Under the trade practice conference program, rules affording detailed guidance for complying with requirements of the Clayton Act were promulgated for the $7.5 billion fresh fruit and vegetable industry and the $693 million phonograph record industry. For the latter, attention also was given to misbranding, misrepresentation, and other deceptive selling methods. Trade Practice Rules for the hearing aid industry were revised and extended to afford additional protection to the hard-of-hearing from various deceptive practices in their purchases of hearing aids. Revision also was made in the rules for the sunglass and corset, brassiere, and allied products industries.

Three new guides were issued under the guides program. One is concerned with deceptive labeling and advertising of adhesive com-

positions, products intended primarily for home use in repairing, patching, or mending articles made of metal, plastic, porcelain, rubber, or other materials. Another draws guidelines for members of the textile industry in avoiding deceptive use of the word "Mill" in their trade names and in advertising. The third guide is directed at deception in the collection of debts.

Under the program for obtaining voluntary compliance with trade practice rules and guides, 283 violation matters were disposed of oil assurances that the unlawful practices would be discontinued. At the close of the fiscal year, 423 matters were receiving attention under this voluntary compliance program.

In addition to the regular compliance work, an industrywide compliance survey, involving nearly 1,000 firms, was initiated under the Guides for Shoe Content Labeling and Advertising.

A special compliance project concerned the failure of many advertisers to disclose the conditional nature of their guarantees in telephone directory advertising. Through the cooperation of the telephone companies publishing these directories, correction of this advertising has been assured. Involved in this undertaking are some 5,000 different telephone directories published in cities and towns throughout the United States.

Another special project dealt with describing refrigerators as "frost free" without clearly disclosing that only the freezer section or the refrigerator section, as the case may be, did not have to be defrosted. As a result of this industrywide compliance check, assistances were received that the necessary disclosure would be made.

More than 1,500 inquiries from businessmen seeking advice on the application of rules or guides to their business practices were answered by the staff.

One of the newer methods, the trade regulation rule, also played all important role in making the guidance program fully effective. Three new trade regulation rules, each directed at a widespread unlawful practice, were promulgated or approved for promulgation during the fiscal year. Of special significance to the public is the rule requiring disclosure that lubricating oil has been previously used. This disclosure is required to be made in all advertising, sales promotional material, and oil the front panel of all containers. Another rule prohibits representations that an electric sewing machine is "automatic" or "fully automatic." Under the rule if any attach-

ment or component is in fact "automatic" it may be so described. The third rule requires that the finished size of tablecloths and related products be stated whenever their cut size is given.

Comprehensive compliance surveys were conducted to insure that trade regulation rules are being fully observed.

At the close of fiscal 1965 there were pending a number of proceedings looking toward the promulgation of trade regulation rules, including those dealing with the following industries and subjects:

Light Bulb Industry.-Deception as to wattage, useful life, and lumens produced.

Television Industry.-Deception as to the size of television tubes and pictures.

Table Lamp Industry.-Deceptive representations as to composition.

Automobile Tire Industry.-Deception as to size and quality.

Automatic Merchandising Vending Machine Industry.--Unlawful acquisitions and mergers.

Another of the newer procedures, the advisory opinion method, was utilized more extensively than ever before. Two hundred and six requests from businessmen asking for advice as to the legality of proposed courses of action were received. This was the largest number of requests received in any year since the advisory opinion program was initiated. The 59 Commission opinions rendered also represented a substantial increase over the preceding year. In all, 211 requests were disposed of by Commission or staff action. Forty-four matters were pending for disposition at the close of the fiscal year.

The requests covered virtually the entire area of the statutes which the Commission administers. The questions presented included, among others, the legality of proposed mergers and acquisitions, cooperative buying arrangements, tripartite promotional plans, exclusive dealings proposals, cooperative advertising programs, and advertising claims for a wide variety of products.

Chapter III

COMBATING DECEPTION OF THE CONSUMER

Because deception in advertising and selling works a double hardship in not only fleecing customers but in undermining faith in legitimate claims for products and services, the Commission mounted an increasingly heavier attack on this evil during the fiscal year.

A further reason for intensification of the effort is that in the global war of ideologies, our system of free enterprise cannot tolerate an image smeared with sharp practice and deceit. And while such chicanery is very much the exception, any of it is too much, particularly when enemies of our economic system are eager to trumpet it to the world.

So that the staff's efforts would not be spread too thinly and without sufficient concentration in troublesome areas to be really effective, the enforcement program was planned carefully. Top priority was given to halting deception in the sale of products involving public health. Actions were taken not only under FTC's specific authority to prevent false advertising of food, drugs, medical devices, and cosmetics, but also under its general authority to prevent unfair and deceptive acts and practices in commerce. Following are highlights of the actions taken.

Health Products

Hearings were completed in a vigorously litigated case where the advertiser of a health book is charged with falsely claiming that ideas and suggestions contained in this book are effective in preventing and treating cancer, tuberculosis, infantile paralysis, heart disease, arthritis, and mental illness. Also challenged in this litigation are claims that the book will enable the reader to free himself of common colds; prevent and cure constipation; and prevent ulcers, fatigue, goiter, and high blood pressure.

was pending on appeal before the Commission at year end (D.8619).

The advertising of hemorrhoid remedies was attacked in five complaints (D. 8640-8644). Contrary to claims made in advertising, the Commission charged that use of the products would not shrink hemorrhoids, or relieve all pain, or do more than afford temporary relief. Some of the complaints attacked claims that the advertised product would heal piles or avoid the need of surgery as a treatment for them. Hearings had commenced in one of these cases and the others were awaiting trial at the yearend. A consent order involving similar claims was accepted during the year (C-821).

False claims that a drug product would prevent or cure arthritis or rheumatism and would restore normal structure or function to parts of the body crippled by those diseases, were prohibited in another typical action during the year (D. 8601). Also, claims that a hearing aid would cure persons with 85 percent hearing loss were prohibited in another typical case (C-849).

A complaint was issued in an important case involving charges that television advertising of throat lozenges falsely implied that the product would be effective to treat throat infections in children, including infections caused by streptococcal and staphylococcal germs (D.8635). The matter was pending on appeal before the Commission at yearend.

Part of a continuing campaign to stamp out deceptive and false advertising which victimizes aged persons, were two complaints and initial decisions involving charges that sellers of vitamin-mineral preparations had falsely claimed that the products increase and stimulate sexual vitality and activity, and exaggerated the likelihood that the products would be of benefit in the treatment of nervousness, depression, loss of happiness, and loss of a sense of well being (D. 8636 and D. 8637). Also challenged were claims that the products would prevent colds and other infections, increase a person's intelligence and prevent discomfort and anxieties due to menstruation, menopause, and old age. A consent order involving similar claims was accepted during the year (C-855).

A drug store chain was ordered to stop using false claims of endorsement or approval of its merchandise by an independent consumer-protection organization and claims it owned manufacturing and laboratory facilities (D. 8576).

Pending at year-end for further attention were projects involving advertising of analgesics and pain relievers, arthritis and rheumatism remedies, food supplements and vitamins, stomach antacids and treatments for ulcers, smoking deterrents, weight reducing products and devices, dentifrices and denture aids, health books, cookware, air purifiers, bedwetting preventives, contact lenses, home treatments for ear trouble, physical fitness courses, agricultural pesticides, and hair and scalp preparations.

Cigarette advertising was being monitored on a continuing basis to carry out the Commission's responsibility of preventing use of any ads which might be misleading or deceptive under established standards of illegality.

Food and Freezer Plans

False claims that meat bad been inspected by the U.S. Department of Agriculture, that the meat was all "USDA Prime" or "USDA Choice", and that coffee was being sold at "wholesale prices", were typical of the practices prohibited in the sale of food and food-freezer plans (C-907, C-912). A common type of misrepresentation is that purchasers of a food-freezer plan will be acquiring their food requirements and a freezer for the same or less money than they have been paying for food alone. False designation of sales personnel as "Home Economists" and misleading guarantees are frequently employed. On May 28, 1965, the Commission issued an "Advertising Alert" to warn consumers about the foregoing and some 30 other forms of deceptive practice prevalent in the sale of food-freezer plans.

Work in this area was continuing at year's end. Also being investigated was the advertising of animal and pet foods, and the advertising of agricultural pesticides.

Radio and Television Advertising

Monitoring.—The Commission staff continued to monitor broadcast continuities of radio and television broadcasters (both networks and stations) and review advertising in a representative sampling of newspapers and magazines. During the year, 897,609 advertisements were examined, of which 34,107 were set aside for further study. Of 632,167 radio and television advertisements which were

examined, 26,735 were set aside for further consideration. Of 265,442 newspaper and magazine advertisements which were examined, 7,372 were set aside. A total of 6,089 advertisements of alcoholic beverages were referred to the Internal Revenue Service.

TV Demonstrations.—The Supreme Court having affirmed the Commission's order in the Colgate-Palmolive case to prevent the use of deceptive television advertising of the nature or significance of product performance tests or demonstrations, the Commission was at yearend considering the application of these principles to other radio and television advertising matters.

Home Improvement Products

False claims of reduced prices, bait and switch tactics., and deceptive guarantees were among the most prevalent practices receiving attention in the home improvement field during the year. For example, a seller of insulation material was prohibited from using deceptive savings and guarantee claims (D. 8598). A seller of aluminum siding was ordered to stop claiming that in attempting to sell siding to other prospective purchasers he would show them the customer's house, and if as a result of this showing, the prospective purchaser bought the siding, a bonus would be given the customer owning the "model home." In that case, the seller did not only not pay the bonuses, but did not even bother to show the "model home"(D. 8614).

False claims that siding material was new and revolutionary and would last a lifetime, and that a building material was of "stone" when it was not genuine stone, also were prohibited (D. 8662, C-817).

Household Furniture and Equipment

Considerable effort was made to stop the use of false advertising and other deceptive practices in connection with the sale of furniture, appliances, and household equipment. For example, a leading manufacturer of washing machines was ordered to cease misrepresenting the extent to which its machines have been proved superior in comparative tests (C-795). A seller of furniture was ordered to cease use of false pricing, savings, and guarantee claims and from claiming that the advertised furniture had been obtained f rom model homes or apartments (D. 8645). Sellers of radios, television sets,

and phonograph equipment were ordered to cease use of fictitious prices, deceptive saving claims and misleading guarantees (C-788, C-869).

Used Products Sold As New

Action was taken to require disclosure of previous consumer use in the sale of reconditioned and rebuilt golf balls (D. 8528, D. 8529, C-848, C-860, C-863). A marketer of previously used motor oil was required to disclose clearly and conspicuously, on front panels of containers, the prior use of motor oil (D. 8589). Books sold under new titles without disclosure of prior publication under another title, and failure to disclose that books offered for sale were abridgements also continued to require attention. (D. 8613).

Correspondence Schools

Deceptive use of "help wanted" ads implying offer of employment with the real purpose was to obtain prospects, for sale of correspondence courses received attention during the year. False claims for the type of training offered, likelihood of employment after completion of the course, earnings achieved by graduates, and assistance offered toward job placement as used in sales talks by correspondence school field agents also were prohibited. Such claims were used to sell courses for airline stewardess, professional model, and operation of automatic data processing equipment (C-793, C-840, C-884). With the increasing use of correspondence training by legitimate institutions of learning, and the importance of permitting persons to upgrade their skills by available means, it is important to curb any chicanery that would discourage well-spent initiative. Very often these falsely touted courses are sold to poor people or the relatively uneducated who can ill afford to lose the sums involved, let alone be disillusioned in their efforts to improve themselves.

Origin and Qualities of Merchandise

False claims as to origin or qualities of merchandise, and failures to disclose the origin require an appreciable amount of time. For example, a perfume seller was ordered to cease simulating the trade name, labeling, packaging, and other distinctive characteristics of well-known brands (C-829). Sale of watch cases deceptively

colored to simulate the appearance of gold and failing to disclose the foreign origin of such cases was prohibited, as were false claims that a watch contained 110 functioning jewels (D. 8597 and C-826). Use of false testing, guarantee and "user" claims in the sale of so-called "long life" light bulbs was prohibited (C-894). Also, use of false claims that sewing machines advertised at low come-on prices were "repossessed", as part of a bait and switch scheme, required attention (C-789).

Carpeting and Other Floor Coverings

An industrywide investigation involving alleged misrepresentation of rug sizes by domestic rug and carpet manufacturers was in progress at yearend.

In the retailing of carpets, there appears to be widespread use of bait and switch advertising, especially by sellers and installers of wall-to-wall carpeting. An analysis of some 500 newspaper carpet advertisements appearing in practically every major market in the United States was made during the year to ascertain the extent of this problem and the best means of dealing with it.

Work-at-Home Opportunities

The practices of some 25 concerns engaged in the advertising of vork-at-home schemes were being investigated at yearend. This type of deception is particularly important for it exploits the aged and the poor, who can least afford to waste their funds.

Consumer Financing

Misrepresentation is to rate of interest on conditional sales contracts and amount of finance charge was involved in a hotly contested case at yearend (D.8550), and five matters involving allegedly deceptive "debt consolidation" schemes were under investigation, along with various types of misunderstanding or confusion as to terms and conditions of installment sales. This type of matter is of increasing importance and prevalence.

House-to-House Sale of Magazine Subscriptions, Encyclopedias and Photographs

False claims of being connected with religious or educational institutions, that caller is not selling anything but is taking a "sur-

vey", that prospect has been specially selected to receive the product at special or reduced price, that the offering is for purposes of establishing scholarship or other nonprofit fund, are among the types of practices which continue to be used in door-to-door selling of magazine subscriptions, encyclopedias, and photographs (C-819, C-847, C-859), despite the fact that the Commission and the courts, including the Supreme Court, have condemned these practices for at least 25 years.

Assurances of Voluntary Compliance

The Commission may terminate an investigation upon acceptance of assurances of voluntary compliance when it appears that that method of disposition will fully safeguard the public interest. A total of 313 assurances were accepted to terminate deceptive practice investigations during the year.

Compliance With Deceptive Practice Orders

Newly issued orders require each respondent to submit a written report supported by relevant documentary material demonstrating the manner and form of compliance with the order. Conferences with respondents and their attorneys are frequently required, together with considerable following correspondence. In many cases the Commission directs that reports be augmented by supplemental reports or investigations.

Once an order to cease and desist has been issued all general complaints and inquiries are referred to the Compliance Division for action. Such complaints and inquiries generally refer to orders issued many years ago. In many instances a satisfactory reply requires the staff attorney to examine all appropriate files of the particular case.

Under the Commission rule pertaining to compliance matters, any respondent subject to an order may request and receive advice from the Commission as to whether a proposed course of action will constitute compliance.

In fiscal 1965 the Compliance Division processed a total of 696 complaints of violations of orders, public inquiries, requests for advisory opinions, and requests for informal advice from respondents. There were 101 investigations in an active status during the year,

many of which will necessitate the institution of civil penalty proceedings.

The statistics regarding the Division's caseload during fiscal 1965 are as follows:

Total pending July 1, 1964	447
Received during fiscal 1965	293
Total for disposition during year	740
Disposed of during year	322
Total pending June 30, 1965	418

The 293 orders to cease and desist which were received represent 67 new orders issued during the year and 225 old orders which were activated because of complaints from outside sources indicating possible violations and for other reasons. During the year 322 cases were processed. This figure involved 788 separate reports of compliance which required analysis and disposition and 614 complaints of violations, etc.

Division of Scientific Opinions

This Division gave attention to a wide variety of foods, drugs,. cosmetics, devices and related commodities. In many areas, intensive scientific and medical investigation and research were carried out on a group of closely related preparations or devices with a view to dealing with the advertising of these articles on an industrywide basis. A number of previously initiated projects were carried forward, including those concerned with preparations offered for the treatment of hemorrhoids or piles, vitamin and mineral preparations offered as dietary supplements, with particular emphasis on such preparations represented to be of value because of their hematinic properties, and analgesic drugs, whose claims with respect to speed and duration of relief provided as well as their safety, were in question. Substantial attention was given to the advertising of products offered as cures for the smoking habit and to denture reliners and denture repair materials promoted for use by the general public.

In laying the groundwork for these industrywide projects, it was necessary to search thoroughly the published medical and scientific

literature pertinent to the problems, and also to locate and confer with medical specialists and other scientists who have firsthand knowledge of the properties and limitations of the preparations or devices under consideration. Some aspects of these projects present problems which are sufficiently unique that the authorities in a particular field are of the opinion that further laboratory or clinical testing must be conducted in order to provide a firm basis for, a regulatory position.

In addition to scientific and medical research and investigation, professional personnel of the Division participated in the drafting of complaints and other legal documents in specific cases and participated in the trial of contested cases.

A statistical summary of the Division's work follows:

Products covered in written opinions	227
Oral opinions	261
Analyses and tests	6
Hearings attended	64
Prehearing conferences attended	9
Expert witnesses secured	42

The subject matter of the written opinions was as follows:

Foods	39	Devices	41
Drugs	71	Economic poisons	37
Cosmetics	13	Miscellaneous	26

Chapter IV

THE FIGHT FOR FAIR BUSINESS COMPETITION

To maintain free and fair competition in the Nation's marketplace, presents the Commission with its most difficult responsibility.It must cope with the never ending eftorts of predatory businesses to defy or circumvent the antitrust laws in order to take unfair advantage of their competitors. The stakes are usually high, and the victims are all too frequently small businessmen.

Hard-core violations were attacked during the year with all the force FTC could muster, but when competitively engendered violations could be halted faster and more equitably on a broader scale without litigation, this course was followed. Indeed, the Coinmission made an effort, unprecedented in degree, to encourage businessmen to comply with the law by defining its requirements and by persuading those violating the law, and their equally culpable competitors, to halt the violations simultaneously so that none would be hurt competitively in the process-and the public interest would be served. The immediate effect of such an advanced program is fewer formal cases and cease-and-desist orders to show for the Commission's efforts. However, the Commission's basic purpose to halt unfair practices, by persuasion, if possible, and by enforcement, if necessary, is being strenuously pursued.

During fiscal 1965, FTC's Bureau of Restraint of Trade received 1,286 applications for complaint, principally from small businessmen who believe that unfair methods of competition are being utililizcd. Those applications for complaint which appeared to have merit and over which the FTC had jurisdiction were entered for investigation. In addition, the FTC began investigations on its own motion, with the result that a total of 242 formal investigations involving trade restraints were initiated, and 729, including those from previous years, were completed. The Commission issued 26 antimonopoly complaints and 39 orders to cease and desist. This work

resulted from enforcement of general trade restraint provisions contained in section 5 of the Federal Trade Commission Act and of sections 2, 3, 7, and 8 of the Clayton Act.

In the enforcement of the Robinson-Patman Act, continued emphasis was given to the business community and its need to take corrective action and discontinue illegal practices without the necessity of resorting to formal litigative processes. Toward that end a number of matters involving a variety of industries were handled through the execution of Assurances of voluntary compliance.

Continuing investigation in the wearing apparel industry resulted in 12 additional consent agreements and orders prohibiting manufacturers from discriminating among competing customers in the payment of promotional allowances. Efforts in this industry continue and a number of additional orders are anticipated which will result in a total of approximately 300 orders prohibiting discriminatory promotional allowances in this industry. The manner in which this project has been handled illustrates the effective results which can be achieved by the broad approach to an industry and its problems.

The Commission undertook to define and declare the requirements of the Robinson-Patman Act and to provide businessmen with a similar opportunity to comply with it while avoiding protracted legal proceedings when it set aside proceedings against 17 drug and sundry suppliers through the issuance of declaratory orders whose findings would be a blinding guide to future conduct.

Similarly, consent orders were issued by the Commission prohibiting discriminatory pricing practices in individual cases involving such diversified products as liar coloring products, Clairol, Inc., (C.832); and railroad signaling equipment, General Railway Signal Company, et al. (C. 837).

Not all Robinson-Patman Act matters were concluded without the need for formal litigation. After fully contested hearings the Commission issued final orders to cease and desist in several individual matters. These included two automotive parts cases involving discriminatory pricing practices, Monroe Auto Equipment Co., (D. 8543), and the Dayton Rubber Co., (D.7604) ; a citrus fruit and produce case involving unlawful brokerage, Garrett-Holmes & Co., Inc., (D. 8564) ; a publication case and a ladies' undergarment case, both involving discriminatory promotional allowances, Ace Books,

Inc., et al. (D. 8557) and The Lovable Company, et al. (D. 8620). A current proceeding against Associated Merchandising Corporation, et al. (D. 8651) ; charges that organization, a subsidiary, and 15 large department stores with unlawfully inducing and receiving discriminatory prices from their suppliers.

In enforcing section 5 of the FTC Act, relative to general trade restraints constituting unfair methods of competition or unfair acts or practices, the Commission's primary objectives and accomplishments involved (1) prevention of anticompetitive practices including conspiracies to fix prices and boycott; (2) prohibition of previously unchallenged restrictive selling and purchasing practices; and (3) cooperative and amicable adjustments of incipient violations of section 5 of the FTC Act through administrative procedures. Several industries received substantial attention in investigations and in formal cases. These industries included floor coverings, steel reinforcing bars, tobacco, trading stamps, television tubes and parts, ball and roller bearings, footwear, and food.

Ninety-nine new investigations were instituted; and 94 matters were formally closed. The newly instituted investigations involve a considerable variety of potential violations including price fixing conspiracies, sales below cost, resale price maintenance, tying arrangements, refusal to deal, and allocation of territories.

Of the several matters involving the issuance of cease-and-desist orders, a consent agreement was obtained in Albany Felt Company, et al. (C. 828), together with an order which required manufacturers of papermakers felts and their association to discontinue agreements to fix prices and other unreasonable restraints in the manufacture, distribution, and sale of felts used by manufacturers of paper. Significantly, the order in the Albany matter required the independent establishment by each of the respondent manufacturers of new prices. Bakers of Washington, Inc., et al. (D.8309), was litigated on price-fixing charges resulting in the issuance by the Commission of a decision and cease-and-desist order prohibiting national and local bakeries from fixing the price of bread. Another price-fixing case, Falstaff Brewing Corporation, et al. (D. 8618), resulted in the Commission's affirming a hearing examiner's initial decision, and issuing a cease-and-desist order that not only inhibited price fixing and other unlawful restraints in the distribution and sale of beer by brewers, but further directed the dissolution of the

association that had been the instrumentality for the collusive activities.

Substantial efforts were made to investigate and terminate illegal boycotts. One such case was litigated while two others were disposed of by consent orders. In Television Association of Delaware Valley, et al. (D. 8623), the Commission prohibited an organized boycott by the association and its television repair service dealer members to prevent and limit competition in the repair and servicing of television, radio, and electronic devices. Television Service Dealers Association of Delaware County, et al. (C. 881), involving a similar boycott by and between three associations and their memberships, also was disposed of by a consent order. In Universal Business Forms Company (C.888), involving a concerted refusal to deal in the distribution and sale of business forms, the Commission issued a consent order prohibiting such action.

In a different area of general trade restraints, several Commission matters involving previously unchallenged selling and purchasing restrictions were examined because of the possible impact on business arrangements. One such matter, Wear-Ever Aluminium Inc., (C. 842), resulted in a consent order requiring that respondent refrain from conditioning (the sale of its "Wear-Ever" brand aluminum pots and pans upon dealer purchases of the company's professional cutlery products. In another, the Commission issued a complaint charging Sun Electric Corporation (D. 8659), with an allegedly illegal attempt to monopolize the repair of its automotive testing equipment by refusing to sell needed parts and accessories for the repair of its equipment to independent repair businesses.

The Commission continued its concern with anticompetitive restrictions governing the allocation of selling time in tobacco auction warehouses. It ordered Mountain City (Tennessee) Tobacco Board of Trade, et al. (D. 8638), to cease various attempts to dominate and control the sale at auction of burley tobacco on the Mountain City market. Also during the year, the Commission, at the request of U.S. District Courts in North Carolina and Virginia, submitted advisory opinions for use by the courts as guidelines in three civil suits involving allocations of auction time in various tobacco markets.

Substantial effort continued to be devoted to competitive problems in the marketing of gasoline. An industrywide inquiry was conducted complete with public investigational hearings. At the year's

end, the information thus obtained was being studied for the purpose of determining the best course of future action.

Responding to the need for a procedure to settle small-scale antitrust violations before they assumed major and costly proportions, the Commission authorized its Division of General Trade Restraints to investigate such matters primarily by correspondence with the parties. During the year, more than half of the approximately 150 practices complained about were voluntarily stopped with assurances of voluntary compliance obtained. This procedure permits action in matters where the Commission formerly was unable to assist the business community and the public for lack of an adequate procedure.

In enforcing the Cellar-Kefauver Anti-Merger Act, the Commission concentrated upon the competitive problems presented by mergers in a number of important industries, and upon providing businessmen with guidance as to the requirements of the act.

In the dairy industry, the Commission decided the fourth of its cases challenging--numerous acquisitions by the largest dairy companies Beatrice Foods Co. (D. 6653). The Commission found that a number of acquisitions by Beatrice violated section 7 of the Clayton Act and in its opinion set out guidelines as to the legality of future acquisitions in this industry.

In the vending industry, cases challenging acquisitions by Automatic Retailers of America, Inc. (C. 809), and ABC Vending Corp. (D.7652), were terminated by consent orders requiring substantial divestiture and limiting future acquisitions by the respondents. As an apparent result of the Commission's action in this industry, acquisitions of the 10 largest vending companies declined markedly in 1964.

The continued concern of the Commission with the present trend toward vertical integration through acquisitions in the cement industry was reflected in consent orders against Lone Star Cement Corp. (D. 8585); and Permanente Cement Company (D. 7939); which required divestiture of substantial ready-mixed concrete facilities acquired by these companies and limited future acquisitions by them. In addition, the Commission issued its complaints in four new proceedings challenging acquisitions of ready-mixed concrete companies by U.S. Steel Corp. (D. 8655); National Portland Cement Co. (D. 8654) ; Texas Industries, Inc. (D. 8656) ; and Mississippi River Fuel Corp. (D.8657)

The Commission issued final orders of divestiture in proceedings challenging acquisitions of producers of corrugated containers by The Mead Corp. (C. 880); Union Bag-Camp Paper Corp. (D. 7946) ; and Inland Container Corp. (D. 7993).

The first Commission merger case to reach the Supreme Court, F.T.C. v. Consolidated Foods Corp., resulted in a landslide decision holding that the acquisition by Consolidated of Gentry, Inc., violated section 7 of the Clayton Act because of the opportunities it created for the operation of anticompetitive reciprocity. Following this decision of the Supreme Court, the Commission is conducting investigations of acquisitions which may create similar opportunities for the use of reciprocity in other industries.

The Commission found that the acquisitions by Fruehauf Trailer Co. (D. 6608), of two of its largest competitors in the manufacture of truck trailers violated section 7 of the Clayton Act, and issued its order of divestiture.

During the past year the Commission has also intensified its enforcement of section 8 of the Clayton Act. Starting from a survey conducted by the Bureau of Economics, which revealed a substantial number of interlocking directorates among the Nation's 1,000 largest corporations, the Commission conducted investigations to determine which of these interlocks might violate section 8 of the Clayton Act. As a result of these investigations, a number of such interlocks have been voluntary terminated.

More than $82,000 in civil penalties for violations of restraint of trade orders was collected during the year. In addition, the Compliance Division succeeded in effecting compliance with over 100 cases with a relatively limited staff. In fiscal 1965 the Compliance Division processed over 250 inquiries relating to restraint of trade orders. It also rendered advisory opinions and effectuated divestitures of over 13 business entities pursuant to provisions of section 7 of the Clayton Act, as amended.

The Division of Accounting, during the past fiscal year, utililized, to a great extent, electronic data processing equipment for the tabulation of invoices and other accounting data showing price discrimination in the sale or purchase of various household products. The emphasis on the use of electronic data processing equipment expedited considerably the preparation of tabulations as evidence of price discrimination.

Chapter V

WOOL, FUR, AND TEXTILE ACTS ENFORCEMENT

By means of an effective combination of legal action, persuasion, and industry counseling, the 96-man staff of F.T.C.'s Bureau of Textiles and Furs undertook to protect the American consumer in his dealings with the Nation's third largest industry. This was done through enforcement of four laws: The Wood Products Labeling Act, the Textile Fiber Products Identification Act, The Fur Products Labeling Act, and the Flammable Fabrics Act.

In carrying out this responsibility the Bureau worked closely with 40 major trade associations and more than 140 smaller trade associations with a combined membership of more than 465,000 textile and fur manufacturers, distributors, and retail establishments.

Although the number of FTC's textile and fur investigators declined during fiscal 1965, the total number of inspections showed a slight increase over fiscal 1964. The number of items spot-checked increased considerably from about 46 to 67 million. This increase was brought about through inspections of larger manufacturers and larger retail stores

During fiscal 1965, the Bureau's Division of Enforcement handled 502 investigations. Two hundred and eighty-three were on hand at he start of the year and 219 new investigations were undertaken. A total of 275 cases were disposed of and 227 were carried over to fiscal year 1966.

Fifty-five recommendations for complaint were forwarded to the Commission. Sixty-nine cease-and-desist orders were issued. While the number of investigations closed rose from 177 to 215. One hundred and forty-four of this number were closed by assurances of voluntary compliance. Although the total number of investigations disposed of in fiscal 1965 was 275, or an 8-percent increase over the preceding fiscal year.

Efforts were continued to prevent the misbranding of imported wool products, such as mohair and wool sweaters and hand-knitting yarns. Forty-five mohair sweater cases have been formally lally opened since January 1963, whale recommendations for complaint were made. The Commission has acted on these recommendations by issuing 11 cease-and-desist orders and one complaint. Nine cases are still under investigation; 14 have been closed by virtue of an assurance of voluntary compliance; 6 respondents abandoned the practice, and 3 cases were closed due to insufficient evidence of misbranding.

The Bureau discovered that a large amount of wool knit socks were being imported into this country from England for the purpose of reclaiming the fibers. The socks appeared to have been worn and so when reduced back to a fibrous state would have to be labeled "reused wool". Investigation has revealed that the fibers were being disposed of as "wool", so the respondents were warned that they would be in violation of the Wool Act if they so disposed of this material. Eight concerns are involved, and the investigation is continuing.

A total of 119 formal cases were considered under the Fur Act during the year. Emphasis has been directed particularly at false and deceptive pricing and record keeping and, as a result, violations in these categories have decreased considerably.

Particular attention has been paid to manufacturers of fur-trim coats and suits. After a long period of education, persuasion, and exhortation, it has been necessary to proceed formally against a number of these merchants.

The number of formal cases under the Textile Act increased during the past year from 76 to 85 as it became apparent that many firms, although having ben repeatedly advised regarding the requirements of the act, have, through continued evidence of violations, indicated they do not intend to comply voluntarily. This is particularly true with regard to the advertising requirements of the Textile Act and several cases have been opened against department stores for falsely and deceptively advertising the content of textile fiber products.

Complaints were received that braided wool rugs are being imported from the Orient and are being labeled as 100 percent wool whereas the wool content is substantially less and the rugs contain considerable amounts of other fibers. These wool rugs are exempt from the Wool Act but they are included under the Textile ct among

those articles that have to be properly labeled and identified. It is anticipated that formal cases will be opened against some 14 to 15 respondents.

Three cases under the Textile Act involving the importation of hosiery from Italy (which hosiery was originally made in Yugoslavia) without disclosing the country of origin have been opened and are being investigated.

Certain firms engaged in applying a highly flammable nitrocellulose lacquer finish to netting material have been investigated. This netting material generally is used in millinery, draperies, and for other nonapparel purposes, but because of the highly flammable and dangerous nature of nitrocellulose, action was brought, under section 5 of the Federal Trade Commission Act, against the respondent for applying this dangerous substance to fabric and then failing to notify purchasers of its presence. One firm has signed an affidavit of voluntary compliance and a second firm has signed a consent order to cease and desist.

During the year, emphasis was placed on the inspection of manufacturers of fur hats. Investigations indicated that in many cases fur hats were being made from used furs without the disclosure of this information on labels and in advertising material. These manufacturers will be reinspected before their products are shipped to retail establishments to determine if compliance has been obtained.

When it is determined to enter a case for investigation, it is assigned to trial attorney, who is responsible for the development of the investigation and subsequent analysis, processing, and disposition. The average number of cases on each trial attorney's docket was 47. The average number of cases disposed of was 231/2 per month, or approximately 4 cases per attorney per month.

The Compliance Section of the Division of Enforcement, composed of four attorneys, had a productive year which commenced with 128 compliance cases. During the year 102 cases were added to the calendar (69 new orders and 33 matters reopened for compliance investigation) and 120 cases were completed.

During fiscal 1965, compliance orders generally became more comprehensive than formerly. Increasingly, these orders embraced violations of two and three of the acts administered by the Bureau, and several involved chain store operations. Particularly in the latter instances the staff encouraged respondents to prepare, for the

guidance of store and department managers, detailed instructions regarding compliance with the orders, and has cooperated by reviewing and correcting such instructions prior to distribution. This is an extension of the policy of counseling respondents to the end that they may avoid further violations, not only of the orders but also of matters not covered by orders.

Emphasis was placed upon the enforcement of orders involving respondents engaged in the importation of wool products suspected of being misbranded. One such case seeking penalties of $60,000 was filed in the U.S. district court and another involving sweaters charged as being misbranded as to mohair content was in preparation for certification to the Attorney General. This matter of misbranding imported wool products is particularly significant because of the unfair competitive impact it has upon domestic producers. Additionally, a case charging willful violation of the Wool Act was certified to the Attorney General with an 18-count suggested form of information.

An up-dating of the Bureau's active files resulted in placing 10,000 files into inactive status. This makes the filing system more efficient and enables staff attorneys to handle correspondence with greater dispatch.

Chapter VI

FOLLOWTHROUGH IN LAW ENFORCEMENT

The statistical profile of the General Counsel's work in fiscal 1965 reveals the Commission's greater emphasis on obtaining industry-wide voluntary compliance with the law as an alternative, where possible, to the bringing of individual lawsuits.

While the number of cases instituted and pending in the courts and the number of consent settlement negotiations declined, the quality and importance of the casework remained high. Nor was there any diminution in total work-load, for the lessened casework was more than offset by services required of in support of the industrywide approach to compliance. The General Counsel contributed importantly to the work of the operating Bureaus in their rulemaking proceedings, preparation of subpoenas, and orders to file special reports, and in the development of technical procedures in the acquisition of evidence in connection with industrywide procedures.

In addition, the year witnessed a step-up in the work of the General Counsel's Division of Export Trade, calling for more advisory services required for the Nation's export expansion program. Also, the Division of Legislation encountered a heavy workload, reflecting in part a rising trend in recent years to designate the FTC to administer proposed regulatory programs for greater consumer protection.

Court proceedings which involve the Federal Trade Commission arise in a number of ways. Any individual or company 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. The FTC may apply in a U.S. district court for enforcement of a subpoena, or may request the Attorney General to institute civil proceedings to compel the filing of a special or annual report ordered by the Commission and to recover forfeitures for failure to comply with the Commission's order. Disobedience to a court's decree enforcing a Commission's order or subpoena may be punished by the court as a contempt.

Collateral suits challenging the Commission's jurisdiction or methods of procedure may be brought under certain circumstances in U.S. district courts. The Commission's interests in these and all related matters are presented and defended by the General Counsel.

In fiscal 1965, the General Counsel, through the Division of Appeals, handled 119 cases. Litigation was completed in 43 of these, of which 7 were restraint of trade matters, 19 involved deceptive business practices, 3 concerned the FTC's subpoena powers, 5 were suits to com el the filing of special reports, and 9 were extraordinary matters such as suits against the Commission for injunction or declaratory judgment. At the year's end, there were 76 cases open for further action or pending final disposition.

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

The Division of Consent Orders of the General Counsel's Office supervises the negotiation of consent orders to be entered in appropriate cases. These cases constitute in numbers the great majority of FTC formal enforcement proceedings. A total of 116 executed agreements containing consent orders to cease and desist were forwarded to the Commission for its consideration in fiscal 1965. In addition 303 review, interim report, or special assignment matters were completed. The Division of Consent Orders uniquely serves the interest of the public and the business community by affording a means whereby the law is enforced and business is not required to endure expensive, time-consuming, market-disrupting litigation.

The General Counsel's Division of Export Trade supervises administration of the Webb-Pomerene (Export Trade) Act (15 U.S.C. sees. 61-65) for the Commission, performs necessary investigative functions in connection with the Commission's general authority under section 6(h) of the Federal Trade Commission Act to inquire into foreign trade conditions, coordinates the Commission's jurisdiction over foreign commerce, advises other offices of the Commission on export trade, and serves as liaison with other Government agencies having complementary jurisdiction over foreign trade.

The 1918 Webb-Pomerene Act, entitled "An Act To promote export trade, and for other purposes", qualifiedly exempts registered American associations from the provisions of the Sherman Act of 1890 and the Federal Trade Commission and Clayton Acts of 1914 insofar as their activities relate solely to export trade. Under the

provisions of this act, associations are permitted to fix prices and quotas, pool products for shipment, and establish terms and conditions of sales to foreign markets. Thirty-four associations were registered with the Commission in 1964, and they exported $1,103,394,518.91 worth of goods.

With the acceleration of the Commission's industry guidance programs, and with the development of procedures for handling vastly increased caseloads, the General Counsel has assigned, on a selective basis, members of his staff to assist the operating bureaus in their conduct of rulemaking proceedings, preparation of subpoenas and orders to file special reports, and the development of technical procedures in the acquisition of evidence in connection with industrywide procedures and single causes.

The General Counsel's Division of Legislation furnished advice and comment to the Commission on 107 bills which were pending in Congress, 10 draft bills submitted to the Bureau of the Budget by other governmental agencies, and 6 enrolled bills pending presidential signature or veto. There has been a continuation of the introduction in Congress of proposed legislation of a regulatory nature in which the Commission is either designated singularly or jointly with another agency to administer the proposed law. Examples of such proposed legislation are the, "Truth-In-Packaging" bill and the "Truth-In-Lending" bill. Also, a number of bills, which name the Commission as administering agency, have been introduced requiring the labeling of goods imported into the United States in order to show foreign origin.

From the experience of the Commission in its daily administration of the law and from studies made in the General Counsel's Office, it appears that certain additional legislation is needed.

LEGISLATION NEEDED

The Commission has urged the enactment of laws which would:

1. Amend section 7 of the Clayton Act (15 U.S.C. 18) by requiring proper notice to the Federal Trade Commission and other appropriate agencies of proposed mergers of corporations of significant size, at least one of which is engaged in interstate commerce, and to provide adequate means of preventing illegal mergers.

2. Amend section 2(e) of the Wool Products Labeling Act (15 U.S.C. 68 (e)), which defines a wool product, so that it will read as follows:

> The term "wool product" means (1) any fiber or fibrous materials, including fibers or fibrous materials reclaimed from other products, which are, contain, or in any way are represented as containing wool, reprocessed wool, or reused wool, and (2) any yarn, fabrics or other product containing or made in whole or in part of such fibers or fibrous materials.

3. Amend section 2(d) of the Flammable Fabrics Act (15 U.S.C. 1191 (d)) so as to include blankets which are dangerously flammable.

4. Amend section 5(a) of the Clayton Act (15 U.S.C. 16 (a)) so as to include a final order of the Federal Trade Commission; that is, amend section 5(a) to read:

> A final judgment, decree or final order to cease and desist of the Federal Trade Commission heretofore or hereafter rendered in any civil or criminal proceeding brought by or on behalf of the United States under the antitrust laws to the effect that defendant or respondent has violated said laws shall be prima facie evidence against such defendant or respondent in any action or proceeding brought by any other party against such defendant or respondent under said laws or by the United States under section 4A, as to all matters respecting which said judgment, decree or order would be an estoppel as between the parties thereto: Provided, That this section shall not apply to

consent judgments, decrees or orders entered before any testimony has been taken or to judgments or decrees entered in actions under section 4A.

Chapter VIII

THE ROLE OF ECONOMIC STUDIES AND EVIDENCE

Some of the Commission's most important instruments of antimonopoly action are factfinding and economic reporting, coupled with well reasoned economic analysis. As the Nation's industrial organization becomes more complex and business concerns become larger, it is imperative to have information which will permit an early exploration of the basic causes of poor economic performance. Proper corrective action is dependent upon facts and their accurate analysis —whether the corrective action is new legislation or a cease-and-desist order by the FTC. The chief function of the Commission's Bureau of Economics is to gather and analyze economic facts.

The Bureau of Economics is divided into three divisions: The Division of Industry Analysis conducts inquiries into the developments of particular industries, as well as broad trends reflecting changes in the structure of American industry to determine how competition is affected; the Division of Economic Evidence provides economic information and analyses needed for the prosecution of casework; and the Division of Financial Statistics collects and prepares, in cooperation with the Securities and Exchange Commission, financial reports covering various manufacturing industries.

Industry Analysis

In addition to a number of individual industry studies, considerable effort in 1965 was devoted to studies relating to broad changes in concentration, diversification, and integration in American manufacturing industry, and to the factors responsible for such changes. In particular, special emphasis has been devoted to an analysis of recent merger activity.

Merger Studies.—The Commission's last full-scale examination of the importance of merger activity was released in 1955. During

fiscal year 1965, two studies illustrated in some detail the extent and economic impact of recent merger activity over the period 1955-64. Following a complete reexamination of merger data for the past 10 years, the Commission released revised merger series for years since 1954. The revised series is shown in table I below.

TABLE 1. NUMBER OF MANUFACTURING AND MINING CONCERNS ACQUIRED, BY ASSET SIZE OF ACQUIRING COMPANY, 1955-64

Year	Asset size of acquiring company (in millions of dollars)						
	$100 and over	$50 to $99.9	$10 to $49.9	$5 to $9.9	$1 to $4.9	Other[1]	Total
1955 - - - - - -	109	87	237	80	73	97	683
1956 - - - - - -	125	79	214	88	72	95	673
1957 - - - - - -	111	66	216	66	67	59	585
1958 - - - - - -	122	73	187	71	70	66	589
1959 - - - - - -	202	119	265	87	115	47	835
1960 - - - - - -	172	103	261	102	1115	91	844
1961 - - - - - -	166	100	261	152	149	126	954
1962 - - - - - -	161	76	244	130	146	96	853
1963 - - - - - -	200	92	287	101	120	61	861
1964 - - - - - -	207	73	283	99	101	91	854
1955 to 1964. .	1,575	868	2,455	976	1,023	829	7,731

[1]Includes companies with assets of less than $1 million and those where the asset size of the acquiring company was unknown.

Source: Data limited to mergers and acquisitions reported by Moody's Investors Service and Standard Corporation Records. Bureau of Economics, Federal Trade Commission.

The trend of mining and manufacturing merger activity since 1940 is shown in chart 1.[1] The chart shows that merger activity accelerated at a rapid pace starting in 1955. Between 1945 and 1949, for example, an average of 301 mining and manufacturing mergers

[1]The acquisitions recorded are limited to those reported in selected trade and business newspapers, and in two reporting services, Moody's Industrials and Standard Corporation Records. The recordings are compiled primarily for the purpose of following the trend in the merger, or as including all of the acquisitions which were actually consummated.

Chart I

MERGERS IN MANUFACTURING AND MINING
1940-64

CHART - SEE IMAGE

occurred each year. Between 1950 and 1954, this average fell slightly to 285 per year. However, an average of 673 mining and manufacturing companies were acquired between 1955 and 1959, and an average of 873 a year between 1960 and 1964. The present level of merger activity is higher than at any time during the past 30 years.

In addition to the absolute increase in merger activity, the data in table 1 show that an increased number of acquisitions were made by large companies between 1955 and 1964. In 1955, for example, companies with assets of $100 million or more made 16 percent of our recorded manufacturing and mining acquisitions. In 1964, however, this size group accounted for almost 25 percent of these mergers.

Firms engaged in the production of electrical machinery and chemical products were responsible for about 25 percent of recorded acquisitions. Other large acquiring industries include nonelectrical machinery, food, and kindred products, and transportation equipment.

Analysis of merger activity includes more than the mere counting of the number of mergers which take place, it requires their measurement. To appraise their economic significance, information is needed which shows the size and product characteristics of both acquiring and acquired firms. A report on The Scope of the Current Merger Movement, prepared in 1965 for the Senate Subcommittee on Antitrust and Monoply, contains an analysis of firms with assets

of $10 million or more which have been acquired since l948. Table 2 (see below) shows the number of acquisitions of firms of this size and the value of the acquired assets. This "large" merger series is one which has been developed and refined during the past year.

TABLE 2. ACQUISITIONS OF LARGE MINING AND MANUFACTURING CORPORATIONS (WITH ASSETS OF $10 MILLION AND OVER), 1948-64

Year	All large acquisitions		Large acquisitions made by 200 largest manufacturing corporations 1	
	Number	Value	Number	Value
1948	4	$64.6	4	$64.6
1949	5	66.8	5	66.8
1950	4	154.8	2	107.2
1951	9	201.4	7	150.0
1952	13	326.5	6	210.2
1953	23	678.6	16	480.5
1954	36	1,450.2	19	1,082.6
1955	68	2,156.0	37	1,499.3
1956	59	2,069.6	39	1,570.1
1957	49	1,458.9	28	1,093.2
1958	39	1,118.5	23	676.9
1959	63	1,949.6	36	1,384.8
1960	62	1,708.3	36	1,063.5
1961	60	2,144.6	27	1,296.3
1962	71	2,179.7	32	1,170.7
1963	65	2,791.0	33	1,776.1
1964	90	2,784.3	37	1,231.5
Total	720	23,303.4	387	14,924.3

[1] As of yearend 1962

Source: Bureau of Economics, Federal Trade Commission

Corporations with assets of $10 million and over accounted for about 83 percent of all assets of U.S. manufacturing corporations in the first quarter of 1965. Over the period 1948-64, 720 “large”mergers occurred and in total these acquired companies in the year prior to acquisition had assets of more than $23 billion. The place of the largest corporations in the merger movement is shown in the

activity of the 200 largest manufacturing corporations. These 200 largest corporations during the years 1948 through 1964 absorbed 387 other large manufacturing corporations. The total of these acquisitions amounted to just under $15 billion or nearly two-thirds of the over $23 billion of large corporate acquisitions recorded. Changes in the large merger series parallel quite closely that of the overall merger series shown in chart 1. In 1955, for example, the number of large mergers which occurred were almost twice those of 1954. More importantly, the value of assets acquired in 1955 was more than twice the 1954 figure.

While most of the acquired companies (61 percent) were in the $10 to $25 million asset-size class, they accounted for only 29 percent of the acquired assets. On the other hand, only 5 percent of the acquired firms had assets of $100 million or more but these mergers accounted for about 23 percent of the acquired assets.

TABLE 3. MANUFACTURING CORPORATIONS ACQUIRED COMPARED WITH TOTAL MANUFACTURING: 1959 AND 1964

Size class of acquired firms (in millions)	Number of large manu-facturing corporations acquired	Total number of manufacturing corporations		Number of acquisitions as percent of percent of total number of manu-corporations	
		1959	1964	1959	1964
$10 to $25 - - - - - -	417	930	998	44.8	41.8
$25 to $50 - - - - - - -	145	353	463	41.1	31.3
$50 to $100 - - - - - -	70	238	270	29.4	25.9
$100 to $250 - - - - -	29	165	208	17.6	13.9
Over $250 - - - - - -	2	127	173	1.6	1.2
Total - - - - - - -	663	1,813	2,112	36.6	31.4

One measure of the economic significance of these acquisitions may be seen by comparing them with the actual number of manufacturing corporations in various asset-size groups. Table 3 shows the number of manufacturing firms by asset-size class for 1959 and 1964. In 1959 there were 930 manufacturing corporations with assets between $10 million and $25 million. It shows also that 417

companies of that size, a number equivalent to almost 45 percent of the 1959 population, were acquired between 1959 and 1964. In total, 663 manufacturing corporations with assets of $10 million or more were acquired between 1959 and 1964; this was equal to 36.6 percent of all such firms in 1959. Between 1959 and 1964, a net increase of 299 companies with assets of $10 million or more took place.

The acquisitions of large companies were spread somewhat more evenly across American industry than was true for "all" merger activity. The six largest, in terms of values of assets acquired, were nonelectrical machinery, petroleum products, chemicals, paper products, transportation equipment, and electrical machinery in that order. These data show also that in two industries, paper and textile products, the acquisitions made were equal to more than 20 percent of the total 1959 manufacturing assets of all corporations (chart 2).

Canned Fruit and Vegetable Report.—During 1965, the third and final report of the Commission's Economic Inquiry into Food Marketing was published. This report examines production and consumption patterns, concentration, diversification, and integration in merger activity; relative costs, profits, marketing patterns, product promotion, and entry barriers in the canned fruit, juice, and vegetable industry.

This report discusses a number of interesting developments in this industry. For example, the report points out that since 1947, U.S. production of canned fruits, juices, and vegetables has increased by one-third (from 326 to 435 million cases annually). At the same time, however, there have been substantial declines in the number of canning establishments since 1947; and that during a somewhat shorter period, 1958-63, employment declined by 6.5 percent.

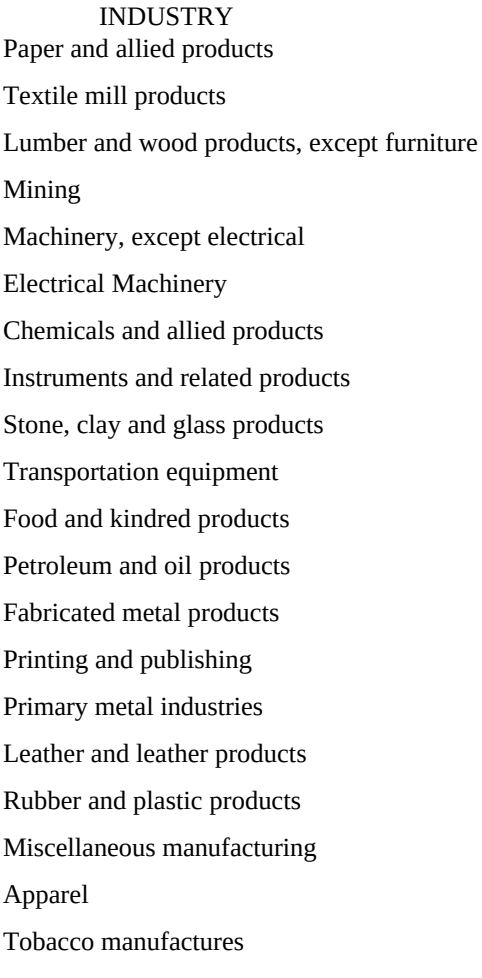
This report indicates that profitability was clearly associated with sales size of canning firms in 1959. The 12 largest canners, each with sales over $25 million, enjoyed average profits before taxes equal to 8.8 percent of their net canning sales. At the other extreme, the 343 reporting firms, each with sales under $1 million, experienced average profits equal to 0.7 percent of their net canning sales. Almost 40 percent of the smallest firms reported net operating losses.

A few large acquisitions of canning facilities by large canners were made in the 1950's; however, these acquisitions were over-

Chart 2

ACQUIRED ASSETS OF LARGE CORPORATIONS, 1948-64, AS PERCENT OF 1959 TOTAL ASSETS BY INDUSTRY

GRAPHIC - SEE IMAGE



shadowed by the merger activity in the period 1960 to 1963. During the latter period, 42 firms included in this report were acquired. And, any of the acquisitions involved relatively large canners. Almost 20 percent of the 39 firms with 1959 canning sales in excess of $10 million each were acquired during 1960-63.

Fifteen of the 42 acquisitions which occurred in the period 1960 to 1963 were made by noncanning firms, thereby increasing the number of large diversified firms in the canned fruit and vegetable industry. As result of recent acquisitions, such large and diversified

firms as Reynolds Tobacco, Nestle, R. T. French, and Coca Cola became canned fruit and vegetable producers. In addition, three large dairy firms, Pet Milk Co. (peripherally in canning prior to 1960), Carnation Co., and Borden Co. acquired large canning firms between 1960 and 1963. (By the end of 1963, the five largest dairy firms also ranked among the 20 largest canners of fruits and vegetables.)

Clearly, canned fruits and vegetables are being marketed under conditions of increasing concentration. Not only are the larger canners doing an expanding share of total business, but the competitive fringe of smaller canners is shrinking, as smaller canners are becoming less capable of offering effective competition to the leaders. Moreover, not only are the leaders strengthening their position vis-a-vis smaller firms but they also are raising the barriers to entry confronting potential entrants. These developments suggest that the canner-brand segment of the industry is becoming increasingly occupied by large, diversified firms capable of developing strong consumer acceptance for their products.

National Commission on Food Marketing.—During 1965, the Commission contracted to prepare and submit two studies to the National Commission on Food Marketing. The first of these, Market Structure, Conduct, and Performance in Food Retailing, will deal primarily with the changing market structure of grocery retailing in the local, regional, and national markets during the past two decades. Attention will be devoted to recent trends toward concentration of retail grocery store sales attributed to the leading national chains; vertical integration; barriers to entry into food retailing; and diminishing opportunity of survival of the independents and local chains.

The second report, Concentration, Integration, and Diversification in Food Manufacturing, will describe in detail and evaluate the structures and structural trends of food manufacturing industries including an analysis of market concentration, degrees of production differentiation, and the conditions of entry. Primary attention is being given to the place of large diversified firms in the structures of individual product industries and to the analysis of merger activity which is extending these large firms into important positions in an expanding number of food product industries. The study also analyzes food industry behavioral characteristics such as of return

and attributes of nonprice competition, relating these to industry structures.

Although a considerable amount of work was done on both these studies in fiscal 1965, they will not be completed until fiscal 1966.

Economic Evidence

The Division of Economic Evidence continued to concentrate its efforts primarily on mergers. The Division reviews all mergers reported by major press and trade sources and examines in depth those that appear to present a significant threat to competition. During 1965, investigations in depth were made of approximately 50 mergers.

A series of decisions by the Commission and the courts has clarified the application of the 1950 Celler-Kefauver Anti-Merger Act. These cases have apparently had the effect of slowing down merger activity involving the uniting of substantial competitors in the same or similar markets, the horizontal type, as well as numerous vertical mergers. However, the merger movement has more and more taken the form of various kinds of conglomerate mergers, particularly of the so-called product extension, and geographic market extension types. Extensive development of economic evidence is required to determine what, if any, adverse competitive effects flow from mergers of this type. However, useful guidelines have been provided by the Commission's decision barring the acquisition of Clorox Chemical Co., the leading producer of household liquid bleach, by Procter and Gamble Co. (D. 6901) and its decision finding a violation in Beatrice Food Co. (D. 6653).

The Division devotes a considerable part of its efforts to the collection and evaluation of economic data which can place mergers in an industry context. This is particularly important in view of the fact that mergers tend to feed upon themselves in a follow-the-leader pattern in particular industries. Among the industries in which merger activity has been particularly noted are bakery products, confectionery goods, snack foods, coffee, plastics, textiles, department stores, paper, apparel, chemicals, machinery, for retailing, cement, and fertilizer.

The Division also takes an active part in designing and carrying out surveys relating to FTC's enforcement responsibilities. It has assisted in the preparation of certain cases involving price fixing,

price discrimination, restraint of trade, and monopoly; and participated in analyzing industry requests for premerger clearance. The Division assists in the review of certain false and deceptive claims where such claims were based on data collected by sampling techniques which raised questions as to their validity.

Financial Statistics

The Division of Financial Statistics develops probability samples of corporate manufacturers, and, each quarter, produces with these samples estimates of the financial condition and quarterly operation results of all manufacturing corporations. In the Bureau of the Budget's recent report War on Waste: Cost Reduction Through Better Management, the work of the Division of Financial Statistics was singled out as an example of how money, time, and effort can be saved through the shortcut of using a probability sample survey instead of taking a complete canvass.

In collaboration with the Securities and Exchange Commission, uniform and confidential quarterly financial statements are collected from a sample of some 11,000 out of an estimated total of more than 200,000 manufacturing corporations doing business in the United States. The sample is stratified so that estimates may be made for each of 34 industry groups and 10 asset sizes of corporate manufacturers. These financial statistics are summarized and published in the Quarterly Financial Report for Manufacturing Corporations, four of which are published in every 12-month period. Each published report contains estimates for 13 income statement items, 32 balance sheet items, and 44 financial and operating ratios for each of the 34 industry groups and 10 asset sizes of corporate manufacturers.

The most recently published reports show that the total assets of manufacturing corporations have increased to a record total in excess of $330 billion, with all-time highs also recorded for items such as net working capital ($102 billion), inventories ($78 billion), net property, plant, and equipment ($127 billion), and stockholders' equity ($205 billion).

FIELD OPERATIONS

The Bureau of Field Operations through its 11 field offices completed 1,096 investigations during the fiscal year, 695 of which involved deceptive practices, 393 restraint of trade, and 8 wool, fur, or other consumer acts. This production was accomplished with an average of 158 attorneys, as compared to a total production of 1,144 completed investigations with an average of 167 attorneys employed during fiscal 1964.

The investigations completed constitute only a part of the Bureau's performance for the fiscal year. Among other things, its New York field office handled 4 contested cases under the Robinson-Patman Act. Its staff handled 162 assurances of voluntary compliance, out of a total of 489 handled by the Commission, one-third of the entire volume. Its field attorneys also negotiated with respondents on 35 consent orders, out a total of 132 handled during the year, or approximately 38 percent of the total. Members of its staff also participated in eight investigational hearings.

The disposition of matters by attorneys in the field offices, either through the obtaining of assurances of voluntary compliance or by the consent settlement method, provided an unusually suitable means of explaining to the parties involved, through direct personal contact with field office attorneys, the effect and meaning of the requirements imposed upon them by their assurances of voluntary compliance and by the terms of the cease-and-desist orders. In addition, these direct personal contacts provided them with information as to how to comply voluntarily with other laws administered by the Commission.

There has been initiated on an experimental basis in each field office a program designed to inform business men, attorneys, or members of the general public, of the nature of the laws administered by the Commission. This program is designed to supply answers to questions propounded either by telephone, writing, or personal contact; and to provide speakers, panelists, etc., to local groups having

an interest in the work of the Commission. It is anticipated that the results of this experimental program will be reported initially at the close of the first quarter of fiscal 1966.

In addition, this Bureau was able to bring its workload to a more current status. At the end of fiscal 1964, it had on hand 651 matters for investigation; during fiscal 1965, it received 1,013. Having completed 1,096, there was on hand as of the end of the fiscal year 568 cases, or a reduction of nearly a hundred cases from the preceding year. Investigation case production per man dropped slightly from 7.03 in fiscal 1964 to 6.9 in fiscal 1965, primarily due to the performance of other functions just described.

During the year, approximately 2,000 cubic feet of the official records of the Commission were accessioned by the U.S. Archivist. This quantity seems unimportant until it is related to the total volume of official records on hand June 30, 1964, which amounted to 8,036 cubic feet. Twenty-five percent of the records-storage space in the FTC building has been cleared for expansion or other use.

Public requests for Commission publications continued at a high rate during the year. Two pamphlets, "Fight Back!" and "Look for that Label," both addressed to consumers, were in heavy demand.

Chapter X

APPROPRIATIONS AND FINANCIAL OBLIGATIONS

FUNDS AVAILABLE FOR THE COMMISSION FOR THE FISCAL YEAR 1965

Funds available to the Commission for the fiscal year 1965 amounted to $13,459,107. Public Law 88-507, 88th Congress, approved August 30, 1964, provided $12,875,000 of which $15,893 was transferred to the General Services Administration for additional space rental costs, and Public Law 89-16, 89th Congress, approved April 30, 1965, provided $600,000.

Obligations by activities, fiscal year 1965

1.	Antimonopoly:	
	Investigation and litigation	$6,246,000
	Economic and financial reports	850,000
	Trade practice conferences, industry guides, and small business	170,000
	Compliance investigations for Attorney General	143,000
2.	Deceptive practices:	
	Investigation and litigation	3,373,000
	Trade practice conferences, industry guides, and small business	341,000
	Textile and fur enforcement	1,209,000
3.	Executive direction and management	299,000
4.	Administration	799,000
	Total	$13,410,000

Settlements Made Under Federal Tort Claims Act

During the fiscal year 1965 the Commission paid claims in the total of $438.42. No other claims are pending for the same period.

Chapter XI

HEARING EXAMINERS

Sixty-three cases were disposed of by hearing examiners during fiscal 1965. At the end of the year, there were 37 cases on hand, compared to 64 cases pending at the beginning of the year. Twenty-nine new cases were received and 7 others were reopened or remanded, making a total of 100 cases for disposition. There were 300 days of hearing or prehearing conferences.

In recognition of the decreased caseload in the office of hearing examiners, steps were taken to utilize, in the best interests of the Government, the manpower thus freed.

Hearing examiners were assigned to perform for the Commission a variety of tasks of a suitable nature, although not strictly adjudicative. These duties included the preparation of findings, conclusions, and recommendations for reference to the Department of justice in cases investigated by the Commission to determine compliance with court decrees, and also the conduct of nonpublic investigational hearings. In addition, examiners sat as special masters in U.S. Court of Appeals proceedings and also handled cases for several other Government agencies. Three examiners were detailed on a full-time basis to another agency and ultimately were transferred to that agency.

APPENDIX (A)
FTC Cases in the Courts

Following is a summary of the principal FTC cases before the courts during fiscal 1965, together with a brief discussion of what is involved in each case or group of cases.

RESTRAINT OF TRADE CASES

Probably the most significant restraint of trade decision in fiscal 1965 was that rendered by the Supreme Court in the Atlantic Refining Co.-Goodyear Tire & Rubber Co. "TBA" proceeding (D. 6486). In affirming the decision of the Seventh Circuit (Chicago), the Court upheld the Commission's finding that an agreement between Goodyear and Atlantic, under which Atlantic "sponsored" the sale of Goodyear tires, batteries, and automotive accessories to its wholesale outlets and retail gasoline service station dealers was an unfair method of competition. On all such purchases by its dealers, Atlantic received an "override" or "sales commission" payment from Goodyear. The Court held that Atlantic, with Goodyear's "encouragement and assistance," had unlawfully utilized its "economic leverage" over its customers to influence their purchasing of Goodyear products. In a similar TBA proceeding, Texaco, Inc.-B. F. Goodrich Co. (D. 6485), the Court reversed the judgment of the District of Columbia Circuit that the Commission's order was not supported by substantial evidence, and remanded the case to the court of appeals with instructions for it to remand the case to the Commission for further proceedings in conformity with Atlantic Goodyear. The Commission's other TBA proceeding, Shell Oil Co.-Firestone Tire and Rubber Co. (D. 6487), remained pending in the Fifth Circuit (New Orleans) at the close of the year.

In other restraint of trade cases, the Sixth Circuit (Cincinnati) affirmed the Commission's finding that Atlantic Refining Co. (D. 7471) unlawfully utilized "consignment agreements" to fix the retail price of gasoline sold by its dealers; and in National Macaroni Manufacturers Ass'n (D. 8524), the Seventh Circuit (Chicago) upheld the Commission's finding of unlawful conspiracy to fix the composition of macaroni and related products for the purpose of controlling the prices of their principal ingredients.

The Commission, however, was not entirely successful in the courts in restraint of trade matters in fiscal 1965. In Brown Shoe Co. (D. 7606), the Eight Circuit (St. Louis) overturned the Commission's finding that the operation of Brown's retail store franchise program was unlawful. The Commission had found that under this method of distribution, selected shoe dealers were required to "concentrate" their purchases upon Brown products, in return for various valuable benefits and services furnished them under the franchise program. In the Commission's view, such method enabled a dominant and financially powerful manufacturer like Brown to foreclose, effectively, smaller shoe manufacturers from access to a significant number of independent retail outlets. The Commission's petition for certiorari was pending in the Supreme Court at the close of the year. In Sandura Co. (D. 7042), the Sixth Circuit (Cincinnati) likewise reversed the Commission, holding that a manufacturer's method of distribution involving a system of closed territories and other resale restraints upon its dealers was economically justified," and therefore not unlawful. The court noted that Sandura was "a relatively small concern competing with and losing ground to the giants' of the floor-covering industry."

Restraint of trade cases pending at the close of the year included: Luria Bros. & Co. (D. 6156), in the Third Circuit (Philadelphia), a highly complex matter involving illegal restrictive agreements and arrangements by several scrap iron and steel companies; and American Cyanamid Co. (D. 7211), in the Sixth Circuit (Cincinnati), involving an unlawful conspiracy in the manufacture and distribution of antibiotic drugs.

In the illegal merger field, the most significant decision in fiscal 1965 occurred in Consolidated Foods Corp. (D. 7000), wherein the Supreme Court reversed the Seventh Circuit (Chicago) and upheld the Commission's finding of violation of section 7. The Commission had found that Consolidated's acquisition of Gentry, Inc., a company engaged primarily in the production of dehydrated onion and garlic products, might have the requisite anticompetitive effects because of opportunities afforded for "reciprocal buying, "i.e., a practice whereby Consolidated could use express or implied business coercion to induce its suppliers to purchase some or all of their dehydrated onion and garlic needs from Consolidated's new Gentry Division. In upholding the Commission, the Supreme Court ruled that the court of appeals had given too much weight to "post-acquisition" evidence. Subsequently, the Seventh Circuit handed down its decision in Ekco Products Co. (D. 8122), affirming the Commission's finding that the merger of Ekco, a large diversified manufacturer, with McClintock Manufacturing Co., a small corporation with a virtual monopoly in commercial meat-handling equipment, was unlawful under section 7.

Other important merger cases pending at the close of the year included: Pillsbury Co. (D. 6000), in the Fifth Circuit (New Orleans), involving 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 country; and Proctor & Gamble (D. 6901), in the Sixth Circuit (Cincinnati), involving the acquisition of the Clorox Chemical Co., a manufacturer of household bleach, by Proctor & Gamble, a leading manufacturer of related products such as soaps, detergents, and cleansers. In Pillsbury, briefs have been filed and the case has been orally argued.

In the Robinson-Patman discriminatory pricing area, there were several significant decisions in cases involving the Commission. In Borden Co. (D. 7129), the Fifth Circuit (New Orleans) reversed the Commission's finding of violation of section 2(a), and held that the company had not unlawfully discriminated in price as between sales of "private label" and "Borden" brand evaporated milk, since, in its view, such products were not "of like grade and quality" as required by the statute. The Commission's petition for certiorari was pending in the Supreme Court at the close of the year. In another section 2(a) case involving the Borden Co. (D. 7474), the Seventh Circuit (Chicago) likewise reversed the Commission, holding that the evidence of record failed to satisfy the statute's interstate commerce and competitive injury requirements with regard to the company's discriminatory sales of fluid milk.

Apart from the above, the Commission obtained favorable decisions in a number of Robinson-Patman cases. In General Auto supplies, Inc.,. (D. 8039—National Parts Warehouse), the Seventh Circuit (Chicago) affirmed the Commission's finding that a group of automotive parts jobbers violated section 2(f) by knowingly inducing and receiving discriminatory discounts from their suppliers. This case is noteworthy in that the “group buying” organization involved was not a mere "bookkeeping device," but an ostensible "warehouse distributor" organized and operated by the jobbers as a "limited partnership." In Monroe Auto Equipment Co. (D. 8543), the Seventh Circuit similarly upheld the Commission's finding that a manufacturer's granting of discriminatory discounts to warehouse distributors on products which they purchased and later "resold" to their own affiliated jobber outlets violated section 2(a). The Commission held that such practice could result in injury to competing independent jobbers purchasing Monroe products from nonaffiliated warehouse distributors at regular jobber prices. In another favorable decision, Joseph 4. Kaplan & Sons, Inc. (D. 7813), the District of Columbia Circuit affirmed the Commission's findings that a manufacturer of shower curtains violated sections 2(a), (d), and (e) in connection with sales to various large department stores throughout the country. Twenty-six of these stores received discriminations on purchases from Kaplan through a wholly-owned subsidiary of an organization owned and controlled by the stores.

In Forster Mfg. Co. (D. 7207), the First Circuit (Boston) upheld the Commission's finding that a dominant manufacturer and seller of "woodenware" products had discriminated in price with the deliberate intention and with

the effect of injuring its smaller competitors. However, the court held that the Commission had applied an overly restrictive test in rejecting Forster's "meeting competition" defense, and remanded the case to the Commission for the application of a "reasonable and prudent person" standard under section 2 (b).

Robinson-Pitman matters pending at the close of the fiscal year included: Exquisite Form Brassiere, Inc. (D. 6966), in the District of Columbia Circuit, involving the merits of the company's section 2(b) defense to a charge of granting unlawful advertising and promotional allowances in violation of section 2(d) (in a previous decision, the court had ruled that such defense was applicable to a section 2(d) charge as a matter of law); and Foremost Dairies, Inc. (D. 7475), in the Fifth Circuit (New Orleans), involving issues of interstate commerce and competitive injury in connection with Foremost's discriminations in sales of fluid milk.

DECEPTIVE PRACTICE CASES

In the year's most significant deceptive practice decision, Colgate-Palmolive Co. and Ted Bates & Co. (D. 7736), the Supreme Court upheld the Commission's finding that a television "demonstration" of a shaving cream's ability to shave sandpaper was deceptive and misleading. In reversing the First Circuit (Boston), the Court held that it is an unlawful trade practice to falsely represent that a televised test, experiment, or demonstration provides a viewer with visual proof of the truth of a product claim, regardless of whether the claim itself is true in actual fact. In a similar shaving cream "mock-up" case, Carter Products, Inc. (D. 7943), the Fifth Circuit (New Orleans) granted permission to withdraw the petition for review. The matter had been held in suspense pending the outcome of Collate. Two other cases involving the same type of deceptive "demonstration," General Motors Corp. and Libby-Owens-Ford Glass Co. (D. 7643), remained pending in the Sixth Circuit (Cincinnati).

In Mary Carter Paint Co. (D. 8290), the Supreme Court granted the Commission's petition for certiorari to review a decision of the Fifth Circuit (New Orleans) overturning the Commission's finding that the company's use of the word "free" in its price advertising of paint was misleading and deceptive.

In another significant deceptive practice matter, the Ninth Circuit (San Francisco) upheld the Commission's findings in Stauffer Laboratories, Inc. (D. 7841). The Commission's order requires the company to stop representing that the mechanical device ("Magic Couch") and plan which it sells will effect weight reduction, or tone and firm sagging muscles.

The Commission's efforts to eradicate deception in the watch industry continued to receive court approval during fiscal 1965. In W.M.R. Watch Case Corp. (D. 8573), and Waltham Watch Co. (D. 8396), the District of Columbia Circuit affirmed Commission cease-and-desist orders directed against various deceptive practices in the marketing of watches and watch

parts. The same court of appeals also upheld the Commission in Brite Manufacturing Co. (D. 8325), involving a company's failure to disclose the foreign origin of imported watchbands. In that case, the court specifically affirmed the Commission's taking of "official notice" that a substantial segment of the purchasing public prefers domestic products, and believes that products unmarked as to country of origin are made in America.

In Coro, Inc. (D. 8346), the First Circuit (Boston) upheld the Commission's finding that a costume jewelry and watch manufacturer supplied "insert sheets" to "catalogue houses" containing fictitious retail prices, and falsely representing that its watches were "unconditionally guaranteed." In another fictitious pricing matter, the Second Circuit (New York) affirmed the Commission in Heavenly Creations, Inc. (D. 8448), involving "preticketing" of a variety of products.

In Western Radio Corp. (D. 74-68), the Seventh Circuit (Chicago) upheld an order of the Commission prohibiting deceptive statements regarding the operational range of a pocket-sized portable radio transmitter, and misrepresentation of the licensing requirements necessary to operate this equipment.

In Heinz W. Kirchner, d/b/a Universe Co. (D. 8538), the Ninth Circuit (San Francisco) sustained the Commission's finding that the characteristics of a swimming-aid device called "Swim-Ezy" had been misrepresented to the public.

In J.C. Martin Corp. (D. 8520), the Third Circuit (Philadelphia) a Commission order prohibiting merchandising by means of a game of chance, gift enterprise, or lottery scheme. The court also held that the Commission's proceeding was not barred by a former Commission proceeding against the same respondents, under either the doctrine of res adjudicata or collateral estoppel.

In A. Robbin & Co. (D. 8532), the Seventh Circuit (Chicago) ruled in the Commission's favor in the first proceeding brought under the Flammable Fabrics Act of 1953 to reach court decision.

COLLATERAL SUITS AGAINST THE COMMISSION FOR INJUNCTIVE AND OTHER RELIEF

In a proceeding brought by Lone Star Cement Corp. (D. 8585), the Ninth Circuit (San Francisco) affirmed the decision of the district court (W.D. Wash.) denying the company's motion for summary judgment and granting the Commission's motion to dismiss for failure to exhaust administrative remedies. Lone Star's suit charged that the Commission lacked authority to conduct further proceedings with regard to one of the acquisitions challenged in its section 7 complaint, because of a failure to satisfy the statute's interstate commerce requirements.

In J. Weingarten, Inc. (D. 7714), the Fifth Circuit (New Orleans) reversed the holding of the district court (E.D. Tex.) and dissolved an injunction preventing the Commission from remanding its administrative

proceeding to a hearing examiner for the taking of further evidence. The court of appeals held that the Commission had not prejudged the case, and had acted with reasonable "dispatch" in its handling of the proceeding.

The district court in Minneapolis (D. Minn.) granted the Commission's motion for summary judgment and dismissed a complaint for declaratory judgment and injunctive relief filed by Nash Finch Co. (D. 4589), challenging the conduct of an investigational hearing to determine the company's compliance with a pre-1959 Clayton Act order issued against it.

The District of Columbia Circuit reversed the holding of the district court (D.D.C.) that it was without jurisdiction to entertain a complaint filed by The Elmo Division of Drive-X Co. (D. 5959), and remanded the matter to the lower court for further proceedings. The company contends that the Commission acted improperly in instituting a new proceeding against it rather than adhering to the terms of a consent agreement in an earlier proceeding providing for reopening only upon findings of change of law or fact, or the public interest so required.

The district court in St. Louis (E.D. Mo.) granted the Commission's motion to dismiss a complaint filed by Anheuser-Busch, Inc. (File 611 0155) on the grounds that the court lacked jurisdiction over the subject matter, and that the complaint failed to state a claim upon which relief could be granted. The matter has been appealed to the Eighth Circuit (St. Louis). Anheuser Busch is unwilling to furnish certain production data requested in a subpoena issued in connection with the Commission's investigation of alleged discriminatory practices and other trade restraints in the distribution of yeast.

SUITS TO COMPLIANCE WITH COMMISSION ORDERS AND SUBPOENAS

During fiscal 1965 the Commission was successful in its suits to obtain compliance with its section 6(b) orders calling for the filing of "special" reports. In Artnell Co. (File 237 8136), the Seventh Circuit (Chicago) affirmed the judgment of the district court (N.D.Ill.) granting the Commission's motion for summary judgment in a proceeding to require Artnell to submit quarterly financial data for the Commission's use in its financial reports program. Artnell subsequently complied. In Dartmouth Finishing Corp. (22-66-395), the district court (D. Mass.) entered a consent judgment imposing statutory penalties of $2,000 for Dartmouth's failure to comply with a section 6(b) order of the Commission. The court also directed that the company be held liable for full statutory penalties should it fail fully to comply with the court's judgment. And in three other instances, the companies involved elected to comply "voluntarily" with Commission report orders, following the filing of compulsory process by the Commission in district courts: Huntington Manufacturing Co. (File 641 0084.) (N.D. Ill.); Bausch Machine Tool Co. (25-66-275) (D. Mass.); and Summit Timber Products Co. (24-44-050) (W.D. Pa.).

In subpoena cases, the Commission filed for enforcement in Roytex, Inc. (File 621 0563) in the District Court for the Southern District of New York and obtained an order directing compliance. Roytex thereafter appealed to the Second Circuit (New York). After its application for stay pending appeal was denied by the court of appeals and the Supreme Court, the company complied with the Commission's subpoena. The appeal was dismissed without prejudice on consent of the parties. In A & R Agency (File 632 3604), the Commission filed for enforcement in the District Court for the Northern District of Illinois (Chicago). The court entered an order directing compliance, with satisfactory results.

CRIMINAL CONTEMPT PROCEEDING

In a noteworthy proceeding, Holland Furnace Co. (D. 6203), the Seventh Circuit (Chicago) found the company and three of its top officials guilty of criminal contempt for willfully violating an order of the court commanding obedience to the Commission's order to cease and desist from various deceptive practices in the sale of furnaces and furnace parts. Holland was fined $100,000, and its president, Mr. Cheff, was sentenced to 6 months' imprisonment. The other two company officials were each fined $500. Holland's petition for certiorari was subsequently denied. Mr. Cheff's petition for certiorari was pending at the close of the year.

APPENDIX (B)

Penalty Enforcement Proceedings

When a report of a requested investigation contains provable violations of an order to cease and desist, the staff attorney examines the usually voluminous record, and, if indicated, drafts a complaint and supporting trial memorandum, which is certified by the Commission to the Attorney General of the United States for transmittal to the appropriate U.S. Attorney. In the vast majority of the cases referred by the Department of Justice to the various U.S. Attorneys, members of the Division's staff are requested to prepare pleadings and take depositions for use in the trial of the case. In many instances the staff attorney assumes the full burden of litigation.

During fiscal 1965, penalties totaling $40,600 were recovered. In addition, eight injunctions requiring future compliance with Commission orders were obtained.

Penalty statistics are as follows:

Pending July 1, 1964	38
Filed during year	4
Total for disposition	42
Disposed of during year	14
Pending June 30, 1965	28

DECEPTIVE PRACTICES CIVIL PENALTY CASES

Cases Concluded

Tropic Industries, Inc. (N.D. Ill). Misrepresentations in connection with the sale of vending machines. Dismissed.

International Motels, Inc. (N.D. Calif.). Misrepresentations in connection with the sale of correspondence course in motel management. Dismissed.

Commercial Distributors of America, Inc. (E.D., Pa.). Misrepresentations in connection with the sale of vending machines. Judgment for $5,000 and injunction.

American Candle Co., Inc. (E.D.N.Y.). Misrepresentations as to composition of candles. Judgment for $1,500 and injunction.

Velox Service, Inc. (S.D.N.Y.). Misrepresenting price, value, and performance of certain merchandise. Judgment for $500 and injunction.

Vitasafe Corp. (S.D.N.Y.). Misrepresentation of a free trial offer of vitamin capsules and refusal to cancel orders for undelivered merchandise. Judgment for $18,000 and injunction.

United Products Co. (N.D. Ohio). Misrepresenting earnings from servicing candy vending machines and the assistance given to purchasers of such machines. Judgment $1,500 and injunction.

R. D. Anderson (W.D. Ky.). Misrepresentations made in connection with the interstate sale of silverware coupons and silverware. Judgment for $9,500 and injunction.

Israel Rettinger(E.D.N.Y.). Misrepresenting the manufacture of rainwear and other merchandise. Judgment for $1,500 and injunction.

Endeavor Press (S.D.N.Y.). Misrepresentation in connection with the interstate sale of contest aids. Closed.

International Photographers (S.D. Calif.). Misrepresentation in connection with the interstate sale of photographs and photographic albums. Judgment for $1,500.

David Fischer (S.D.N.Y.). Fictitious pricing of waterproof coatings and paint. Closed.

Cases Pending

Peanut Novelty Company (N.D. Tex). Selling and distributing lottery devices.

Universal Educational Guild, Inc. (E.D.N.Y.). Misrepresentations in connection with the sale of encyclopedias.

Post-Graduate School of Nursing, Inc. (N.D. 111.). Misrepresentations in connection with a correspondence course designed to qualify purchasers in the field of practical nursing.

American Rug & Carpet Co., Inc. (S.D.N.Y.). Deceptive use of oriental names to describe domestic rugs.

Atlantic Products (Nebr.). Misrepresentations of photographic albums and certificates for photographs.

Pruvo Pharmacal Co. (E.D. Wis.). Misrepresenting the therapeutical value of a drug preparation.

Roland S. Jenkins (N.D. Ohio). Misrepresentation in connection with the interstate sale of vending machines and vending machine supplies.

George R. Hoffman (Kans.). Misrepresentation in connection with the interstate sale of correspondence courses.

Herbold Laboratory, Inc. (S.D. Calif.). Misrepresentations as to the efficacy of preparations for use on the hair.

Madway Main Line Homes, Inc. (E.D. Pa.). Pricing misrepresentations in the sale of prefabricated homes.

APPENDIX (C)

Bureau of Textiles and Furs
Civil Penalty and Criminal Cases

During fiscal 1965, one suit for civil penalties was concluded with the recovery of a $2000 penalty and an injunction against further violation of the Commission's order under the Wool Products Labeling Act of 1939.

Penalty Cases Statistics:

Pending July 1, 1964	3
Filed during year	2
Total for disposition	5
Disposed of during year	1
Pending June 30, 1965	4

Criminal Cases Statistics:

Pending July 1, 1964	2
Filed during year	0
Total for disposition	2
Disposed of during year	0
Pending June 30, 1965	2

Civil Penalty Cases Concluded

Lawrence Blanket Co. (Dist. Mass.). Misbranding wool products, blankets. Judgment for $2000 and injunction.

Civil Penalty Cases Pending

Woody Fashions, Inc. (S.D.N.Y.). Misbranding wool products, coats. H. M. Prince Textiles, Inc. (S.D.N.Y.). Misbranding wool products, yarn and fabrics.

Raymond's, Inc. (Dist. Mass.). False advertising and false invoicing of fur products and failure to maintain required records.

Asheville Textile Corp. (S.D.N.Y.). Misbranding and false invoicing of wool products, imported fabrics.

Criminal Cases Pending

Radley Furs, Inc. (S.D.N.Y.). Misbranding and false invoicing of fur products by failure to show they were dyed.

Stone & Stone, Inc. (S.D.N.Y.). Misbranding and false invoicing of fur products by failure to show they were dyed and by failure to show the true country of origin of the furs.

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